

# TAX INFORMATION BULLETIN

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## “COST PRICE OF THE MOTOR VEHICLE” – MEANING OF THE TERM FOR FRINGE BENEFIT TAX (FBT) PURPOSES

### PUBLIC RULING – BR Pub 00/10

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

#### Taxation Law

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

This Ruling applies in respect of section CI 3(1) and Schedule 2 of the Income Tax Act 1994 (and the meaning of “cost price” for the purposes of determining the value of the benefit to the employee).

#### The Arrangement to which this Ruling applies

The Arrangement is the provision of a motor vehicle by an employer, who owns the motor vehicle, to an employee for the private use and enjoyment of the vehicle by the employee.

#### How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

The “cost price of the motor vehicle” for the purpose of the calculation of fringe benefit tax under section CI 3(1) and Schedule 2 will be determined as follows:

- The “cost price of the motor vehicle” will include:
  - the purchase price of the vehicle (inclusive of goods and services tax (GST)).
  - the cost of initial registration and licence plate fees (inclusive of GST).

- the cost of accessories, components, and equipment (other than “business accessories”) fitted to the vehicle at the time of purchase or at any time thereafter (all costs inclusive of GST).
- the cost of sign writing or painting the vehicle in the employer’s colours or style (all charges GST inclusive).
- the cost (if any) of transporting the motor vehicle to the place where the motor vehicle is to be first used (all charges GST inclusive).
- The “cost price of the motor vehicle” will not include:
  - the cost of annual vehicle re-licensing fees.
  - the cost of “business accessories”, fitted to the motor vehicle at the time of purchase or at any time thereafter.
  - the cost of financing the purchase of the vehicle.

For the purposes of this Ruling:

- The term “business accessories” means accessories, components, and equipment fitted to the vehicle, required for and relating solely to the business operations to which the vehicle is used, and that are in themselves “depreciable property” for the purposes of the Act. Where powered, they will usually require the vehicle’s power source to operate them, e.g. a two-way radio, roof mounted flashing warning lights, electronic testing/monitoring equipment, etc.

- The term “fitted to the vehicle” means permanently affixed to the vehicle. Permanency would not be negated if the accessory were removed from the vehicle on a temporary basis, for repair or maintenance, or on the removal of the accessory at the time of sale or disposal of the vehicle or the accessory itself.

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

This Ruling will apply from 1 November 2000 to 31 October 2003.

This Ruling is signed by me on the 19th day of September 2000.

**Martin Smith**

General Manager (Adjudication & Rulings)

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## COMMENTARY ON PUBLIC RULING BR PUB 00/10

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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 00/10 (“the Ruling”).

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

### Background

If an employee has the private use or enjoyment, or the availability for private use or enjoyment, of a motor vehicle that is owned by the employer of the employee, the employer must pay FBT on the value of the benefit. The benefit is calculated by reference to the cost price of the vehicle to the employer, not the value of the benefit to the employee. If an employer purchases a motor vehicle to be used by, or to be made available for use by, an employee, a number of costs are incurred in addition to the purchase price of the vehicle for the vehicle to be in a state where it can be used by the employee. Some of the additional costs include:

- On-road costs. Under section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, no motor vehicle can be driven on the road unless:
  - the motor vehicle is registered, and
  - the registration plates and a current license issued for the vehicle are affixed and displayed on the vehicle, and
  - the full amount of the accident compensation levy has been paid.
- The cost of transporting the vehicle to the initial place where it is to be used.

- The cost of fitted accessories, components, or equipment required for and relating solely to the business operations for which the vehicle is used.
- The cost of accessories, components, and equipment, such as towbars, roof racks, and stereos, fitted to the car at the time of purchase or at some later time.

This Ruling identifies the costs that form part of the “cost price of the motor vehicle” for the purposes of calculating FBT.

The Commissioner considers the cost of motor vehicles includes accessories that are permanently affixed to the vehicle. Everything that is permanently affixed to the vehicle, including accessories such as CD players, towbars, and radiotelephone sets, is part of the cost to the employer of making the vehicle available to the employee. Accessories not so permanently affixed are not part of the cost price of the vehicle in the first place and their FBT (or other income tax) status is to be determined separately. However, the Commissioner considers that certain accessories, permanently fitted to the vehicle and relating solely to the business operations for which the vehicle is used, should not be treated as part of the cost of the vehicle for FBT purposes. For example, a radiotelephone set fitted to the vehicle and only able to be used for business purposes would be excluded from the vehicle’s cost price because it is a “business accessory”. On the other hand, a mobile phone is an example of an item considered not to be part of the cost price of the vehicle because it does not meet the test of being permanently affixed to the vehicle.

