TAX INFORMATION BULLETIN

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Inland Revenue
Te Tari Taake

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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 items are available for review/comment this month, having a deadline of 31 July 2000. Please see page 25 for details on how to obtain copies:

Ref.	Draft type	Description
IG0010	Interpretation guideline	Work of a minor nature. The item provides guidance on how the courts have determined whether specific work undertaken as part of development or division work, in the context of section CD 1(2)(f) of the Income Tax Act 1994, constitutes "work of a minor nature" and therefore excludes sale proceeds from being treated as gross income of the taxpayer.
IS0079	Interpretation statement	Financial planning fees – GST treatment. The item sets out details of the GST treatment of services provided in relation to financial planning fees charged by financial advisers to plan, implement, and monitor their clients' investment portfolios. It replaces Public Ruling BR Pub 95/11.
IS3175	Interpretation statement	Assets under construction – depreciation. The item gives the Commissioner's view on whether assets still under construction constitute "depreciable property", as defined in section OB 1 of the Income Tax Act 1994, and if so, how the allowable deduction for depreciation is to be determined under subpart EG.

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 *Adjudication & Rulings, a guide to Binding Rulings (IR 715)* or the article on page 1 of *Tax Information Bulletin* Vol 6, No 12 (May 1995) or Vol 7, No 2 (August 1995).

You can download these publications free of charge from our website at **www.ird.govt.nz**

SUPPLIES PAID FOR IN FOREIGN CURRENCY – GST TREATMENT

PUBLIC RULING – BR Pub 00/04

Note (not part of ruling): This Ruling is essentially the same as public ruling BR Pub 95/12, published in *Tax Information Bulletin* Vol 7, No 7 (January 1996), but this Ruling's period of application is from 1 March 1999 to 29 February 2004. Some formatting changes have also been made. BR Pub 95/12 applies when the time of supply occurred prior to 1 March 1999.

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

Taxation Laws

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

This Ruling applies in respect of sections 2(1) (definition of "money"), 3(1) (definition of "financial services"), 10(2), 14(a), and 77.

The Arrangement to which this Ruling applies

The Arrangement is the acceptance by a registered person of payment in foreign currency for a taxable supply of goods or services made in New Zealand.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

1. The value of the taxable supply is the amount of foreign currency converted to New Zealand currency at the exchange rate applying at the time of supply.

2. The appropriate exchange rate is the rate offered by a registered bank or a bureau de change at the time of supply.

The period for which this Ruling applies

This Ruling will apply for the period 1 March 1999 to 29 February 2004.

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

Martin Smith

General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR PUB 00/04

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 00/04 ("the Ruling").

The subject matter covered in this Ruling was previously dealt with by BR Pub 95/12 and in *Tax Information Bulletin* Vol 7, No 7 (January 1996), on page 17. This Ruling applies for the period from 1 March 1999 to 29 February 2004.

Background

Public ruling BR Pub 95/12 dealt with the GST consequences of receiving payment in foreign currency for taxable supplies of goods and services made in New Zealand. A number of registered persons, particularly those involved in tourism, accept foreign currency as payment for supplies of goods and services. Often a registered person will offer the customer an "in-house" exchange rate. This exchange rate is less favourable to the customer than other exchange rates. That is, the customer gets less New Zealand currency for the foreign currency than that obtainable at a bank or bureau de change.

The registered supplier will exchange the foreign currency at a bank and receive New Zealand currency. Because the bank exchange rate is better than the exchange rate the registered person gave the customer, the registered person will make a profit on the conversion of the foreign currency. The Ruling considers the GST treatment of such a profit. In particular, the Ruling considers whether the profit is consideration for an exempt supply, or whether the profit is part of the consideration for a taxable supply.

Legislation

Section 2(1) defines "money":

> **"Money"** includes-
>
> (a) Bank notes and other currency, being any negotiable instruments used or circulated, or intended for use or circulation, as currency; and
>
> (b) Postal notes and money orders; and
>
> (c) Promissory notes and bills of exchange,-
>
> whether of New Zealand or any other country, but does not include a collector's piece, investment article, or item of numismatic interest.

Section 3(1) defines "financial services". Under paragraph (a):

> For the purposes of this Act, the term "financial services" means any one or more of the following activities:
>
> (a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise)...

Section 14(a) exempts supplies of financial services from GST.

Section 10 provides for the value of supply. Section 10(2) states:

> Subject to this section, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of,-
>
> (a) To the extent that the consideration for the supply is consideration in money, the amount of the money:

Section 77 states:

> For the purposes of this Act, all amounts of money shall be expressed in terms of New Zealand currency, and in any case where and to the extent that such amount is consideration in money for a supply, that amount shall be expressed in terms of New Zealand currency as at the time of that supply.

Application of the legislation

Number of supplies

When a registered person sells goods and services to a customer who pays in foreign currency there is only one supply. That supply is the supply of goods and services.

