

# TAX INFORMATION BULLETIN

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Inland Revenue  
*Te Tari Taake*

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## **THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT**

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

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

The following draft item is available for review/comment this month, having a deadline of 31 August 2000. Please see page 27 for details on how to obtain copies:

<b>Ref.</b>	<b>Draft type</b>	<b>Description</b>
PU0085	Public ruling	Lease surrender payments received by a landlord – income tax treatment. The subject matter of the item was previously covered by public rulings BR Pub 97/1 and 97/1A. The arrangement considered in the draft ruling is the receipt of a lease surrender payment by a landlord from a tenant when the landlord, who is in the business of leasing property, agrees to accept the early termination of the lease.

## 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).

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## ASSOCIATED PERSONS TEST – TIMING IN RELATION TO GROSS INCOME DERIVED FROM THE SALE OR OTHER DISPOSITION OF LAND

### PUBLIC RULING – BR Pub 00/05

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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 paragraphs (b), (c), and (d) of section CD 1(2).

#### The Arrangement to which this Ruling applies

The Arrangement is the sale or other disposition of land by a taxpayer who is associated with another person.

#### How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- For the purposes of determining whether any amount derived from the sale or other disposition of land is included in the gross income of any taxpayer by virtue of paragraphs (b) to (d) of section CD 1(2), the test of whether a taxpayer and another person are associated persons is applied only at the time of the acquisition of the land. The test of association is not applied at the time of the sale or other disposition of the land.

#### The period for which this Ruling applies

This Ruling will apply for the period from 1 July 2000 to 30 June 2003.

This Ruling is signed by me on the 14th day of June 2000.

**Martin Smith**

General Manager (Adjudication & Rulings)

## COMMENTARY ON PUBLIC RULING BR PUB 00/05

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in Public Ruling BR Pub 00/05 (“the Ruling”).

### Background

Paragraphs (b) to (d) of section CD 1(2) include within the gross income of a taxpayer any amounts derived from the sale or other disposition of land if the taxpayer, or any other person associated with the taxpayer, carried on certain businesses at the time the land was acquired.

For the purposes of section CD 1, associated persons or persons associated with each other are defined in section OD 8(4). Section OD 8(4) was amended by the Income Tax Act 1994 Amendment Act (No 4) 1995 (“the amendments”). The definition was extended to ensure that discretionary beneficiaries fall within the trustee-beneficiary relationships included in the definition.

During the course of the related Bill, a submission was made raising the issue of whether the changes to the definition of associated persons would have any effect in relation to land acquired before the changes were made. While the amendments came into force on 17 August 1995 (the date of the Bill’s introduction), the submission queried whether the changes would have any effect in the case of an amount derived from the sale of land acquired before that date. The amendments to the definition would only apply to land acquired before 17 August 1995 if the test of association in paragraphs (b) to (d) of section CD 1(2) applies at the time the land is disposed of. If the test of association under paragraphs (b) to (d) applies at the time the land is acquired, the amended definition of associated persons would only apply in relation to land acquired after 17 August 1995.

The Ruling confirms that the test of association under paragraphs (b) to (d) of section CD 1(2) applies at the time the land is acquired. The changes to the definition of associated persons will therefore only apply to land acquired on or after 17 August 1995.

This question is important in general terms (i.e. not just because of the changes made to the definition of associated persons) because in many cases a taxpayer may be associated with a person at the time of acquisition of land, but may not be associated with the person at the time of the sale or disposition of the land (and vice versa).

A number of commentators have expressed their view as to the timing of the test of association in section CD 1(2)(b) to (d), but there seems to be uncertainty as to the correct view. This uncertainty

stems from the wording and tenses used. The Commissioner’s view is, and always has been, that the test of association is applied at the time the land was acquired.

### Legislation

Section CD 1(1) states:

Any amount derived from the sale or other disposition of any land, being an amount to which this section applies, is gross income.

Section CD 1(2) sets out the amounts that are included in the gross income of any person under section CD 1(1):

For the purposes of subsection (1), the gross income of any taxpayer includes the following amounts –

...

- (b) Any amount derived from the sale or other disposition of any land where the taxpayer, or any other person where the taxpayer and that other person **are associated persons**, carried on, at the time the land was acquired, the business of dealing in land, and –
  - (i) That land, which was sold or disposed of by the taxpayer, was acquired by that taxpayer for the purpose of that business of dealing in land; or
  - (ii) That land was sold or disposed of by the taxpayer within 10 years after the date on which it was acquired by the taxpayer:
- (c) Any amount derived from the sale or other disposition of any land where the taxpayer, or any other person where the taxpayer and that other person **are associated persons**, carried on, at the time the land was acquired, the business of developing or dividing land into lots, being development or division of the kind (not being work of a minor nature) referred to in paragraph (f), and –
  - (i) That land, which was sold or disposed of by the taxpayer, was acquired by that taxpayer for the purpose of that business of developing or dividing land into lots; or
  - (ii) That land was sold or disposed of by the taxpayer within 10 years after the date on which it was acquired by the taxpayer:
- (d) Any amount derived from the sale or other disposition of any land, where the taxpayer, or any other person where the taxpayer and that other person **are associated persons**, carried on, at the time the land was acquired, the business of erecting buildings, and the taxpayer or that other person carried out, whether before or after the acquisition of that land by the taxpayer, any improvements, not being improvements of a minor nature, to that land (whether by way of erecting a building or otherwise); and
  - (i) That land, which was sold or disposed of by the taxpayer, was acquired for the purpose of that business of erecting buildings; or

- (ii) That improved land was sold or disposed of by the taxpayer within 10 years after the date on which those improvements were completed.

... [Emphasis added]

Section OD 8(4) defines “associated persons or persons who are associated” for the purposes of section CD 1.

## Application of Legislation

Paragraphs (b), (c), and (d) of section CD 1(2) all use the same phrase in bringing to tax, “Any amount derived from the sale or other disposition of any land where the taxpayer, or any other person where the taxpayer and that other person are associated persons, carried on, at the time the land was acquired, the business of ...”.

The question is raised as to whether the use of the words “are associated persons” means that in order for the provisions to be satisfied the test of association is applied:

- at the time of acquisition of the land by the taxpayer: this requires a person who carried on the business of dealing in land at the time the taxpayer acquired the land to have been associated with the taxpayer at the time the land was acquired (but that person would not necessarily be associated with the taxpayer at the time of disposition); or
- at the time of disposition: this requires a person who carried on the business of dealing in land at the time the taxpayer acquired the land to be associated with the taxpayer at the time the land was disposed of (but that person would not necessarily have been associated with the taxpayer at the time of acquisition); or
- at the time of acquisition and at the time of sale or other disposal: this requires a person who carried on the business of dealing in land at the time the taxpayer acquired the land to have been associated with the taxpayer both at the time the land was acquired and also at the time the land is disposed of.