## Legislation

Section CI 3(1) provides a formula for calculating the value of the fringe benefit that consists of the private use and enjoyment, or the availability for the private use and enjoyment, of a vehicle. This formula is:

- $\frac{y}{90} \times z$  when the benefit is subject to FBT on a quarterly basis, and
- $\frac{y}{365} \times z$  when the benefit is subject to FBT on an income year basis.

In these formulae, if the benefit is subject to FBT, (z) is the amount calculated in accordance with Schedule 2.

Schedule 2 states:

Subject to clause 3, in relation to any quarter or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 4) to any income year, and to any motor vehicle that in the quarter or income year is provided by any person for the private use or enjoyment of an employee or is available for such private use or enjoyment, the value of the benefit that would be able to be enjoyed by the employee, if the employee had unlimited private use or enjoyment or availability for private use or enjoyment of the motor vehicle in that quarter or income year, shall be, -

- (a) Where the motor vehicle is owned (whether in the person's own right or jointly with any other person) by that person, 6% or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 4) 24% of **the cost price of the motor vehicle to that person** or, as the case may be, those persons: (Emphasis added)
- (b) Where the motor vehicle is leased or rented by that person from any other person (that person and that other person being associated persons) under a lease or rental agreement that commenced -
  - (i) ...
  - (ii) On or after 23 September 1985, 6% or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 4) 24% of **the cost price of the motor vehicle** to the person who is the owner of the motor vehicle at the time the benefit is provided to the employee: (Emphasis added)

The definition of "Adjusted tax value" in section OB 1 states:

- (a) Means, in relation to any depreciable property of a taxpayer and any particular time (and subject to section EG 11, in the case of property in a pool, and to section EG 19(10)(a), in the case of software to which that section applies), the amount calculated in accordance with the following formula:

$bv$  (base value) -  $ad$  (aggregate deductions)

where -

$bv$  (base value) is -

- (i) Except where paragraph (ii) or paragraph (iii) or paragraph (iv) of this item applies, the **cost of the property** to the taxpayer (excluding any expenditure of the taxpayer allowed as a deduction under any provision of this Act or the Income Tax Act 1976 other than sections EG 1 to EG 15 and section EG 18 of this Act or sections 108 to 108N and section 113A of the Income Tax Act 1976): (Emphasis added)

## Application of the Legislation

The determinative factor in the calculation of FBT on motor vehicles is the "cost price of the motor vehicle to that person" (the employer) as contained in Schedule 2. The calculation of fringe benefit tax on the provision of a motor vehicle to an employee is based on the vehicle's "cost price" and **not** its value to the employee. This was the "test" adopted by Parliament and confirmed in *C of IR v Atlas Copco (NZ) Ltd* (1990) 12 NZTC 7,327. At pages 7,334 and 7,335 Sinclair J said:

The Tenth Schedule to the Income Tax Act clearly states that the value of the benefit is an amount equal to "6% of the cost price of the motor vehicle *to that person*", where "that person" is the person providing the benefit. In other words, the schedule expressly states that the value of the benefit is to be calculated by reference to the cost price to the employer. There is no justification in the legislation for defining the term by reference to the *value* of the benefit to the *employee* rather than the cost of the benefit to the *employer*. There is no room for an employee notion to be introduced when construing the Schedule.

The above comment is consistent with the intent of Parliament that the cost price of motor vehicles for FBT purposes should equal the cost to the employee, had the employee purchased the vehicle rather than having the vehicle provided by the employer. In introducing the Tax Reform Bill 1990, on 19 December 1990, the then Minister of Revenue (Hon. Wyatt Creech) said that the amendment to the FBT rules was to ensure that the value of the motor vehicle for FBT purposes included GST. He said that this was to ensure that the FBT "cost price" would equate with the cost that the employee would have had to pay had the employee purchased the vehicle.

### Meaning of "cost price"

"Cost price" is not defined in the Act for the purposes of the FBT rules. It is, therefore, not clear whether it is limited to the purchase price of the vehicle, as some suggest, or whether it includes costs incidental to the purchase, such as on-road costs and the costs of transporting the vehicle to the place where it will be used.

The words "cost" and "cost price" are used extensively throughout the Act. Section OB 1 defines these words for a very limited number of sections where the words are used.

Examples include:

- For the purposes of Part EE (the trading stock rules) “cost” is defined as:  
In Part EE, for trading stock other than an excepted financial arrangement, means costs incurred in the ordinary course of business to bring the trading **stock to its present location and condition** including purchase costs and costs of production calculated under sections EE 5 to EE 7. (Emphasis added)
- “Cost price” in relation to “specified leases” means:  
...the amount of expenditure of a capital nature incurred by the lessor in acquiring **and installing** that leased asset... (Emphasis added)

The significance of these two definitions (even though they have limited application in the Act) is that they both include a reference to costs (“bringing to its present location” and “installing”) that are more than simply the *purchase price* of the item in question. In the definition of “cost” for the purposes of the trading stock rules, it could be argued that getting the stock “to its present location” is synonymous with “installing” as used in the definition of “cost price”. “Install” is defined in the Concise Oxford Dictionary as “*place (heating or lighting etc.) in position for use*”. While the two definitions relate to the two different sides of the revenue/capital distinction, they both relate to the assets used in a business.