A possible alternative view is that there are two supplies in these circumstances: the first supply being a supply of goods and services from the registered person to the customer, the second supply being an exempt supply (under section 3(1)(a) and section 14(a)) of the exchange of currency, also from the registered person to the customer. However, as already stated, that is not the position where a sale of goods and services occurs with the customer paying in foreign currency—there is only one supply in this situation.

The position is different if a customer, having already completed an exchange of foreign currency for New Zealand currency with a registered person, then chooses in a separate transaction to use that New Zealand currency to purchase goods and services from the same registered person.

It will be a question of fact in each case whether there are one or two supplies. In the ordinary commercial situation there can be no reconstruction of the transaction to recharacterise two supplies as one or vice versa, nor is it appropriate to apply principles of economic equivalence to achieve similar results between one supply and two supply situations.

When a registered person accepts foreign currency in payment for supplies, there is no exempt supply of the exchange of currency. To be an exchange of currency under section 3(1)(a) one currency must be exchanged for another. Section 3(1)(a) does not cover the situation when currency is exchanged for goods and services. The fact that the registered person will later

exchange the currency with a bank or bureau de change does not alter this. The transaction between the bank or bureau de change and the registered person involves an exempt supply of the exchange of currency by the bank or bureau de change to the registered person. There is no such exempt supply from the registered person to the customer paying with foreign currency.

In situations where there is only one supply, a supply of goods and services, the value of supply is important, particularly since the registered person usually makes a profit from the low exchange rate.

Value of supply

When a registered person sells goods and services to a customer, the value of supply is determined using the rules in section 10. Under section 10(2)(a), when consideration for the supply is an amount of money, the value of supply is the amount of money. "Money" is defined in section 2(1) and includes foreign currency.

Therefore, when a customer tenders foreign currency as consideration for a supply, the value of supply is the amount of foreign currency. However, section 77 requires all amounts of money tendered in consideration of a supply to be "expressed in terms of New Zealand currency as at the time of that supply".

"Expressed in terms of New Zealand currency"

Three interpretations of the phrase "all amounts of money shall be expressed in terms of New Zealand currency" are possible. It could mean that:

- the parties must state their transaction, or document it, in New Zealand currency and the supplier returns that amount for GST purposes; or
- the supplier must convert foreign currency to New Zealand currency at the current market exchange rate and return that amount for GST purposes; or
- the supplier may convert foreign currency to New Zealand currency at the rate agreed between the parties and returns that amount for GST purposes.

The first interpretation does not require any type of conversion, whereas the second and third do.

The words in section 77 are exactly equivalent to those in section 20(1) of the Australian Income Tax Assessment Act 1936. Section 20(1) had been accepted as embodying the decision of the Privy Council in *Payne v Deputy FCT* [1936] 2 All ER 793 (see, for example, Dixon J in *Adelaide Electric Supply Co Ltd v FCT* (1949) 78 CLR 557). In the *Payne* decision, Lord Russell said at page 796 of the judgment:

> ...the assessable income of the taxpayer must, whatever be the currency in which he derives it, all be **expressed in terms of Australian currency**; **in other words** if any portion of his assessable income is derived by him in French or Belgian currency, **it must before he can be properly assessed to Australian income tax be converted into its equivalent, at the time it was derived, in Australian currency.** In exactly the same way, any income derived by him in British currency must be converted into its equivalent in Australian currency. In short when an Australian statute tells the taxpayer to state his derived income in order that a fraction thereof (i.e., so many pence in the pound of derived income) may be taken as tax, this can only mean that his derived income is to be stated and dealt with in terms of Australian currency. From this it would accordingly follow that the commissioner was right in including the amount of £1,097 in the appellant's assessment. [Emphasis added.]

Lord Russell was using the words subsequently adopted in section 20(1) in the sense described above in the second interpretation. Accordingly, the second interpretation of the phrase in section 77 is to be preferred to the first and third interpretations. That is, the phrase "expressed in terms of New Zealand currency" in section 77 requires the amount of foreign currency tendered as consideration for a supply to be converted into an amount of New Zealand currency at the exchange rate applying at the time of supply.

The above interpretation is also consistent with the use of the same phrase by the New Zealand legislature in the now repealed section KF 2(5) (definition of "effective rate of domestic income tax"). The relevant part of the former section KF 2(5) stated:

> "Effective rate of domestic income tax", in relation to a company that is not resident in New Zealand and to an accounting year of that company, means the rate ascertained in accordance with the following formula:
>
> $$\frac{a}{b}$$
>
> where-
>
> a is the total income tax (**expressed in terms of New Zealand currency** at the rate of exchange in force on the last day of that accounting year) payable by that company in the country or territory in which it is resident, in respect of the total income derived by it in that accounting year, being the total income upon which the total income tax is levied; and
>
> b is that total income (**expressed in terms of New Zealand currency** at the rate of exchange in force on the last day of that accounting year): [Emphasis added.]

This definition is an equivalent use of the phrase in section 77, and supports the interpretation that the phrase requires some type of conversion. As already outlined, the decision in *Payne* supports the interpretation of the phrase in section 77 as requiring the conversion of the foreign currency (tendered as consideration for a supply) at the exchange rate applying at the time of supply.