### Plain words

On an ordinary reading of the words of the legislation it seems clear that the phrase “at the time the land was acquired” relates to the carrying on of the relevant business, rather than to the timing of the associated persons test.

However, it is not clear as to the point in time that the words “are associated persons” are referring to. The word “are” generally indicates a present tense and, therefore, arguably indicates that the test should be applied at the most recent point in time (i.e. the time of the disposal of the land). However, another reading of

the words indicates that the test should be applied at the time of acquisition.

The meaning of the words without the presence of an associated person is clear:

- An amount will be gross income if:
  - a taxpayer derives that amount from the sale or other disposition of land,
  - the taxpayer was carrying on the relevant business when the land was acquired, and
  - the land was acquired for that business or sold within 10 years of acquisition.

There are three elements to the section. First, an amount must be derived from the sale or disposition of land. Second, the taxpayer must have been carrying on the relevant business at the time the land was acquired. Third, the land must have been acquired for that business or sold within 10 years.

Arguably, the second element is the most important. The fact that the taxpayer was carrying on the relevant business at the time the land was acquired is central to the issue of the taxability of any amount derived on the sale of the land. For example, if the taxpayer were not carrying on a business of dealing in land, any amount derived would not be taxable under section CD 1(2)(b). However, if the taxpayer were carrying on such a business, any amount derived would be taxable if the land was either acquired for the business or sold within 10 years.

If the land was acquired for the purpose of a relevant business, it is logical that any amount derived from the sale of the land would be taxable. This is entirely consistent with the fact that any amount derived from a business is gross income under section CD 3. However, where the land was not acquired for the purpose of such a business, any amount derived would still be taxable if the land was sold within 10 years. In this situation, it is simply the fact that the taxpayer carried on the relevant business that leads to the inclusion of the amount derived within gross income. All acquisitions of land by the taxpayer are tainted by the existence of the business, regardless of whether the land is acquired as part of that business.

Now consider the effect of the section where an associated person is involved:

- An amount will be gross income of a taxpayer if:
  - the taxpayer derives that amount from the sale or other disposition of land,
  - an associated person of the taxpayer was carrying on the business of dealing in land when the taxpayer acquired the land, and
  - the land was sold by the taxpayer within 10 years of acquisition.

Again, there are three elements to the section. First, an amount must be derived from the sale or other disposition of the land. Second, an associated person of the taxpayer must have been carrying on the business of dealing in land when the taxpayer acquired the land. Third, the land must have been sold within 10 years of acquisition.

In a situation where an associated person is involved, the central focus of the section is even more clearly the fact that a relevant business, such as dealing in land, must have been carried on at the time the land was acquired. As it is the associated person who was carrying on the required business at the time of acquisition, the taxpayer could not have acquired the land for the purposes of the business. In these circumstances the amount derived will only be taxable if the land is sold within 10 years. It is only the existence of the business at the time of acquisition that allows the section to include the amount derived on sale in the taxpayer's gross income. The taxpayer is effectively tainted by the activities of the associated person at the time the land was acquired.

The section, therefore, is concerned with what was happening at the time the land was acquired – was an associated person of the taxpayer carrying on a business of dealing in land? It would seem that in these circumstances it is logical to argue that the associated person must have been associated with the taxpayer when the land was acquired. To separate the associated persons test from the test of the relevant business is an artificial interpretation of the section. Although the section is including in gross income amounts derived on sale, the focus of the section is on the activities of either the taxpayer or the associated person **at the time the land was acquired**.

The time of sale or other disposition of the land is certainly important in the context of section CD 1. The time of the sale of the land is the time at which the application of the section is triggered. However, once the application of the section is triggered by the sale of the land, the focus of the section is clearly on the activities which took place at an earlier time. The mere fact of the sale of the land is insufficient to include any amount derived from that sale in a taxpayer's gross income. The scheme and purpose of the provisions is not simply to bring to tax amounts derived on the sale of property. There must be some other relevant purpose or intention, some other relevant action on the part of the taxpayer or associated person, or some link with business activities, before any amount will be included in gross income.

However, as it is not completely clear on the plain reading of the words that the test is applied at acquisition, relevant case law should be considered.

The question as to the relevant time for testing association does not appear to have been directly considered by any New Zealand court. However, there is implicit support for the view that the test of association is applied at the time the land was acquired in some TRA cases.

For example, in *Case H92* (1986) 8 NZTC 630, the TRA considered whether the objectors were assessable on the profit made on the sale of land, A, under any of sections 65(2)(a) and 67(4)(a), (b) and (e) of the Income Tax Act 1976. On concluding that the objectors were not dealers in land at the time the land was acquired, the issue was then whether an associated company, P, was dealing in land when the relevant land was purchased by the taxpayer. The TRA found that the company's activities did not constitute the business of dealing in land at the time of purchase. Although the TRA did not specifically consider the time at which the parties needed to be associated, the judgment appeared to assume that this was at the time of acquisition. Bathgate DJ said (at page 642):

The thrust of cross-examination of the objectors concerning P was to show that it was involved in erecting buildings **when A was purchased** by the objectors. **At that time** P and the objectors were associated persons for the purposes of sec 67(4)(b) and (c). [Emphasis added]

More recently, *Case T25* (1997) 18 NZTC 8,160 concerned whether a taxpayer was assessable on the proceeds of the sale of a commercial property. The question to be answered by the TRA was whether, on the date of acquisition by the objector of his interest in the commercial property, the objector carried on any business of developing or dividing land into lots or whether on that date any associated person of the objector (the CC Partnership or the R Syndicate) carried on such a business.

Although the timing of the test of association is not specifically referred to by Barber DJ, his Honour makes it clear that he considers the time of acquisition to be the appropriate time and he proceeds on that basis. When discussing whether the objector was a developer or subdivider as at the date of acquisition of the property, his Honour stated (at pages 8,174–8,175):

However, as at 17 October 1978 only two relevant projects had been undertaken. One subdivisional project (of residential land) had been completed and the other was a building project so that, at that date, the objector could not be described as carrying on the business of developing or dividing into lots 'any land' and **nor was any associated person of the objector at that time**.

I appreciate that the CC Partnership and the R Syndicate each commenced in 1974 and ended in late 1979; but on the crucial date, 17 October 1978, the nature of their activity did not offend s 67(4)(ba).

[Emphasis added]

Barber DJ's statement that the CC Partnership and R Syndicate ended in 1979 impliedly gives strong support for the proposition that the time for the test of association is at acquisition. In this case the property in question was disposed of in 1988. In these circumstances, if the test of association were to be applied at the time of disposal the above comments by Barber DJ would have been irrelevant.

Notwithstanding the above statements, it is clear that the issue of the timing of the test of association was not argued in *Case H92* or *Case T25*. Case law, therefore, provides limited guidance on the interpretation of the words "are associated persons" in the context of land sales.