This leads to the view that there may be very little difference (if any) between the terms “cost” and “cost price” as used throughout the Act. This view is supported by the comments of Fullagar J in *Australian Jam Co. Pty Ltd v FCT* (1953) 10 ATD 220. This case concerned the valuation of trading stock. At 570 the Judge said:

The words ‘cost price’ in the section [relating to the valuation of trading stock] are perhaps not literally appropriate to goods manufactured, as distinct from goods purchased, by the taxpayer, but I feel no difficulty in reading them as meaning simply ‘cost’.

This implies that “price” adds nothing to the meaning of “cost”. “Cost price” is simply “cost”. In commenting on the above citation in an item entitled “Some Aspects of Valuation of Trading Stock for Income Tax Purposes” in the *NZ Universities Law Review*, Vol. 1 (September 1964), ILM Richardson (now Sir Ivor) said:

If “price” adds anything to “cost” it is only in emphasis, in stressing that what is involved is the actual expenditure of money by the taxpayer with relation to the trading stock.

In *Phillip Morris Ltd v. F.C. of T.* 79 ACT 4,352, the Supreme Court of Victoria had to decide what constituted “cost price” for the valuation of cigarettes (trading stock) on hand at the end of an income year under section 31(1) of the Income Tax Act Assessment Act 1936. The Court determined that in respect of manufactured goods:

...the words “cost price” in that subsection [section 31(1)] should be understood as meaning “cost”.

Both the above cases (*Australian Jam* and *Phillip Morris*) considered section 31(1) of the [Australian] Income Tax Assessment Act, which gives taxpayers an option of valuing trading stock at its “cost price”. The wording of the section is very similar to the former New Zealand equivalent—section EE 1(3) prior to amendments that applied from the 1998–1999 income year—that is, the same “cost price” option applied to New Zealand taxpayers. It follows that in considering the use of the words “cost price” in New Zealand, the courts would arguably adopt the same position as the Australian courts in the above decisions. Where the words are used in other parts of the Act (including Schedule 2), and there is no specific definition, it is considered that “cost price” should be given a similar interpretation. This means that “cost price” as used in Schedule 2 for FBT purposes also means “cost”.

In discussing trading stock, some authorities take the view that “cost price” relates to things purchased, while “cost” relates to things manufactured. For example, in *Phillip Morris* Jenkinson J said:

The statutory conception of “cost price” or, **in the case of manufacturer’s stock, “cost”** is merely a value at a particular time... (Emphasis added)

In *Australian Jam*, Fullagar J said:

The words ‘cost price’ in the section [relating to the valuation of trading stock] are **perhaps not literally appropriate to goods manufactured, as distinct from goods purchased**, by the taxpayer, but I feel no difficulty in reading them as meaning simply ‘cost’. (Emphasis added).

In *TRA Case S12* (1995) 17 NZTC 7,102, Barber DJ considered what is meant by “its cost price” in relation to the valuation of foals born to broodmares owned by a horse breeder. He determined that the foal’s “cost price” should include the write-down (depreciation) of the broodmare. At 7,107 he said:

...the Legislature has provided that the breeder or farmer must take progeny into account at “its cost price”. Those words do not seem to me to be a particularly happy choice because **“cost price” is normally that which a merchant buys something** (refer Sixth Edition of the *Concise Oxford Dictionary*). The cost is the price to be paid for a thing and the price is the money or other consideration for which a thing is bought or sold. The taxpayer has not purchased the foal but has had the foal created through the mare after servicing from the stallion. However, in their context, the words “its cost price” must be given a sensible interpretation. In the *Shorter Oxford English Dictionary* (3rd Edition) a meaning for “cost” is “That which must be given in order to acquire, produce or effect something”. (Emphasis added)

In these cases the courts make a distinction between “cost” and “cost price”. “Cost” relating to manufactured goods (the cost of manufacture) and “cost price” relating to goods purchased (the cost of purchase). However, under both the Australian and the former New Zealand trading stock valuation rules there is only one option for valuing trading stock at cost and that is its “cost price”. In terms of the legislation, therefore, both manufacturers of trading stock and purchasers of trading stock are required to value their goods under its “cost price”. So, in the trading stock context at least, “cost price” includes both the terms “cost” and “cost price”.