Exchange rate applying at the time of supply

Section 77 requires the amount of money that is consideration for a supply to be expressed in terms of New Zealand currency "as at the time of that supply".

Section 9 determines the time at which any supply takes place. Section 9(1) states the general rule, that is, a supply shall be deemed to take place at the earlier of the time an invoice is issued or the time any payment is received by the supplier. In the circumstances to which the Ruling applies, the time of supply is the time of payment. Accordingly, it is the exchange rate applying at the time of payment that is to be used to convert the foreign currency to NZ$ for GST purposes and not an exchange rate applying at the date the registered person converts the foreign currency to NZ$. Nor can the rate of exchange actually obtained on the conversion of the foreign currency be used.

The Commissioner will accept the exchange rates offered by a registered bank or bureau de change.

In this connection the Commissioner will accept the bank exchange rates of ASB Bank, ANZ, BNZ, National Bank of New Zealand, or WestpacTrust. The Commissioner will also accept the bureau de change exchange rates of Thomas Cook or American Express.

The value of supply is not the value of foreign currency tendered as consideration exchanged at the registered person's low exchange rate. Instead, it is the value of foreign currency tendered as consideration converted at the exchange rate determined by the registered banks and bureaux de change operating in the foreign exchange markets at the time of supply (payment).

Examples

Example 1

Hotel Guest wishes to exchange some foreign currency for New Zealand currency. Hotel offers him a low exchange rate, which he accepts. Hotel exchanges the foreign currency at a bank and makes a small profit.

The profit is consideration for an exempt supply, being the exempt supply of an exchange of currency. Hotel has exchanged New Zealand currency for foreign currency. The consideration for the supply is the difference between the exchange rate Hotel receives from the bank and the exchange rate Hotel gave Hotel Guest.

For example:

Approved exchange rate:	NZ$1=Foreign$3 or Foreign$1=NZ$0.33
Hotel exchange rate:	NZ$1=Foreign$4 or Foreign$1=NZ$0.25

Hotel Guest exchanges Foreign$300 at Hotel exchange rate and receives NZ$75. Hotel exchanges the Foreign$300 at the bank for the approved exchange rate and receives NZ$100. The NZ$25 profit is consideration for an exempt supply and does not have to be returned for GST purposes.

Example 2

Hotel Guest checks out of Hotel and settles his bill using foreign currency. Again Hotel offers him a low exchange rate which he accepts. Hotel exchanges the money at a bank and makes a small profit.

The profit on the currency exchange at the bank is part of the consideration for the taxable supply of goods and services by Hotel to Hotel Guest. The value of supply is the amount of foreign currency tendered in consideration for the supply. As the amount of money is foreign currency, it needs to be expressed in amounts of New Zealand currency. That change to New Zealand currency should take place at the approved exchange rate at the time of supply. That means the profit on the currency exchange is part of the consideration for the taxable supply Hotel makes.

For example:

Exchange rates as above. Bill of NZ$1,000. Hotel Guest tenders Foreign$4,000 to pay the bill. Hotel accepts the Foreign$4,000 in full payment of the bill, at Hotel's exchange rate. Hotel then exchanges the Foreign$4,000 at the bank for the approved exchange rate and receives NZ$1,333, making a profit of $333 on the currency. This profit is part of the consideration for a taxable supply and should be returned as such for GST purposes.

NEW LEGISLATION

FRINGE BENEFIT TAX – PRESCRIBED RATE OF INTEREST

The rate of interest used to calculate fringe benefit tax for low-interest employment-related loans is being increased to 8.1% for the quarter beginning 1 July 2000. This replaces the existing rate of 7.59%.

The rate is reviewed quarterly to ensure it is in line with market interest rates. It was last changed in April 2000.

The new rates are consistent with first mortgage housing rates.

The new rate was enacted by Order in Council on 29 May 2000.

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2000 (2000/86)

ENERGY EFFICIENCY AND CONSERVATION ACT 2000

The Energy Efficiency and Conservation Act 2000 was enacted on 15 May 2000.

The Act establishes an Energy Efficiency and Conservation Authority whose functions are to encourage, promote and support energy efficiency, energy conservation and the use of renewable sources of energy.

On the basis of criteria set out in *CIR v Medical Council of NZ* [1997] 18 NZTC 13,088, the Authority is a public authority.

However, for the purposes of clarifying the law, section 29 of the new Act deems the Authority to be a public authority for the purposes of the Inland Revenue Acts. This ensures that any income derived by the Authority will be exempt income in terms of section CB 3(a) of the Income Tax Act 1994.

CHILD SUPPORT (RECIPROCAL AGREEMENT WITH AUSTRALIA) ORDER 2000

The Order in Council giving effect to the Child Support (Reciprocal Agreement with Australia) Order 2000 was signed by the Governor-General on 29 May 2000. The Order applies to administrative (formula) based child support, voluntary arrangements and court awarded child and spousal maintenance.