However, case law does indicate that one should be careful in the interpretation of tenses. The use of a tense may be decisive only if it is clear what the tense used relates to. For example, in *Maradana Mosque Board of Trustees v Mahmud* [1967] 1 AC 13, the Privy Council considered a provision that empowered the Minister to make a certain order if satisfied that a school "is being administered" in contravention of the Act. Counsel for the Minister argued that it was permissible to take account of the past running of the school. The Privy Council held that only the current method of administration at the time of the order could be considered.

By way of contrast, in *Norman v Simpson* [1946] 1 All ER 74 the United Kingdom Court of Appeal needed to interpret the words "have been" and concluded that the expression could be equated to "are" or "is" in the context before the Court. In that case the use of the words "have been" did not limit the Court to considering only the point in the past at which the sub-letting commenced. In relation to section CD 1(2), it can be argued that the use of the word "are" does not necessarily limit the inquiry to the present time and that it could be interpreted as operating in the past tense.

The approach of the courts has been that if the use of a tense is not clear or is ambiguous, other sources such as the statutory context and the scheme and purpose of the legislation will be used as aids in determining the correct interpretation. This approach is also consistent with the Court of Appeal's approach to statutory interpretation set out in *CIR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175.

## Section GD 9(1)

The associated persons test is used in many provisions of the Revenue Acts. Generally, these provisions are unhelpful for present purposes as it is obvious in most cases that the associated persons test relates to only one point in time. However, section GD 9(1) is relevant here because it is closely related to the provisions currently being considered. Section GD 9(1)

deals with the situation where a person transfers land to an associated person some time after acquisition.

Section GD 9(1) is in the nature of an anti-avoidance provision, and applies where land is transferred from a "transferor" to a "transferee" and the transferor and the transferee "are associated persons". If the transferee later sells or otherwise disposes of the land, any amount derived from the transaction is gross income of the transferee if that amount would have been gross income of the transferor under section CD 1(2).

Section GD 9(1) states:

Where –

- (a) Any land has been transferred from any person (the "transferor") to any person (the "transferee"); and
- (b) The transferor and the transferee are associated persons; and
- (c) The transferee subsequently sells or otherwise disposes of that land and the consideration from that sale or disposition exceeds the cost of the land to the transferee; and
- (d) If, had the transferor not transferred the land to the transferee but instead had sold or otherwise disposed of the land for the consideration referred to in paragraph (c), that consideration would have been gross income of the transferor under section CD 1 –

that consideration shall be deemed to be gross income of the transferee under section CD 1.

Thus, section GD 9(1), like section CD 1(2), also uses the phrase "are associated persons" in a context where its meaning could be ambiguous. The section is concerned with the situation of a property being disposed of at a profit or gain, i.e. something that happens in the present and triggers the application of the section. However, the section also refers to the earlier transfer from the transferor to the transferee who "are associated persons".

In section GD 9(1), the words "are associated persons" clearly relate back to the earlier time of the transfer from the transferor to the transferee, rather than the present time of the disposal of the land. The words "are associated persons" are followed by "and the transferee **subsequently** sells or otherwise disposes of that land". The use of the word "subsequently" denies the words "are associated persons" any connection to the event of disposal. The section, therefore, is an example of words in a present tense being used to relate to a past event.



Section GD 9(1) clearly supports the conclusion that “are associated persons” does not necessarily mean associated at the most recent point in time, i.e. the time of disposal, but can be interpreted as “were associated persons”. In the case of section GD 9(1), this means looking back to the time of acquisition by the relevant taxpayer, i.e. the transferee.

### **Legislative purpose**

The use of the associated persons test in section CD 1(2) is essentially for anti-avoidance reasons and aims to stop the use of associated persons who are not carrying on any relevant business. This was referred to in the Parliamentary Debates in 1973 on the Land and Income Tax (Annual) Bill (which contained the predecessor provisions to section CD 1). Mr Munroe (MP, Invercargill) explained the difficulties in applying the then current law on the taxation of profits relating to land and the need for amendment, and stated (NZPD Vol 386, 1973: 3653):

There is a provision in the [Land and Income Tax] Act which makes dealing in real or personal property for profit or gain assessable for tax. The Inland Revenue Department has had difficulty with this provision because of interpretations of it by the courts. The courts have tended to take the view before they will uphold an assessment, that as there is no capital gains tax in New Zealand there must be a clear pattern of previous dealings, or the circumstances must be such as to leave an inference that a profit motive was present at the time of purchase. In cases where the taxpayers have been land dealers or builders they have been able to avoid assessment of profits on property deals by claiming quite successfully that the property was held as an investment even if the sale was made shortly after acquisition. **In other cases the land dealers or builders have held properties in the names of members of their families or in associate companies for the purpose of avoiding tax on the sale of the properties.** [Emphasis added]

If the intention were to prevent dealers in land using associates (who are not dealers) to acquire the land, one would expect that the relevant association would need to be examined at the time of acquisition. The intention behind the provisions of section CD 1(2) would seem to be to make it more difficult for a person who is carrying on one of the specified businesses to hide behind associated persons. If the test of association applies only at the time of disposal, this would mean that associated person purchasers of land who are “substituted” for land dealers could avoid being taxed where the association was technically terminated immediately before the disposal of the land.

Furthermore, if the association test applies only at the time of disposal, it would apply to persons who happen (by way of “accident” or otherwise) to become associated with, e.g. a land dealer just prior to their disposing of property where no taxable purpose or connection previously existed.

In addition, the anti-avoidance policy would tend to suggest that the possible interpretation of applying the association test at both acquisition and disposal is also incorrect. As such an interpretation would also require the test to be applied at disposal, the concerns expressed above would be equally applicable to that interpretation.

### **Conclusion**

In paragraphs (b), (c), and (d) of section CD 1(2), on an ordinary reading of the words “are associated persons”, the time at which the test of association must be applied is ambiguous. However, the scheme and purpose of the provisions indicate that the correct interpretation is that the test of association is applied at the time the land is acquired by a taxpayer. The Commissioner considers this to be the better view of the law. The test is not applied at the time of sale or other disposition of the land, nor must it be applied at both the time of acquisition and at the time of sale or other disposition.

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## PRODUCT RULING - BR PRD 00/05

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

### Name of the Person who applied for the Ruling

This Ruling has been applied for by the Hawke's Bay Regional Council ("HBRC").

### Taxation Laws

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

This Ruling applies in respect of: sections CD 3, CD 5, CE 1(1)(b), CE 1(1)(e), CF 2(1) of the Income Tax Act 1994; and section 8(1) of the Goods and Services Tax Act 1985.

### The Arrangement to which this Ruling applies

The Arrangement is the distribution of surplus funds, sourced by the HBRC from a special dividend received from the Port of Napier Limited ("PONL"), to ratepayers of the Hawke's Bay region. Further details of the Arrangement are set out in the paragraphs below.