### **Trading stock context**

As mentioned above, the trading stock rules changed with effect from the 1998–1999 income year. The current definition of “cost” applying to the valuation of trading stock requires the “cost” to include, “*any costs incurred in the ordinary course of business to bring the trading stock to its present location and condition including purchase costs and costs of production calculated under sections EE 5 to EE 7*”. The effect is that now trading stock must be valued by the taxpayer using generally accepted accounting principals (section EE 5(1)). Effectively, section EE 5(2) says that the trading stock must comply with Financial Reporting Standard No.4 (FRS 4) 1994 (Accounting for Inventories).

In FRS 4, the value of inventories (trading stock) is to include:

- 4.6 “Cost of inventories” is the total of:
- (a) **cost of purchase** (as defined in paragraph 4.10 below);
  - (b) costs of conversions (as defined in paragraph 4.13 below); and
  - (c) **other costs incurred in bringing the inventories to their present location and condition.**

4.10 “Cost of purchase” includes:

- (a) import duties and other purchase taxes (**other than those subsequently recovered**);
- (b) **Transport and handling costs**
- (c) ...

(Emphasis added)

As this standard applied from 1994 (replacing the previous standard SSAP 4), presumably FRS 4 could have been used as a guide by taxpayers in valuing trading stock under the former valuation option, “cost price”. That the Commissioner accepted similar calculations to FRS 4 is illustrated by the contents of an item on the valuation of trading stock published in *Public Information Bulletin* No.82 (December 1974).

This item set out the three options available to taxpayers, being cost price, market selling value, or replacement price. It then went on to define “cost” (note: not “cost price”). In respect of purchases of finished goods the item said:

Here the cost should include **freight inwards**, customs duty, insurance, and sales tax in addition to the actual purchase price of the goods. (Emphasis added)

In the context of their use in relation to trading stock, the words “cost” and “cost price” are interchangeable.

### **Depreciation context**

The only provisions that deal with valuation of capital assets in the Act are the depreciation rules set out in Subpart EG.

Generally, business assets are “depreciable property” as defined in section OB1, being property that “*might reasonably be expected ...to decline in value ...while used or available for use ...in carrying on a business for the purposes of deriving gross income*”. This is provided that the assets are not trading stock, land, financial arrangements, or intangible property. Motor vehicles are “depreciable property” and will qualify for depreciation deductions under Part EG.

Under section EG 2(1)(a) depreciation is calculated:

- where the diminishing value method is being used, on the “adjusted tax value” of the property
- where the straight-line method is being used, on the “cost of the property” to the taxpayer.

“Cost” is not defined in the Act for the purposes of section EG 2. “Adjusted tax value” is defined in section OB 1. The main component of this definition is the “base value” of the property. “Base value” in the majority of cases, especially in respect of property acquired after the beginning of the 1993–1994 income year, will be its “cost”.

As stated above, as far as trading stock is concerned there appears to be no difference between the use of the words “cost” and “cost price”. The words are interchangeable. If the same applies in respect of the word “cost” used in subpart EG, it could mean that “cost” and “cost price” are interchangeable elsewhere in the Act, eg in Schedule 2, in determining the “cost price” of a motor vehicle for FBT purposes.

The definition of “cost price”, as it applies to Schedule 2, was discussed in *C of IR v Atlas Copco (NZ) Ltd*. This case considered whether the “cost price” in respect of motor vehicles was the GST inclusive or exclusive cost. While it was not necessary for the Court to formulate an exhaustive meaning of “cost price”, Sinclair J concluded that the words “cost” and “price” are susceptible to a wide variety of meanings. At page 7,332 Sinclair J referred to expert accounting evidence on the meaning of “cost” and stated:

This accords with the expert evidence given by two accountants, Mr John Hagen and Professor David Emanuel. Professor Emanuel cited a number of definitions of “cost” from leading textbooks on accounting:

- “(a) ‘Costs represent the financial sacrifices which are involved in acquiring or producing assets.’ Ma, Matthews and Macmullan, *The Accounting Framework* (2<sup>nd</sup> Ed, 1987) at p 43.
- (b) ‘Accountants have placed a great deal of emphasis upon the principle of objective evidence, and nowhere is it more apparent than in accounting for the acquisition of plant and equipment. Cost is used as the valuation method in this instance because it is more easily identified than any other valuation and because it is said to be the sacrifice given up now to accomplish future objectives.’ McCullers and Schroeder, *Accounting Theory: Text and Readings* (1978) at p 233.
- (c) ‘We define cost here as the sum of the quantitative representations of the sacrifices necessarily incurred **to bring the fixed asset to its place and state of use.**’ Most, *Accounting Theory* (1977) at p 235. (Emphasis added)
- (d) ‘Cost is thus the economic sacrifice expressed in monetary terms required to obtain a specific asset or group of assets.’ Hendriksen, *Accounting Theory* (3<sup>rd</sup> Ed, 1977) at p 270.
- (e) ‘Cost is an economic sacrifice, an outflow of wealth, by giving up asset value or incurring liability value.’ Staubus, *Activity Costing for Decisions* (1988) at p 192.”