The agreement will apply when a custodian and child(ren) live in one country and the liable parent in the other. The country in which the custodian and child(ren) live will be the one to establish child support and spousal maintenance liabilities. The agreement will allow Australia and New Zealand to:

- enforce payment of child support and spousal maintenance owing to the other country; and
- supply each other with details of liable parents' income and their addresses.

When enforcing payment, each country will use its own debt collection powers. In most cases this will consist of applying the normal process of requiring employers to make deductions from a liable parent's salary or wages.

Existing arrangements that are satisfactory to both the custodian and the liable parent will be allowed to remain outside the agreement.

The Order comes into effect from 1 July 2000.

Contact details

Each country will manage agreement cases through a Central Authority. The contact details are:

New Zealand

Inland Revenue Child Support
PO Box 9471
Hamilton
New Zealand

Freephone	0800 924 444 ext 41328 (from within New Zealand only)
Telephone	0064 7 834 7328
Fax	0064 7 834 7233

Australia

Australian Child Support Agency
GPO Box 9815
Hobart
Tasmania
Australia

Freephone	1800 637 445 (from within Australia) 0800 440 953 (from within New Zealand)
Telephone	0061 3 6221 0187
Fax	0061 3 6221 0180

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 – GENERAL DEPRECIATION DETERMINATION DEP45

In *Tax Information Bulletin* Vol 12, No 4 (April 2000) on page 12 we published a draft general depreciation determination for boat lift storage systems. These are submersible devices that lift small boats clear of the water for cleaning, maintenance, and/or storage.

No submissions were received on the draft determination and the Commissioner has now issued the determination. It is reproduced below and may be cited as "Determination DEP45: Tax Depreciation Rates General Determination Number 45". The proposed new depreciation rate is based on the estimated useful life set out in the determination and a residual value of 13.5%.

GENERAL DEPRECIATION DETERMINATION DEP45

This determination may be cited as "Determination DEP45: Tax Depreciation Rates General Determination Number 45".

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.

This determination is signed by me on the 1st day of June 2000.

Martin Smith

General Manager (Adjudication & Rulings)

NATIONAL AVERAGE MARKET VALUES OF SPECIFIED LIVESTOCK DETERMINATION 2000

This determination may be cited as "The National Average Market Values of Specified Livestock Determination, 2000".

This determination is made in terms of section EL 8(1) of the Income Tax Act 1994 and shall apply to specified livestock on hand at the end of the 1999 – 2000 income year.

For the purposes of section EL 8(1) of the Income Tax Act 1994, the national average market values of specified livestock for the 1999 – 2000 income year are as set out in the following table.

National Average Market Values of Specified Livestock

Type of Livestock	Classes of Livestock	Average Market Value per Head $
Sheep	Ewe hoggets	48
	Ram and wether hoggets	46
	Two-tooth ewes	60
	Mixed-age ewes (rising three-year and four-year old ewes)	50
	Rising five-year and older ewes	40
	Mixed-age wethers	31
	Breeding rams	131
Beef cattle	*Beef breeds and beef crosses*:	
	Rising one-year heifers	360
	Rising two-year heifers	569
	Mixed-age cows	642
	Rising one-year steers and bulls	474
	Rising two-year steers and bulls	689
	Rising three-year and older steers and bulls	844
	Breeding bulls	1,631
Dairy cattle	*Friesian and related breeds:*	
	Rising one-year heifers	400
	Rising two-year heifers	749
	Mixed-age cows	862
	Rising one-year steers and bulls	373
	Rising two-year steers and bulls	621
	Rising three-year and older steers and bulls	805
	Breeding bulls	1,133

Type of Livestock	Classes of Livestock	Average Market Value per Head $
	Jersey and other dairy cattle:	
	Rising one-year heifers	374
	Rising two-year heifers	725
	Mixed-age cows	842
	Rising one-year steers and bulls	249
	Rising two-year and older steers and bulls	473
	Breeding bulls	889
Deer	*Red deer:*	
	Rising one-year hinds	197
	Rising two-year hinds	329
	Mixed-age hinds	384
	Rising one-year stags	243
	Rising two-year and older stags (non-breeding)	362
	Breeding stags	1,850
	Wapiti, elk, and related crossbreeds:	
	Rising one-year hinds	227
	Rising two-year hinds	363
	Mixed-age hinds	418
	Rising one-year stags	275
	Rising two-year and older stags (non-breeding)	398
	Breeding stags	1,753
	Other breeds:	
	Rising one-year hinds	67
	Rising two-year hinds	117
	Mixed-age hinds	147
	Rising one-year stags	79
	Rising two-year and older stags (non-breeding)	129
	Breeding stags	388
Goats	*Angora and angora crosses (mohair producing):*	
	Rising one-year does	49
	Mixed-age does	47
	Rising one-year bucks (non-breeding)/wethers	26
	Bucks (non-breeding)/wethers over one year	35
	Breeding bucks	162
	Other fibre and meat producing goats (Cashmere or Cashgora producing):	
	Rising one-year does	33
	Mixed-age does	51
	Rising one-year bucks (non-breeding)/wethers	35
	Bucks (non-breeding)/wethers over one year	31
	Breeding bucks	162

Type of Livestock	Classes of Livestock	Average Market Value per Head $
	Milking (dairy) goats:	
	Rising one-year does	102
	Does over one year	154
	Breeding bucks	163
	Other dairy goats	102
Pigs	Breeding sows less than one year of age	212
	Breeding sows over one year of age	238
	Breeding boars	281
	Weaners less than 10 weeks of age (excluding sucklings)	47
	Growing pigs 10 to 17 weeks of age (porkers and baconers)	92
	Growing pigs over 17 weeks of age (baconers)	138

This determination is signed by me on the 17th day of May 2000.