1. The Arrangement involves the payment of an amount to be applied for the benefit of ratepayers in the Hawke's Bay region in the form of a one-off cash distribution ("the ratepayers' distribution"). The source of the ratepayers' distribution will be surplus cash of approximately \$10 million arising from receipt by the HBRC of a fully imputed special dividend from PONL (of which HBRC owns 91.67%) which the HBRC intends to distribute to ratepayers and local authorities within the region. The amount of the ratepayers' distribution will be the difference between the total surplus cash to be distributed (approximately \$10 million) and the distributions (if any) to be made to various territorial local authorities (being the Napier City Council, the Hastings District Council and the Wairoa District Council).
2. The HBRC proposes to divide up the ratepayers' distribution on the basis of rateable land value and distribute it to ratepayers in the Hawke's Bay region (being ratepayers in the Central Hawke's Bay District, Part Rangitikei and Part Taupo District, Wairoa District, Hastings District and Napier City). This will be effected by sending out individual cheques to the ratepayers.

3. Ratepayers are:
  - persons whose names appear in the "occupiers" column of the rate records of the HBRC; or
  - where a territorial local authority has agreed to collect rates for the HBRC under section 127 of the Rating Powers Act 1988, persons whose names appear in the "occupiers" column of the rate records of the territorial local authority.
4. The ratepayer's distribution payment will be paid entirely independently of the rating process and will not be recorded on general rates notices sent to ratepayers.
5. The HBRC chose to distribute the surplus funds according to rateable property values because:
  - (i) it is administratively easier and more efficient to do so;
  - (ii) it is considered to be more equitable than distributing the funds on a per capita basis.
6. Where ratepayers are in arrears with their rates, the distribution payment will be used to satisfy their arrears and the balance (if any) will be paid out to the ratepayer.
7. Ratepayers are not obliged to do anything in return for the payment.

### Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) That the ratepayers' distribution is sourced entirely from the fully imputed special dividend received from PONL in 1997.
- b) That this is a one-off payment in terms of distributing funds received from PONL.
- c) At the time of making the ratepayers' distribution, HBRC is not contemplating or anticipating making any further distributions of a similar nature to ratepayers.

## **How the Taxation Laws apply to the Arrangement**

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

- The ratepayers' distribution will not be gross income in the hands of ratepayers under sections CD 3, CD 5, CE 1(1)(b), CE 1(1)(e) and CF 2(1).
- There will be no liability on ratepayers under section 8(1) of the Goods and Services Tax Act 1985 to pay GST on the ratepayers' distribution payment.

## **The period or income year for which this Ruling applies**

This Ruling will apply for the period 17 May 2000 to 31 December 2002.

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

**Martin Smith**

General Manager (Adjudication & Rulings)

## **NEW LEGISLATION**

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### **1999–2000 DEEMED RATE OF RETURN ANNOUNCED FOR FOREIGN INVESTMENT FUND RULES**

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The deemed rate of return used for the foreign investment fund (FIF) rules of the Income Tax Act 1994 has been set at 10.74% for the 1999–2000 income year. The rate will apply to all types of investments, including interests in superannuation schemes and life insurance policies.

The FIF rules tax the income earned by foreign entities on behalf of New Zealand residents and apply to investments that are not subject to the controlled foreign company rules.

The deemed rate of return method is one of four methods for calculating FIF income or loss. The rate for future income years will continue to be set annually.

The regulations setting the rate, the Income Tax (Deemed Rate of Return, 1999–2000 Income Year) Regulations 2000, were made by Order in Council on 19 June 2000.

## 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.

## COMMISSIONS PAID TO INDEPENDENT FINANCIAL ADVISORS

### Income Tax (Withholding Payments) Regulations 1979, Section NC 7 Income Tax Act 1994

We have been asked if commissions paid to independent financial advisors in relation to the sale of products provided by a funds management company are subject to withholding payments deductions.

#### Background

Independent financial advisors provide their clients with financial planning advice and other services. As part of this, and because the financial advisor operates on an independent basis, clients are provided with opportunities to purchase financial products from a number of financial organisations, for example, funds management companies. If a client purchases such a financial product, the independent financial advisor receives a commission (for example, upfront and trail commissions) from the provider of that financial product. The advisor is commonly referred to as a commissioned agent or a commissioned salesman.

#### Liability to deduct withholding tax from withholding payments

##### Regulations

Regulation 4 of the Withholding Payments Regulations 1979 states that payments of the classes specified in the Schedule to those Regulations are withholding payments for the purposes of the PAYE rules. One such class is:

1. Commissions or other remuneration to insurance agents or sub-agents, or to salesmen.

The Schedule to the Regulations states that, in relation to this class of payment, withholding tax must be deducted at a rate of 20 cents per dollar.

Under regulation 4(2), withholding tax does not have to be deducted if the individual financial advisor derives the commission or other remuneration through a company (not being a non-resident entertainer or non-resident contractor), or holds a certificate of exemption.

In summary, liability to deduct withholding payments is determined by whether payments made to financial advisors are "commissions or remuneration" and whether these payments are made to "insurance agents or sub-agents, or to salesmen".

##### *Commissions or remuneration*

The independent financial advisor provides services that facilitate the sale of a funds management company's products. In return, the independent financial advisor receives a monetary payment calculated as a percentage of the resultant sales.

These payments (commission, or other forms of remuneration such as brokerage) received by independent financial advisors satisfy the first requirement of being "commissions or other remuneration" (*Drielsma v Manifold*, [1894] 3 Ch.100,C.A.).

##### *Insurance agents or sub-agents, or salesmen*

An independent financial advisor facilitating product sales for a funds management company, is not acting as an insurance agent or sub-agent. It is the Commissioner's view that an independent financial advisor who provides services of this nature is acting in the capacity of a salesman (*Wendell and Associates Limited v CIR* (1986) 8 NZTC 5,155; and *Challenge Realty Ltd v CIR* (1990) 12 NZTC 7,022).

## **Withholding declaration – Section NC 7 of Income Tax Act 1994**

Section NC 7 states that the person who is to receive the withholding payment must deliver a withholding declaration to the person who is to make the withholding payment. This declaration must be authorised by the Commissioner and contain such particulars as the Commissioner requires (refer specifically to *Tax code declaration (IR 330)* form).

## **Exemption certificate**

Under regulation 4(2)(c) of the Withholding Payments Regulations, payments will not be withholding payments if they are exempted by an exemption certificate under regulation 5. A self-employed taxpayer, whose earnings are subject to withholding payments, may apply for a certificate of exemption under regulation 5(1). When considering an application for a certificate of exemption, the Commissioner will take into account the taxpayer's compliance history. (Application for an exemption certificate can be made on the *Request for a certificate of exemption from withholding tax (IR 332)* form. To obtain this form, please telephone 0800 377 774.)

## **Timing of withholding tax payments to Inland Revenue**

Under regulation 4, the withholding payments are payments for the purposes of the PAYE rules, and a funds management company is required to account for the withholding payments on the same basis as PAYE.

## **GST**

If the independent financial advisor has issued a tax invoice to a funds management company under section 24 of the Goods and Services Act 1985, withholding tax is to be calculated on the GST exclusive amount. Where no tax invoice has been issued, the calculation will be on the gross amount of any payment.