Professor Emanuel then summarised the position by saying that:

“Cost is the economic sacrifice associated **with getting the purchased item to its current location and condition.**” (Emphasis added)

It is interesting to note that here the accountants used the term “cost” rather than “cost price”—the term (as used in Schedule 2) that the Court was considering. This is consistent with the earlier analysis that the words are interchangeable.

In *Atlas Copco* the Commissioner objected to the evidence of the accountants. At page 7,333 the Court said:

Counsel for the Commissioner objected to the evidence of the two accountants on the basis that the interpretation of “cost price” is a question of law for the Court, and to rely upon the interpretation of accountants would infringe the “ultimate issue” rule. Moreover, counsel felt that the accountants had mistakenly placed economic substance over legal form in analysing the nature of the payment paid by the purchaser.

It is true that defining “cost price” is a question of statutory interpretation and, as such, must be resolved by the Court.

**Where the meaning of words in a statutory context is unclear or ambiguous, however, the Court may derive some assistance from common business parlance and practice**, as well as international standards. Moreover, as I have already discussed, the approach of the accountants accords with both the economic substance and the legal form of the transaction: the GST component of the purchase price which may be recovered by a registered purchaser cannot be considered part of the effective “cost price”. (Emphasis added)

Here the Court accepts that where uncertainty in the legislation exists, common business practice can be taken into account in defining terms or words. As sufficient doubt surrounds the use of the words in question, accounting or business usage may be of assistance. In this regard SSAP 28 states in respect of the valuation of Fixed Assets:

4.1 The initial cost of a fixed asset is the value of the consideration exchanged or given up to acquire or create the asset at the location and **to put it into the working condition necessary for its intended use**. Thus, initial cost includes the invoice price (...), import duties, broker’s or agent’s commissions, legal fees, option costs (...), survey costs, site preparation costs, **installation costs...**, **freight** and charges for installation commissioning and testing. (Emphasis added)

This standard is consistent with the “expert evidence” given by the accountants in *Atlas Copco* (as cited above). As mentioned, that case was dealing with the definition of “cost price” in Schedule 2, but the evidence given by the accountants, as well as the definitions in SSAP 28, refer to “cost”. This further strengthens the proposition that no fundamental difference exists between “cost” and “cost price” as used in the Act.

### **Conclusion**

On the above analysis it is concluded that “cost” and “cost price” as used in the Act are interchangeable. The calculations of both terms, using accepted accounting principles, include costs in addition to what can be termed the “purchase price”. This means that for the purposes of the phrase “cost price of the motor vehicle” in the FBT rules, the “cost price” of a motor vehicle will be more than just its purchase price.

### **What is the “cost price” of a motor vehicle for FBT purposes?**

When a new motor vehicle is purchased, a number of Government charges have to be paid before the purchaser can use the vehicle on the road.



The purchaser may also have accessories fitted to the vehicle at the time of purchase or at a later date. Some of these accessories may be of a non-business nature, such as a towbar, CD player, CNG/LPG conversion, air conditioning, alloy wheels, etc. Generally, unless they are part of a special deal, these accessories will be additional costs to the purchaser. In some instances the purchaser may have a business accessory, eg a radiotelephone, fitted to the vehicle at the time of purchase or at a later date.

The question to be considered is whether all or any of (the cost of) these items forms part of the “cost price” of the vehicle.

### **Government charges**

Fees payable at the time of purchase of a new car so it can be driven on the road include:

- Once only payments: registration fee, number plate fee.
- Annual (recurring) fees: annual relicensing fee, ACC levy, label fee.

It is arguable that without payment of the initial registration and plate fees (as distinct from the recurring annual re-licensing fees) by the employer the vehicle cannot be used immediately. The employer has to pay these costs before the vehicle can be “put on the road” or in a position to be used. This suggests that they are properly to be treated as part of the “cost price” of the car.

Support for the view that “cost” includes such items as getting the vehicle “on the road” so that it can be used, is found in the High Court of Australia case of *BP Refinery (Kwinana) Ltd v FCT* (1960) 8 AITR 113. At page 117, Kitto J in considering the issue of what was included in the term “cost”, said.