Martin Smith

General Manager (Adjudication & Rulings)

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.

DISPUTES PROCEDURES: THE COMMENCEMENT AND EXPIRY DATES OF A "RESPONSE PERIOD"

Section 3(1) Tax Administration Act 1994 (TAA): Definition of "response period"

We have been asked to clarify when is the last day for responding to a Notice of Proposed Adjustment (NOPA) issued by the Commissioner pursuant to the Disputes Resolution Process.

This interpretation applies to all notices issued on and after 1 September 2000.

"Response period" is defined in section 3(1) as meaning the two month period starting on the date of issue of:

- a notice of proposed adjustment
- a notice of disputable decision
- a notice revoking or varying a disputable decision that is not an assessment
- a disclosure notice
- a notice from the Commissioner rejecting an adjustment proposed by a disputant
- a notice from the disputant rejecting an adjustment proposed by the Commissioner
- the date of issue of a disputant's statement of position
- the day immediately following the last day for the filing of a GST return for that period.

For the purposes of this item, all of the above will be referred to as "notices".

Although the question raised in this item is specifically in relation to the issue of a NOPA, the interpretations following will apply to any of the notices that come within the definition of "response period".

Date of issue

The Commissioner considers that the date of issue is the date that the notice is sent or posted. It is the date that the notice physically leaves Inland Revenue or the taxpayer for delivery to the post office or external mailbox. Generally, this will be determined by the date on the notice which, it is assumed, will be that same date that the notice is actually sent. However, this is a rebuttable presumption.

If a taxpayer sends a notice by facsimile (fax), the date of issue will be the date the notice is transmitted (sent) by fax.

Month

Neither "two month" period nor "month" are defined in the TAA or the Income Tax Act 1994 (ITA).

The word month is, however, defined in section 35(1) of the Interpretation Act 1999 as meaning a calendar month, and this meaning applies unless an enactment provides otherwise.

The definition of "response period" explicitly states that the response period **starts on** the date of issue. This means that the date of issue is included in the response period.

The last day of the two month response period is not the corresponding day (numerically) as the day the response period commenced. A last day that corresponds numerically to the date of issue (the commencement date) creates a time-span of two months and one day. The last day of the response period will be the day immediately preceding the day (numerically) corresponding with the date the response period commenced (*Migotti v Colvill* (1879) 4 CPD 233, 37 *Halsbury's Laws of England* (3rd Ed) 82, 83.)

As a practical example, where a NOPA is issued on 5 October 1999, the last day for responding to that notice is 4 December 1999.

Generally, the last day for responding to a NOPA will numerically be one number less than the date of issue. The exception to this is the month of February with 28 days and 29 in each leap year. Although unlikely, if a NOPA was issued on any of the days from 29 to 31 December inclusive, in each case the last day for responding to that NOPA would be 28 February, or 29 February if it is a leap year (the nearest day preceding the day numerically corresponding to the commencing day).

Holidays and non-working days

On occasions, the last day for responding to a notice falls on a holiday or non-working day. "Working day" is defined in the Interpretation Act 1999 as a day of the week, other than:

(a) A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and

(b) A day in the period commencing with 25 December in a year and ending with 2 January in the following year; and

(c) If 1 January falls on a Friday, the following Monday; and

(d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday:

The Interpretation Act 1999 states that, where the last day in a period of time is not a working day, the last day in that period will be the next working day.

For example, a NOPA is issued on 2 November 1999. The last day for responding would be 1 January 2000. As 1 and 2 January 2000 fall on a Saturday and Sunday, the holidays are observed on the following Monday and Tuesday, which are both non-working days. Therefore, the last day for responding to the NOPA is the next working day, that is 5 January 2000.

This item replaces statements to the contrary published in *Tax Information Bulletin* Vol 8, No 3 (August 1996).

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 OBJECTORS UNINCORPORATED BODIES FOR THE PURPOSES OF GST

Case:	James Holdsworth & Others v CIR
	Colin Francis Hair & Others v CIR
	William Newman & Others v CIR
Decision date:	2 June 2000
Act:	Goods and Services Tax Act 1985
Keywords:	*Definition of unincorporated body, taxable activity, value of supply*

Summary

Justice Smellie found for the Commissioner on all three cases.