## 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 WORK CARRIED OUT ON TAXPAYER'S GAS DISTRIBUTION SYSTEM WAS REPLACEMENT (CAPITAL EXPENDITURE), OR REPAIR (REVENUE EXPENDITURE)

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<b>Case:</b>	Auckland Gas Limited v CIR
<b>Decision date:</b>	14 June 2000
<b>Act:</b>	Income Tax Act 1976
<b>Keywords:</b>	<i>Capital expenditure or revenue expenditure. Repairs, alterations</i>

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As cast iron mains were manufactured in short lengths, there were many thousands of joints in the network. In addition, fractured mains were a weekly occurrence for the taxpayer. This occurred from subsidence of surrounding ground and by vibration caused by overhead traffic, nowadays of a weight and frequency not contemplated when the mains were laid.

For these reasons the percentage of gas entering the system and becoming lost (known as unaccounted for gas, or UFG), became a major problem. It peaked in 1971, when no less than 38.5% of the gas entering the system was lost.

The UFG problem became worse in the 1970s when natural gas was introduced. The lengths of cast iron pipe were joined by bell and spigot joints, filled with hemp and kept in place by molten lead. Until 1970 the gas supplied was coal gas, a wet gas which had the effect of swelling the hemp joints and making them gas tight. Natural gas is dry, and has the effect of drying the joints and creating more leaks.

In the 1980s the practice of laying new mains in cast iron was abandoned in favour of coated steel. That product was then replaced with polyethylene pipes. Polyethylene pipes are tough, but flexible, and are resistant to abrasion, pressure, stress and corrosion. They are supplied in long lengths of 150 metres and can be easily joined by heat, and the resulting joints are as strong as the pipe itself. They are also largely unaffected by vibration caused by traffic and subsidence.

### Summary

The Privy Council found the work carried out was correctly characterised by the Commissioner as capital expenditure.

### Facts

The appeal concerned the deductibility of expenditure incurred by the taxpayer on its low-pressure gas distribution system for the years ended 30 June 1988 to 1992. The taxpayer claimed it was entitled to deduct this expenditure in the year incurred when calculating its assessable income.

The Commissioner disallowed the claim, contending the expenditure was capital in nature and should be depreciated over time.

The taxpayer's underground distribution system was principally made of cast iron mains and smaller steel pipes known as services, which ran from the mains to individual premises. Cast iron mains have a life of a century or more, but are by no means trouble free. Two major problems were leakage of gas and the entry of water. This occurred at joints and fractures in the mains and at corroded parts of the services. The result was interruptions to the supply.

The taxpayer made many attempts to develop a technique to solve the problems affecting the old cast iron pipes. It finally adopted the technique of inserting polyethylene pipe into the existing cast iron mains and services. The old mains and services were broken open to enable the insertion process to be carried out. This procedure solved the problem of leakage in the old pipes. The technique also solved the UFG problem more cheaply than the “find and fix “ method, which required digging up the problem pipe.

## **Decision**

The decision deals with the question of “repair” versus “replacement”, and observes that in this context these words are not technical expressions with a special meaning, but bear an ordinary everyday meaning.

In order to decide whether work constitutes repair or replacement, the first step is to identify the object to which the test of repair or replacement is being applied.

The decision observes that authority on the question of repair or replacement is of limited assistance, as the physical objects to which the test of repair has to be applied vary widely and so does the nature of the work done. Judicial dicta applicable to one set of circumstances may be unhelpful or misleading when applied in different circumstances. The Board noted that the effect of the work on the character of the object is also an important consideration.

In the last resort, as with the general question of distinguishing income expenditure from capital expenditure, the solution is not to be found by any rigid test or description. The answer depends upon a consideration of all the circumstances. The Board made it clear that although it is tempting to say the answer is a question of fact and impression, that would be a mistaken approach. It noted that in drawing a distinction between repair and replacement, the dominant features leading to a reasoned conclusion must be capable of being identified.

The courts below treated the entirety of the system as the relevant asset, and the Board was content to proceed on that footing. It said that one must be clear about what is meant by the taxpayer’s distribution system. It defined the asset as “an assemblage of linked pipes whose function was to carry gas from one place to another” and observed that if a significant portion of this series of linked pipes is effectively abandoned and replaced wholesale with new pipes, the work may readily go beyond repair.

On the facts, polyethylene pipes were inserted over the five years at issue in 380 km of the cast iron mains, which represented about 23% of the total mains network. In addition, polyethylene pipes were inserted in 150 km or 32% of the steel services. Thus the work covered a substantial part of the entire mains network.

The Board noted the new pipes differed from the old in several respects; they were virtually leak free and they were much better suited to the passage of dry and clean natural gas and they carried gas at a higher (medium) pressure. Although the latter difference was not a goal in itself, it was an improvement over the old system.



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## WHETHER SALE OF DISPUTANT'S LAND INVOLVED THE SALE OF A GOING CONCERN

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**Case:** TRA Number 040/99. Decision Number 15/2000  
**Decision date:** 21 June 2000  
**Act:** Goods and Services Tax Act 1985  
**Keywords:** *Going concern*

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The TRA considered that this argument was unsustainable and that all the disputant needed to prove was at that time of settlement there was some "concern", in this case quarrying, which was ongoing and was to pass to the purchaser. What the purchaser subsequently did with that activity was irrelevant and in any event the evidence established that the licensee continued to extract gravel and shingle from the property.

### Summary

The disputant was successful and the Commissioner is to amend the assessment by deleting the debit sum of \$105,555.55

The TRA considered that there was a written agreement for the sale of a going concern and accepted the evidence of the then commercial manager of the vendor group and its solicitor and the contemporary record of the solicitor's legal executive.

### Facts

On 1 July 1996 one of the corporate components of the disputant sold some land which it owned at Wiri to a plant nursery company. The purchase price was \$950,000. Possession was to be given on 20 September 1996. The transaction was evidenced by a written agreement for sale and purchase using an Auckland District Law Society form. The property was sold subject to a licence to a third party evidenced by an agreement dated 30 April 1991, permitting it to operate a quarry on the land and a lease to another company in the disputant group.

The TRA went on to consider counsel's argument on the lease/licence point. The Commissioner contended that there was never a written agreement that the transaction was for the sale of a going concern and therefore zero-rated, because the quarrying business supported by the licence rights and obligations did not pass on the sale of property. This was based on a proposition that the "licence agreement" of 30 April 1991 is not capable of coming within the words "details of tenancies" where they appear on page 1 of the agreement for sale and purchase. This is because a licence is not a tenancy.

Both vendor and purchaser were registered for GST. The agreement provided that the purchase price was "inclusive of GST (if any)". The words "plus GST (if any)" were deleted and the agreement provided that only if both possibilities were deleted then "the purchase price includes GST (if any)".