... in my opinion, the word “cost” in section 56 (1)(b) bears the meaning which it has in the business life of the community. It seems to me impossible to suppose that the depreciation provisions of the Act are intended to apply only to those simple cases in which the ascertainment of cost is a purely arithmetical process. I interpret it as embracing the whole sum which, according to accepted accountancy practice as applied to the circumstances of the case, ought to be considered as having been laid out by the taxpayer in order to acquire the subject-matter as plant, **that is to say installed and ready for use** as plant for the purpose of producing assessable income. (Emphasis added)

Therefore, the cost of the vehicle must include expenditure making it “ready for use” by the taxpayer. Without payment of the registration and plate fees the vehicle is not ready for the purpose intended.

Whether the costs of the initial registration fee and the plate fee form part of the cost of the vehicle is not entirely clear. The Commissioner considers the better view of the law, and the likely intent of Parliament, is that such expenses form part of the cost price of the vehicle, particularly given that they are one-off costs that fall into the “once and for all payments” category (see *BP Australia Ltd v FCT* (1965) 3 All ER 209) and hence are capital in nature. These fees are intended to make the vehicle able to be used.

The remaining fees are annual charges and normal accounting practice would treat them as revenue expenditure, even if they were incurred upon purchase of the vehicle.

In summary, the better view is that registration and plate fees are “once and for all” payments, are of a capital nature, make the vehicle able to be used and are part of the “cost price” of the vehicle. Annual charges (licensing, ACC levy, etc) are revenue expenditure and not part of the “cost price”.

### **Business accessories**

Generally, accessories permanently fitted to the motor vehicle are properly to be included as part of the vehicle’s cost. As discussed earlier, accessories, such as stereos, towbars, roof racks, etc, fitted to a vehicle will form part of its cost price.

However, some components or equipment fitted to vehicles may be of a purely business nature. The issue arises as to whether such components or equipment should also be included in the “cost price of the vehicle” for FBT purposes.

There is no legislative direction on this issue. This may indicate that all accessories, components, or equipment attached to the vehicle form part of its “cost price”. It is arguable, however, that business accessories, components and equipment fitted to the vehicle should not be treated as forming part of the cost price, where they are required and relate solely to the special business operations for which the vehicle is used, and are in themselves depreciable property for the purposes of the Act, eg a two-way radio telephone in a salesperson’s vehicle. Such components or equipment are fitted to the vehicle to facilitate the business use of the vehicle, and may be considered as separate business assets located in the vehicle.

Another factor (relevant to this last-mentioned aspect) possibly pointing to the components or equipment as not being part of the cost price, is to consider the nature of the assets and how they are treated by businesses for accounting purposes. For example, it is most likely that components such as two-way radios are accounted for and depreciated separately. The radios can be removed from vehicles, or moved from one vehicle to another, and it seems logical that they

be treated as separate assets for depreciation purposes. Note: motor vehicles and radiotelephone equipment are listed separately in Depreciation Determination DEP 1. Two-way radios have their own depreciation rate because they are regarded as assets in their own right and not accessories (to a motor vehicle). They form part of a larger asset, for example, the entire radio telephone network, consisting of radios in vehicles and the central control unit in the employer's premises. In such circumstances, even though they are a form of accessory or addition to the motor vehicle, they are an asset in their own right and therefore require a separate asset classification.

Usually, radio networks are purchased as a package consisting of a number of radios for each vehicle, plus the central control station. To treat the network as part of the cost price of each car would require an apportionment of the overall expense, including installation costs, to each vehicle. The Commissioner does not consider this to be a sensible approach.

The same could be said of accessories such as roof-mounted flashing lights, and electronic monitoring equipment. If these types of assets are added because they are required for and relate solely to the business operations for which the vehicle is used, they will be treated similarly to the two-way radio system.

Therefore, where business components, such as two-way radios, roof-mounted flashing lights, electronic testing or monitoring equipment, etc, are fitted to the vehicle and are paid for by the employer, they do not form part of the "cost price" for FBT purposes. As mentioned earlier, such accessories are business assets of the employer, coming within the definition of "depreciable property" for the purposes of the Act.

As previously discussed under the heading "Application of the Legislation", it was the clear intent of Parliament that the "cost price" for FBT purposes should equal the cost to the employee had the employee purchased the vehicle rather than having it provided by the employer. It follows that if the employee had to pay for the vehicle, the cost to the employee must also include accessories fitted to the vehicle as already discussed. Exceptions are the cost of separately depreciable components or equipment fitted to the vehicle solely to meet the special needs of any business operations for which the vehicle is used.

Therefore, the Commissioner considers that business components fitted to the vehicle, which are required for and relate solely to the business operations for which the vehicle is used, and are in themselves depreciable property, should be excluded from the "cost price" of motor vehicles for FBT purposes. This covers assets requiring the vehicle's power source in order to operate—they are not part of the cost price of the car itself.

There may be isolated instances where the type of business asset mentioned above will unavoidably be used for non-business purposes. The Commissioner considers that any extraordinary and unenvisioned use of the accessory for non-business use over the life of the asset will not in itself negate the purpose of fitting the accessory to be "solely for business purposes" in this context.