Facts

William Newman & Ors v CIR

Farm land was owned by a "daughter's trust", a "son's trust", and William Newman as tenants in common as to a 1/3 share each. The 1/3 share owned by the daughter's trust was leased to William Newman. The land was farmed by a partnership between William Newman and the son's trust. The partnership was registered for GST. The profits of the partnership were split evenly between William Newman and the son's trust. In July 1991 all three owners sold the land to a company, Newman & Newman Limited.

Pursuant to section 51(4) of the Goods and Services Tax Act 1985 ("the Act") the Commissioner deemed the landowning objectors to be registered for GST. The objectors were assessed for output tax on 2/3 of the purchase price of the land as they owned a 2/3 share.

James Holdsworth & Ors v CIR

The farm land was owned as to ½ by James Holdsworth, 1/6 by Peter Holdsworth, 1/6 by Margaret Holdsworth and 1/6 by Rachel Chadwick. The land was farmed by a partnership comprising them all and was registered for GST. In August 1991 the owners sold the land to Peter Holdsworth as trustee for a company to be formed.

Pursuant to section 51(4) the Commissioner deemed the objectors to be registered for GST as an unincorporated body and assessed them for output tax on the purchase price of the land.

Colin Francis Hair & Ors v CIR

The farm land was owned as to 3/20 by Colin Hair, 5/20 by Lorna Hair and 12/20 by Colin Hair and Robert Briant as trustees of four different trusts. The land was farmed by the objectors in partnership with Taumutu Farm Limited and was known as the Taumutu Farm New Partnership. The partnership was registered for GST. In April 1994 the land was sold to a third party.

Pursuant to section 51(4) the Commissioner deemed the objectors to be registered for GST as an unincorporated body and assessed them for output tax on the purchase price of the land.

Decision

Justice Smellie stated that the Act casts a very wide net and that it is entirely within the purpose of the Act that "associated persons" who act together to supply goods valued above the threshold of $30,000 per annum should be taxed as a group. The taxing mechanism is that provided in the Act as the "unincorporated body".

He held that in each case, when looking at the contractual arrangements made by the objectors, there must have been agreement between the tenants in common to commit their respective interests in the land to the respective partnerships for the term of those partnerships and, as a necessary corollary, to restrict their individual rights of occupation and disposal. He went on to hold that the objectors were joint ventures and therefore unincorporated bodies pursuant to section 57 of the Act.

On the issue of "taxable activity" Justice Smellie held that the Court of Appeal decision in *CIR v Bayly* (1998) 18 NZTC 14,073 applies directly and that a taxable activity was being carried on.

Justice Smellie held that the value of supply in all cases was over the threshold.

WHETHER LATE PAYMENT CHARGE ON INSURANCE PREMIUMS WAS INTEREST AND TAXABLE, OR ADDITIONAL PREMIUMS AND TAX EXEMPT

(**Note:** This decision relates to pre-1990 tax years as the section in question was amended for later years)

Case:	Colonial Mutual Life Assurance Society Ltd v CIR
Decision date:	18 May 2000
Act:	Income Tax Act 1976
Keywords:	*Income tax, insurance, interest on overdue premium*

Summary

In a split decision, the Court of Appeal considered that the additional charge was not taxable.

Facts

This was an appeal from *Colonial Mutual Life Assurance Society Ltd v CIR* (1999) 19 NZTC 15,375.

When policyholders in Colonial Mutual Life Assurance Society Ltd ("CML") did not pay their premiums on time, CML charged an additional sum. This amount was described by CML in its policy documents as "interest".

The Commissioner took the view that the additional charge was interest and taxable. CML took the view it was additional premium and tax exempt.

The High Court took the Commissioner's view and upheld the assessment.

Decision

Majority reasons:

Richardson P considered that the relevant section 204 of the ITA 1976 created a code and that there were two principle income flows to CML under that section. "(T)he interest is an adjustment in relation to the premium payable contractually charged because of the delay in payment and made on a daily basis". He considered it took on the same character as the premium and noted that both interest and premium were calculations of time value of money.

Henry J also considered section 204 to be a code and thought that interest on premiums did not come within the concept of an "investment" by CML. Nor was it "gross revenue" as the Act did not contemplate a method by which expenditure to gain the revenue could be deducted and therefore was premium income. He rejected an argument by the Commissioner that the interest was not calculated by reference to risk assessment (mortality) and therefore not premium, saying the extra charge was part of meeting the "overall risk obligations" and "in substance it is part of the premium".

Blanchard J also considered section 204 to be a code with two business activities within its ambit: insurance and investment. While accepting there may be sources of "gross revenue" for CML outside these two activities, His Honour did not consider that there was an investment (although he did accept there was a

debt) by CML. He said, "payments to purchase or keep up a life policy are tax exempt payments which are intended to be invested by the insurer". The interest is paid as part of maintaining the policy and thus is akin to a premium.