The TRA considered that it had already decided as a question of fact that in this agreement the parties intended the word "tenancies" to have the context and meaning given to it by clause 16. It clearly included the licence. Even if it were wrong, the TRA further considered that it was satisfied that in this case, the nomenclature chosen by the parties was inapt to describe the nature of the tenure being granted. The licence could just as accurately have been described as a lease.

This is a going concern case. The defendant has paid out to a taxpayer a GST credit of \$108,242.38 and, of that sum, seeks to recover \$105,555.55 from the disputant.

### Decision

The disputant contended that the reservation of the licensee's quarrying rights referred to in clause 16.1 of the agreement did form the basis of a concern which was "going" as at the date of settlement of the transaction.

The Commissioner contended that this was not factually so. He submitted that because the purchaser and the licensee renegotiated the terms of the quarrying licence effective from the date of settlement, there was no "going concern" at the date of hand-over of the property.



## REGULAR FEATURES

### DUE DATES REMINDER

#### 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

#### September 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
- 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
- 29 GST return and payment due

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

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## PUBLICATIONS AVAILABLE FROM INLAND REVENUE

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This list shows all publications currently available from Inland Revenue. Also for most of the publications there is a brief explanation of what they are about.

Some publications could fall into more than one category, so you may wish to skim through the entire list and pick out those that you need. You can get our publications from INFOexpress.

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### General information

**Adjudication & Rulings – a guide to binding rulings (IR 715) – Oct 1999:** Explains binding rulings, which, once given, commit Inland Revenue to a particular interpretation of the tax law.

**IRD number application – individual (IR 595)**

**IRD number application – non-individual (IR 596)**

**Automatic payment authority (IR 586) – Jul 1999**

**Casino duty reconciliation (IR 686R) – Jan 2000**

**Conversion sheet of overseas income to NZ currency (IR 270) – Apr 2000:** This form contains a table that helps you to convert overseas investment income to New Zealand currency when completing a New Zealand tax return. You do not have to use this table—instead you can use the actual rate available from any trading bank.

**Disputing a Notice of proposed adjustment (IR 777) – Jun 2000:** If we send you a notice to tell you we're going to adjust your tax liability, you can dispute the notice. This booklet explains the process you need to follow.

**Disputing an assessment (IR 776) – Jun 2000:** Explains the process to follow if you want to dispute our assessment of your tax liability, or some other determination.

**Election to pay income tax on trustee income (IR 463) – Nov 1999:** A form to be completed by a person electing to pay income tax on trustee income.

**Electronic payments to Inland Revenue (IR 583) – Jun 1999:** A guide to show you how to make electronic payments to Inland Revenue.

**Family Assistance for families on benefits (IR 203):** If you are a beneficiary with children, find out what sort of Family Assistance you are entitled to and how to get it.

**Family Assistance for working families (IR 204):** If you are a working family with children, find out what Family Assistance (including Parental Tax Credit) you are entitled to and how to get it.

**Family Assistance registration pack (FS 1) – Feb 2000:** To receive any of the Family Assistance payments, you must fill in the FS 1 registration form and send it to Inland Revenue.

**Gift duty (IR 194) – Jun 1999:** An explanation of gift duty and how to pay it.

**Gift statement (IR 196) – Jul 1999**

**How to tell if you need a special tax code or deduction rate (IR 23G) – June 1999:** Information about getting a special “flat rate” of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.

**If you disagree with an assessment (IR 778) – May 2000:** Summarises what to do if you or your client disagrees with an assessment. If you are considering disputing an assessment you should read this brochure first to determine how you might like to proceed. Full details of the process are provided in our booklet *Disputing an assessment (IR 776)*.

**Important information about your Family Assistance registration (IR 687) – Jan 2000**

**Income from a Maori authority (IR 286A) – Jan 1996:** For people who receive income from a Maori authority. Explains which tax return the individual owners or beneficiaries fill in and how to show the income.

**Inland Revenue audits (IR 297) – Mar 1998:** For business people and investors. It explains what is involved if you are audited by Inland Revenue, who is likely to be audited, your rights during and after the audit and what happens once an audit is completed.

**Maori Community Officer Service (IR 286) – Jan 1996:** An introduction to Inland Revenue's Maori Community Officers and the services they provide.

**Matrimonial property disposition (IR 183) – Oct 1999:** A form to be completed by persons who have entered into an agreement under section 21 of the Matrimonial Property Act 1976.

**New Zealand tax residence (IR 292) – Dec 1999:** An explanation of who is a New Zealand resident for tax purposes.

**Objection procedures (IR 266) – Mar 1994:** Explains how to make a formal objection to a tax assessment, and what further options are available if you disagree with Inland Revenue.

**Overseas private pensions (IR 257) – Apr 1999:**

Information for people who have interests in a private superannuation scheme or life insurance annuity policy outside New Zealand.

**Overseas social security pensions (IR 258) –**

**Aug 1999:** Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.

**Payments and gifts in the Maori community (IR 278) –**

**Apr 2000:** Explains the tax treatment of payments or gifts made in the Maori community.

**Provisional tax (IR 289) – April 2000:** People whose end-of-year tax bill is \$2,500 or more must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.

**Putting your tax affairs right (IR 282) – Jun 1997:**

Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.

**Rental income (IR 264) – Aug 1999:** An explanation of taxable income and deductible expenses for people who own rental property. This booklet is for people who own one or two rental properties, rather than larger property investors.

**Reordered tax acts (IR 299) – Apr 1995:** In 1994 the Income Tax Act 1976 and the Inland Revenue Department Act 1974 were restructured, and became the Income Tax Act 1994, the Tax Administration Act 1994 and the Taxation Review Authorities Act 1994. This leaflet explains the structure of the three new Acts.

**Request for a certificate of exemption from withholding tax (IR 332):** Certificates of exemption are issued only to those people who have identified themselves as being in business, and are in receipt of income that is subject to deductions under the Income tax (Withholding payments) Regulations 1979, and have a good record of filing returns and making payments.

**Self-employed or an employee? (IR 186) – Jun 1997:** Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether they must pay ACC premiums.

**Settlers of trusts disclosure (IR 462) – Nov 1999:** A form to be completed by certain people who make a settlement to a trust.

**Superannuitants and surcharge (IR 259) – Jul 1996:** A guide to the surcharge for national superannuitants who also have other income.

**Tax code declaration (IR 330) – Mar 2000**

**Tax facts for income-tested beneficiaries (IR 40C) – Jun 1996:** Vital information for anyone who receives an income-tested benefit and also has some other income.

**Taxes and duties (IR 295) – May 1995:** A brief introduction to the various taxes and duties payable in New Zealand.

**The Rule Book – taxes and sportspeople (IR 248) – Jul 1997**

**Trusts and estates income tax rules – (IR 288) – May 1995:**

An explanation of how estates and different types of trusts are taxed in New Zealand.

**Visitor's tax guide – (IR 294) – Nov 1995:** A summary of New Zealand's tax laws and an explanation of how they apply to various types of visitors to this country.