#### ***Cost of non-business accessories***

Commonly, when a vehicle is purchased the owner asks for certain "extras" or accessories (other than business accessories) to be fitted to the vehicle. If these accessories are not "optioned" (and included in the purchase price), the dealer will charge for their cost and fitting to the vehicle. Such accessories can include stereos, towbars, sunroof, roofrack, CNG/LPG conversions, alloy wheels, air-conditioning, electric windows and locking systems, higher specification tyres, etc.

Where the vendor charges for any of these accessories, the question arises as to whether they should be added to the "cost price" of the vehicle for FBT purposes. The same issue arises if the accessories are acquired from another person or supplier, or acquired at a later date.

Such accessories are of a capital nature and should be added to the vehicle's purchase price to arrive at its "cost price". They are part of the vehicle as a whole and are not generally removed at the time the vehicle is sold or otherwise disposed of. They are either singularly or collectively a "once and for all" payment(s), culminating in the "cost price" of the vehicle that is provided to the employee by the employer for the employee's "private use and enjoyment".

Under this interpretation, the cost price may vary from period to period, depending on when accessories are added (or in the unlikely or rarer event of an accessory being removed).

Therefore, in summary, accessories fitted to a vehicle form part of its "cost price" for FBT purposes (as contemplated in Schedule 2), irrespective of the time they are purchased and fitted to the vehicle.

#### ***Cost of signwriting or painting the vehicle in the employer's colours or design***

It is the Commissioner's view that costs associated with sign writing and painting the motor vehicle in the employer's colours, logo, or design are part of the "cost price" of the vehicle for FBT purposes. It was concluded earlier that "cost price" for the purposes of Schedule 2 means something more than the "purchase price" of the motor vehicle. While the cost of signwriting or painting may not add to the value of the motor vehicle, that is not the test. As discussed

earlier, the test is the “cost to the employer”, not the “value to the employee”. Some may argue that the costs associated with signwriting and painting the vehicle are primarily of a business nature and should be excluded from the vehicle’s cost price. However, unlike business accessories, the signwriting and painting will generally not be depreciable property and therefore, such costs must be added to the cost of the vehicle. The better view of the law is that the costs are correctly attributable to the vehicle itself and form part of the cost price for FBT purposes.

### ***Transporting or freighting the vehicle to its place of use***

In the above discussion on “cost price”, it is clear that the courts have accepted that the cost of transporting or freighting goods (whether those goods are trading stock or capital assets of the business) to the place where they are to be used is part of the cost of the goods. As mentioned in SSAP 28, the initial cost of fixed assets will include expenditure incurred “*to put it (the asset) into the working condition necessary for its intended use*”. And in *Atlas Copco*, “cost is ...associated with getting the purchased item to its current location and condition”. This would include installation costs and freight.

The cost of transporting a purchased motor vehicle to the place where it can be used by the taxpayer, is clearly part of its “cost price”, both for FBT and depreciation purposes. For example, the purchase of vehicles direct from a manufacturer or from another source overseas, where the purchaser pays for the cost of transporting the vehicle to New Zealand. It is the Commissioner’s view that these transport costs form part of the “cost price” of the vehicle for FBT purposes.

However, these costs only relate to the initial cost of getting the vehicle to the place it will first be used by the employer, after acquisition. Subsequent transport costs of moving the vehicle within New Zealand (say from one branch of the employer’s firm to another) are considered to be part of the normal business operations of the employer and on revenue account.

### ***Cost of repairs and maintenance***

Another issue is the costs of repairs and maintenance of the vehicle and/or accessories, and whether they should be added to the cost price.

Generally, repairs and maintenance expenditure on the vehicle or accessories will not increase the vehicle’s “cost price” for FBT purposes. However, if work on the car is more than normal repairs and maintenance, such as replacing the existing motor with one of larger capacity, the question arises whether that alteration will increase the cost price of the vehicle for FBT purposes. If the repair or replacement is considered to be of a revenue nature, and deductible for income tax purposes, the cost price of the vehicle will not increase in value for the calculation of FBT. On the other hand, if the repair or replacement is of a capital nature, the cost price for FBT purposes must be increased by the amount of that capitalisation. Each case will need to be considered on the basis of its own facts applying established capital/revenue distinction rules. If the FBT cost price is increased, the recalculation of FBT (on the increased cost price) will apply from the quarter in which that capital expenditure was incurred.

### ***Example 1***

Employer A purchases a secondhand motor vehicle as a company car for the use of a salesperson employee. The employee will be travelling long distances, so the employer purchases a CD player and has it fitted to the vehicle. As the employee has the full use of the vehicle for private use and is likely to tow his own trailer from time to time, he asks the employer to purchase and fit a towbar to the vehicle. The employer agrees. The “cost price” of the vehicle for FBT purposes will be the total of the purchase price plus the cost of acquiring and fitting the CD player and the towbar (all costs GST-inclusive).