Minority decisions:

Gault J considered the interest was taxable and relied, in part, on a previous decision of the Court of Appeal (*Cmr of Taxes v AMP* (1902) 22 NZLR 445). He also considered that interest could create a debt. His Honour found influential the contract between CML and the policy holder that treated the sum paid as interest, and accepted that interest recognises the time value of money unpaid without making that interest the same character as the principle sum (in this case the overdue premium) on which the interest is paid. Finally, he accepted that such interest was within the definition of "gross revenue" for section 204 and highlighted that there was provision to allow deductions for expenses incurred in creating such "gross revenue".

Thomas J agreed with Gault J that the AMP case was directly on point and should not be overturned. After discussing that case he went on to accept the interest was payable on a debt (the unpaid premium). His Honour considered the interest to represent income to CML and then went on to consider what its nature was. Rejecting taxation by economic equivalence, Thomas J considered the words of the section and accepted the presence of an inclusive definition of "gross revenue" which could include income from other than premiums and investments. However, he was concerned that there was no provision for deductibility of direct expenses in earning that third source of income (although he conceded it would be deductible as indirect expenses). He went on to consider Parliament's intent as reflected in the section, giving eight reasons to conclude that the interest was investment income and therefore taxable.

GST ON FEES FOR ADMINISTRATIVE SERVICES; COMMISSIONER NOT ENTITLED ON APPEAL TO CHANGE BASIS ON WHICH ASSESSMENTS WERE MADE; APPELLATE COURT JURISDICTION CONFINED TO CASE STATED

Case:	F B Duvall Limited v CIR
Decision date:	17 May 2000
Act:	Goods and Services Tax Act 1985
Keywords:	*GST, output tax, scope of appeal, change of grounds on appeal, jurisdiction of appellate court.*

Facts

The objector was a loss company controlled by J G Russell and was part of his tax avoidance scheme. This case related to seven six month GST periods (the first ending 31 August 1987, the last 31 August 1990, both dates inclusive). During the relevant periods the objector received administration fees from various subsidiary companies. The Commissioner calculated GST payable on those fees. Notices of assessment expressed themselves as being in respect of total supplies made by the objector for the particular periods.

In a judgment reported at (1993) 15 NZTC 5,159 the TRA found for the Commissioner. There were no discussions of the supplies received by the objector and of its input tax credits.

The objector appealed to the High Court and the case was heard four years after the TRA decision. However, by then the Commissioner had concluded that the appeal had to be allowed. Baragwanath J noted that the appeal was to be allowed by consent and considered that the main issue for him to determine was upon what ground.

The Commissioner contended that no services were supplied by the objector and so no GST arose. The reason for this was to provide a stepping stone to a contention that the objector was not entitled to input tax credits. The objector submitted that it was not open for the Commissioner to raise this argument and further that the services it supplied were financial and therefore exempt from GST. Baragwanath J concluded that the Commissioner's contention was open to consideration and that there was no reason why the parties should not reverse their position on appeal. His Honour further held that no services were supplied by the objector in return for the administration charge.

Following the High Court judgment the Commissioner made zero assessments, which, while allowing for the wrongly allowed output tax, also rejected input tax credits. This was challenged by the objector but was upheld by two further judgments of Baragwanath J: ((1999) 19 NZTC 15,039 and (1999) 19 NZTC 15,515).

Decision

Richardson P, delivering the Court of Appeal's judgment, concluded that the Commissioner was not entitled to change the stance he had taken in making the assessments and had pursued before the TRA, namely, that the administration charges were in respect of taxable supplies assessable for output tax. His Honour further held that the High Court lacked jurisdiction to hear and determine the Commissioner's new argument that the objector had not supplied any services and then in subsequent judgments to determine that the objector was not entitled to input tax credits.

Richardson P firstly considered that it was difficult to see any justification for the High Court to go beyond the consent and beyond formally allowing the appeal. Secondly, it was not open for the Commissioner to assert the contrary of the basis on which the assessments had been made and objected to. All of the notices of assessment asserted that that objector had supplied services. The TRA had upheld the view that the administration charges were taxable supplies. On appeal the Commissioner was confined to the stance he had taken and which had been upheld by the TRA and the attempt to assert the opposite, that no supply of services had been made, was outside the Commissioner's actual assessments of output tax.

Further, the High Court was hearing an appeal on questions of law or fact in terms of the case stated by the TRA. The case stated confined the High Court, and the Commissioner was not entitled to change his stance. The High Court exceeded its jurisdiction in allowing the Commissioner to do so and in hearing and determining the appeal as it did. Finally, input tax credits were not at issue in the assessments or in the hearing before the TRA. The whole focus was on output tax. The appeal was therefore allowed and the orders made by the High Court, beyond the original allowing of the appeal by consent, were quashed.

However, the Court of Appeal indicated that the Commissioner may be able to make further assessments in respect of the input tax credits, notwithstanding the prima facie time bar.

WHETHER TAXPAYER'S PAYMENT OF ACCRUED STAFF LIABILITIES WAS A CAPITAL OR REVENUE EXPENSE

Case:	CIR v New Zealand Forest Research Institute Ltd
Decision date:	12 June 2000
Act:	Income Tax Act 1976
Keywords:	*Capital expenditure or revenue expenditure*

Summary

The Commissioner was successful in his appeal from the Court of Appeal.