## **Business and employers**

**Accident compensation – Smart business quick reference summary sheet (IR 321) – May 1999:** A brief summary of your Inland Revenue ACC obligations.

**Business Call Centre (IR 783) – June 2000:** Information about Inland Revenue's Business Call Centre.

**Completing the employer monthly schedule (IR 347) – Jan 1999**

**Dairy farming (IR 252) – Jan 2000:** A guide to the GST and PAYE obligations of dairy farmers.

**Depreciation (IR 260) – Apr 1999:** Explains how to calculate tax deductions for depreciation on assets used to earn assessable income.

**Direct selling (IR 261) – Aug 1996:** Tax information for people who distribute for direct selling organisations.

**Employer obligations – Smart business quick reference summary sheet (IR 322) – Apr 1999:** A summary sheet explaining obligations as an employer.

**Employer's guide (IR 335) – Mar 1999:** Explains the tax obligations of anyone who is employing staff, and how to meet these obligations. Employers registering with Inland Revenue will receive a copy of this booklet.

**Entertainment expenses (IR 268) – June 1999:** When businesses spend money on entertaining clients, they can generally only claim part of this expenditure as a tax deduction. This booklet fully explains the entertainment deduction rules.

**First-time employer's guide (IR 333) – Apr 1999:**

Explains the tax obligations of being an employer for people who are thinking of taking on staff for the first time.

**Fringe benefit tax guide (IR 409) – Jul 1999:**

Explains fringe benefit tax obligations of anyone who is employing staff, or companies that have shareholder-employees. Employers registering with Inland Revenue will receive a copy of this booklet.

**GST – do you need to register? (IR 365) – May 1999:**

A basic introduction to goods and services tax, which will also tell you if you have to register for GST.

**GST guide (IR 375) – May 1999:** An in-depth guide that covers almost every aspect of GST. Everyone who registers for GST gets a copy of this booklet. As it is quite expensive for us to print, if you are only considering GST registration, please get the booklet "GST – do you need to register?" instead.

**GST – Smart business quick reference summary sheet (IR 324) – Dec 1999**

**Income tax – Smart business quick reference summary sheet (IR 325) – Mar 2000**

**IR 56 taxpayer's handbook (IR 356) – Mar 2000:**

A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and Deep Freeze base workers who make their own PAYE payments.

**ir-File (IR 343) – Mar 1999:** A booklet for employers explaining electronic filing and how to register.

**ir-File Macintosh user's guide (IR 643) – May 1999:**

A booklet explaining how to register for employers who use Macintosh.

**Making payments (IR 87C) – Nov 1996:** How to fill in the various payment forms to make sure payments are processed quickly and accurately.

**Weekly and fortnightly PAYE deduction tables (IR 340) – April 2000**

**Four-weekly and monthly PAYE deduction tables (IR 341) – April 2000:**

Tables that tell employers the correct amount of PAYE to deduct from their employees' wages from 1 April 2000.

**Record keeping – Smart business quick reference summary sheet (IR 323) – Dec 1999**

**Retiring allowances and redundancy payments (IR 277) – Aug 1997:**

An explanation of the tax treatment of these types of payments.

**Sale or disposal of financial arrangements (IR 3K) – Nov 1999:**

A form to be completed by persons who have either sold a financial arrangement or had one mature.

**Smart business (IR 320) – Apr 1999:**

An introductory guide for businesses and non-profit organisations.

**Tax code declaration (IR 330) – Mar 2000**

**Taxes and the taxi industry (IR 272) – June 1999:**

An explanation of how income tax and GST apply to taxi owners, drivers and owner-operators.

**Tax help – Smart business (IR 318) – Mar 2000:**

A guide to Inland Revenue's advisory services for businesses and non-profit organisations.

## **Resident withholding tax and non-resident withholding tax**

**Approved issuer levy (IR 291A) – Mar 2000:** Explains how to pay interest to overseas lenders without having to deduct non-resident withholding tax. It explains the requirements for approved issuer status, registration of securities and payment of approved issuer levy.

**Non-resident withholding tax payer's guide (IR 291) – Mar 1995:** A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.

**Resident withholding tax on dividends (IR 284) –**

**Jan 1998:** A guide for companies telling them how to deduct RWT from the dividends that they pay to their shareholders.

**RWT on interest – payer's guide (IR 283) –**

**Jul 1996:** A guide to RWT for people and institutions that pay interest.

**Resident withholding tax on investments (IR 279) –**

**Jun 1996:** An explanation of RWT for people who receive interest or dividends.

## **Non-profit bodies**

**Charitable organisations (IR 255) – May 1993:**

Explains what tax exemptions are available to approved charities and donee organisations, and the criteria that an organisation must meet to get an exemption.

**Clubs and societies (IR 254) – Feb 1998:** A tax guide for clubs, societies, non-profit bodies, associations and other groups.

**Education centres (IR 253) – Jun 1994:** Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.

**Gaming machine duty (IR 680A) – Jun 1997:**

An explanation of the duty payable by organisations that operate gaming machines.

**Grants and subsidies (IR 249) – Jun 1994:** A guide to the tax obligations of groups that receive a subsidy,

either to help pay staff wages, or for some other purpose.

**Smart business (IR 320) – Apr 1999:**

An introductory guide to tax obligations and record keeping for businesses and non-profit organisations.

## **Company and international issues**

**Controlled foreign companies (IR 275) – Nov 1994:**

Information for NZ residents with interests in overseas companies (more for larger investors, rather than those with minimal overseas investments).

**Declaration of an amalgamation (IR 432) – Nov 1999:**

This form is completed by a representative of the company resulting from the amalgamation.

**Foreign dividend withholding payments (IR 274A) –**

**Mar 1995:** Information for NZ companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.

**Foreign investment funds (IR 275B) – Oct 1994:**

Information for taxpayers who have overseas investments, but who don't have a controlling interest in the overseas entity.

**Imputation (IR 274) – Dec 1997:** A guide to dividend imputation for New Zealand companies.

**Qualifying companies (IR 435) – May 1999:** A guide to qualifying company tax law.

## **Child support**

**Acknowledgement of paternity (IR 106) – Apr 1999:**

A form to acknowledge you are the father of a child if no other proof exists.

**A guide for parents who pay child support (IR 170) –**

**May 1999:** This explains the rights and responsibilities of being a paying parent.

**Application for exemption from child support**

**payments (IR 105) – Apr 1999:** A form to be used if you are a hospital patient or a prison inmate and you want to apply for an exemption from paying child support or spousal maintenance.

**Authority to pay an agent or trustee (IR 128) –**

**Mar 1999:** This form is to be used if child support or spousal maintenance payments are to be made to an agent or trustee.

**Automatic payment authority for child support (IR 123) – Jul 1999**

**Cancellation of income estimation for child support**

**(IR 111) – Feb 1999:** Use this form if you estimated your current taxable income for your child support assessment and you now want to cancel that estimate.

**Change of bank account (IR 127) – Apr 2000:** Use this form if you change the bank account Inland Revenue pays your child support or spousal maintenance into.

**Change of circumstances (IR 116) – Feb 1999:** Use this form to advise Inland Revenue about a change in your circumstances.

**Changes to a voluntary agreement (IR 108) –**

**Apr 1999:** Use this form to tell us about a change to a voluntary agreement.

**Child Support administrative reviews – a general guide (IR 175) – Aug 1999**

**Child Support administrative reviews – how to apply (IR 172) – Feb 2000:** If you think the child support assessment should take into account some special circumstances, read this booklet to find out how to apply for a review. The booklet includes an application form.

**Child Support administrative reviews – how to respond (IR 173) – July 2000:** Explains what to do if you are named as the other party in an application for an administrative review.

**Child support – a guide for custodians (IR 171) –**

**Feb 1999:** Explains the rights and responsibilities of being a custodian.

**Child Support – estimating your income (IR 151) –**

**Apr 2000:** Information on how a paying parent may estimate their income.

**Child Support and the Family Court (IR 174) –**

**May 1999:** Sets out your options on how and where to apply if you disagree with any decision made by Inland Revenue Child Support about your case.

**Child support formula assessment application**

**(IR 101) – Mar 1999:** This form is to be used to apply for a formula assessment of child support.

**Child support – a guide for prisoners (IR 154) –**

**Oct 1999:** Provides information to prison inmates to assist them with their child support responsibilities.

**Child Support – how the formula works**

**(IR 150) – Dec 1999:** Information about how child support is worked out, and how much the living allowances are. This leaflet is updated each year to keep up with the changing living allowances.

**Child support and redundancy (IR 152) – Jun 1999:**

How a redundancy payment could affect your child support.

**Child support – repayment of arrears (IR 130) –**

**May 1999:** This form will help you and Inland Revenue to work out how much you can pay towards your child support arrears (paying parent) or work out your overpayment (custodian).

**Child support – shared care (IR 156) – Jan 1999:**

How shared care will affect your child support.

**Child Support – voluntary agreements (IR 157) –**

**Apr 2000:** For people who want Inland Revenue Child Support to administer a voluntary agreement.

**Child support is working for children (CS 80) –**

**Mar 1998:** Provides an overview of child support, including its objectives, initiatives and other important information.

**Election not to enforce Court order or election to withdraw from voluntary agreement (IR 112) –**

**Feb 1999:** Use this form if you wish to stop child support or spousal maintenance you receive under a Court order or voluntary agreement.

**Election to withdraw from child support formula assessment (IR 107) – Mar 1999:**

Use this form if you are entitled to receive child support under a formula assessment and you wish this to stop.

**Elect someone to act on your behalf (IR 597) –**

**Nov 1999:** To be completed if you wish someone to act on your behalf with Inland Revenue.

**Estimate of income for child support assessment –**

**2001 (IR 104):** To be completed if you wish to estimate your current taxable income for your child support assessment for the year 2001.

**Notice of objection – child support (IR 119) – Mar 1999:**

To be used if you object to your child support assessment.

**Child Support payment slip (IR 131) – Mar 2000**

**Problems with our Child Support service (IR 153) –**

**Jul 1999:** Explains how to make a complaint.

**Registration of a person required to pay child support or spousal maintenance (IR 103):**

Used to register a person who is required to make payment of child support or spousal maintenance.

**Registration of voluntary agreement or Court order for child support (IR 102) – Mar 1999:**

Used to register a voluntary agreement or Court order for the payment of child support or spousal maintenance.

## Student loans

**How to get a student loan and how to pay one back (SL 5)**

**Special tax code/student loan special repayment deduction rate application – 2001 (IR 23BS)**

**Student Loans – going overseas (IR 223) – Apr 2000**

**Student Loans – how to save yourself money (IR 217) – May 2000**

**Student Loans – interest and calculations (IR 222) –**

**May 2000**

**Student Loans – making repayments (IR 224) –**

**Apr 2000:** Repaying your student loan.

## Compliance and penalties

**Taxpayer obligations, interest and penalties (IR 240)**

**– Apr 1999:** A guide to the rules for business people.

**New rules for business taxes – an overview**

**(IR 240E) – Feb 1997:** A summary sheet of information contained in the *Taxpayer obligations, interest and penalties* booklet.

**New shortfall penalties (IR 240J) – Feb 1997:**

A summary sheet of information specifically about shortfalls and associated penalties contained in the *Taxpayer obligations, interest and penalties* booklet.

**New late payment penalties (IR 240F) – Feb 1997:**

A summary sheet of information specifically about late payments and associated penalties contained in the *Taxpayer obligations, interest and penalties* booklet.

**New late filing penalties (IR 240G) – Apr 1999:**

A summary sheet of information specifically about late filing and associated penalties contained in the *Taxpayer obligations, interest and penalties* booklet.

**New criminal penalties (IR 240H) – Feb 1997:**

A summary sheet of information specifically about criminal activities and associated penalties contained in the *Taxpayer obligations, interest and penalties* booklet.

**New two-way interest (IR 240K) – Feb 1997:**

A summary sheet of information regarding interest payable to and by Inland Revenue, contained in the *Taxpayer obligations, interest and penalties* booklet.

## Tax agents

**AGENTSanswers (IR 787)**

**Cancellation of client's registration (IR 794) –**

**Nov 1999:** A form for cancelling a tax agent's client registration.

**Client linking or delinking (IR 795) – Nov 1999:**

A form for linking or delinking a client from a tax agent's records.

**E-File (IR 798) – June 2000:** Information about Inland Revenue's electronic filing system.

**Extension of time (EOT) arrangements (IR 9XA) –**

**May 2000:** This document is only available on Inland Revenue's website. It contains details of the arrangements and the procedures in the agreement, which is prepared annually by Inland Revenue in consultation with the Institute of Chartered Accountants of New Zealand.

**Existing client change form (IR 793) – Nov 1999:**

A form for changing tax agents client details.



**Gift duty – A guide for practitioners (IR 195) – May 1999:** Specifically written for practitioners to help them understand the obligations of gift transactions.

**INFOexpress (IR 355) June 2000:** Tax practitioners' guide to using INFOexpress.

**New INFOexpress features for agents (IR 721) – Jun 2000**

**Tax agents' 2000 Guide (IR 9X):** A guide to completing 2000 returns.

## **Inland Revenue corporate publications**

**Annual report**

**Briefing papers for the incoming Minister – Nov 1999**

**Briefing papers for the incoming Minister – supplementary volumes**

**Departmental forecast report 1999–2000**

**Departmental forecast report 2000–2001**

**Strategic business plan 1998–2001**



## 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.

**By internet:** Visit [www.ird.govt.nz/rulings/](http://www.ird.govt.nz/rulings/) 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.

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**Public rulings**

**Comment deadline**

**PU0085:** Lease surrender payments received by a landlord – income tax treatment.

31 August 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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