Facts

With effect from 1 July 1992 New Zealand Forest Research Institute ("NZFRI") acquired from the Crown certain assets and the Crown's business related to forest research. Under the transfer agreement NZFRI was obliged to pay a price for those assets that was determined having regard to the relative values of assets and liabilities associated with the Crown's forest research establishment.

Under the transfer agreement NZFRI assumed certain liabilities from the Crown with effect from the transfer date. Those included liabilities that related to the business or activity carried on by the Ministry of Forestry before the transfer date or to the transfer or employment of any employee of the Ministry on the terms on which any employee was previously employed.

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

A sum of $1.97 million was determined to be the value of accrued staff liabilities and the price to be paid by NZFRI for the Crown's business and assets was calculated having regard to that sum.

Under the Crown Research Institutes Act 1992 ("CRI Act") certain provisions were enacted to the effect that employees of the Crown would become employees of CRIs. In accordance with the CRI Act and its employment contracts, NZFRI recognised transferring employees as being entitled to certain paid leave with effect from 1 July 1992.

During the succeeding year NZFRI paid $836,978 on account of leave that was due to employees it engaged from 1 July 1992, in terms of their employment contracts.

The Commissioner disallowed the deduction of that amount on the basis that it was an item of capital and not deductible to NZFRI.

In the High Court Justice Salmon found in favour of the Commissioner. The taxpayer appealed to the Court of Appeal.

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

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

Secondly, remuneration for leave has all the attributes of revenue character payments.

Thirdly, the payments in question were not made in the discharge of a liability to pay a quantified sum as at the commencement of the year 1 July 1992. The employees' rights and the taxpayer's obligations to them were as provided for in the collective employment contract and section 41 of the CRI Act.

Fourthly, in terms of section 41, the employment contract of every transferring employee is "deemed to have been unbroken" and the employee's period of service with the Crown is "deemed to have been a period of service with the Crown Research Institute". Therefore, any payment in respect of leave paid by the taxpayer is not in respect of service to another employer, that is the Crown.

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

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

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

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

Decision

The Privy Council found in the Commissioner's favour reversing the Court of Appeal's decision.

Simply, the Board held that the payments were capital expenditure being part of what was paid for the acquisition of the assets for the business. The Board stated that there can be no doubt that the discharge of the vendor's liability to a third party, whether vested or contingent, can be part of the purchase price. It does not matter that the payment is not made at once but pursuant to an arrangement whereby the purchaser agrees to be substituted as debtor to the third party.

It also does not matter that the payments would be income in the hands of the third party recipient. The case of *Royal Insurance v Watson* was directly on point with the Commissioner's case being stronger in this instance because the payments in issue were clearly attributable to services rendered to the Crown and, but for the sale of the business, would have been obligations of the Crown.

The Board did point out that there could be a case where there is no obligation on the part of a purchaser of a business to make such payments and payments are made by the purchaser. In such a case the payments would be additional remuneration for services performed for the new employer and will be a revenue expense. In this case, however, the finding of fact by the High Court Judge was that NZFRI was obliged to make the payments both as a result of statute and as a result of the bargain contained in the transfer agreement.

In regards to the application of section 41 of the CRI Act, the Board found that the Court of Appeal's construction gave section 41 too wide a meaning. The Board favoured a narrower construction of section 41 in that the rights (particularly as affected by their length of continuous service) of the employees as against NZFRI are to be determined as if they had always been employed by NZFRI. This does not mean that this assumption is to be applied to the Crown/NZFRI relationship. Nor can the assumption be applied to the effect of the transfer agreement upon NZFRI's liability for tax.

Finally the Board stated that there can be no doubt that if the Crown had been a taxable entity and had itself paid the accrued staff liabilities then they would have been deductible revenue expenses. The ascertainment of the income year in which the Crown would have been entitled to deduct the payments is irrelevant.

The conclusion is that NZFRI's acceptance of liability to pay the accrued staff liabilities was a capital expense.

REGULAR FEATURES

DUE DATES REMINDER

July 2000

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

- *Employer monthly schedule IR 348* due

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

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

7 Provisional tax instalments due for people and organisations with a March balance date

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

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

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

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

FBT return and payment due

31 GST return and payment due

August 2000

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

- *Employer monthly schedule IR 348* due

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

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

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

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

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

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

31 GST return and payment due

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

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.

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Under the Adjudication & Rulings heading, click on "Drafts out for comment" to get to "The Consultation Process". Below that heading, click on the drafts that interest you. You can return your comments by the internet.

Name _____

Address _____

_____

	Interpretation statements	***Comment deadline***
☐	**IS0079:** Financial planning fees – GST treatment	31 July 2000
☐	**IS3175:** Assets under construction – depreciation	31 July 2000

	Interpretation guidelines	***Comment deadline***
☐	**IG0010:** Work of a minor nature	31 July 2000

Items are not generally available once the comment deadline has passed

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

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