### ***Example 2***

Employer B is looking for a vehicle to replace an existing vehicle written-off by the firm’s Wellington based accountant. The accountant will be entitled to use the vehicle for private purposes when it is not being used for business purposes. While on a trip to Auckland the employer locates a suitable secondhand car, purchases it and has it transported to Wellington where the accountant will use it. The “cost price” of the car for FBT purposes will be the purchase price plus the cost of transporting it to Wellington (both costs GST-inclusive).

### **Example 3**

Employer C decides to replace the company's fleet of cars used by its sales representatives, because of the high cost of maintaining the existing fleet. The sales representatives are permitted to use the vehicles for private use when they are not required for business purposes. Through a contact with a motor vehicle dealer, the company decides to purchase 10 secondhand cars direct from Japan. The employer agrees on a purchase price with a Japanese car dealer and arranges for the vehicles to be shipped to New Zealand. The "cost price" of the vehicles for FBT purposes will be the total of:

- the purchase price of the cars, including any costs or commissions paid in Japan or in New Zealand
- the cost of transporting the cars to New Zealand
- GST and any import or inspection levies payable at the time of importation
- the cost of initial registration and licence plate fees, and
- the cost of any accessories fitted to the cars at the time of purchase or any time after purchase, either in Japan or in New Zealand.

### **Example 4**

Employer D is a forestry contracting firm, and has recently purchased a four-wheel drive motor car for its forestry foreman. The foreman has the full use and enjoyment of the vehicle for private purposes while not working. As with the employer's other work vehicles, the car is fitted with a radiotelephone used only for communication between the company's headquarters and its own vehicles. As the radiotelephone is fitted solely for business purposes, and may be considered a separately depreciable business asset located in the vehicle, it does not form part of the cost price of the vehicle for FBT purposes.

### **Example 5**

An employee of Employer E is a travelling salesman. When the employer purchased a new vehicle for the employee's use, a mobile phone kit (mobile phone and car kit) was installed in the car at the employer's expense. The cost of the mobile phone will be excluded from the cost price of the motor vehicle because it is not "permanently affixed to the vehicle". Whether use of the mobile phone gives rise to a fringe benefit in its own right must be decided on the facts.

## **Comments on technical submissions received**

Many comments received in the course of producing this item suggested that the cost of fitted accessories should not be subject to FBT, as they have no inherent benefit for employees. As noted earlier in the ruling commentary, this argument ignores the fact that the statutory test, in the context of motor vehicles, is not the value of the benefit to the employee, but the cost price of the vehicle to the employer.

It is considered that the Commissioner's approach in excluding any such fittings and accessories on the basis of being business assets is arguably a favourable interpretation of the legislation to taxpayers, particularly when compared to the wording in the Australian legislation where such a test has been specifically legislated.

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## PRODUCT RULING – BR PRD 00/08

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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 Waipa Networks Limited (“Waipa”).

### Taxation Law

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

This Ruling applies in respect of sections OB 1, GD 1, GD 2, and BG 1.

### The Arrangement to which this Ruling applies

The Arrangement is the provision of discounts by Waipa to its customers in the form of a reduction in the price which would otherwise be charged for the use of Waipa’s electrical reticulation system (i.e. its power lines).

1. Waipa is a company incorporated under the Energy Companies Act 1992 and operates an “electricity lines business” under the Electricity Industry Reform Act 1998. Its business involves transporting electricity to connected consumers. The reticulation system is the fixed asset which allows Waipa to operate its lines business.

#### Ownership

2. All Waipa’s shares are held in trust by the Waipa Power Trust (“the Trust”). The Trust was established on the 30 April 1993.
3. The beneficiaries under the trust are described as “connected consumers”. Connected consumers are defined at 1.1(f) of the trust deed as:  
...persons, who at any appropriate date designated from time to time by the Trustees are named in the records of the Company and/or Electricity Supply Business as persons whose premises are connected to the Company’s lines network, and who are either:
  - i) end customers of the company who are liable for the payment of services in relation to those lines; or
  - ii) end customers of any Electricity Supply Business that is liable for payments for services in relation to those lines ...

4. The object of the Trust is to hold shares in Waipa on behalf of “connected consumers” and to distribute to the “connected consumers” the benefits of ownership of the shares in Waipa.
5. All of Waipa’s customers are connected consumers under the Trust.

#### Discount Policy

6. Waipa has established a policy of providing discounts to its customers from time to time, as deemed appropriate by the directors. The policy is to provide the discount against the price Waipa would normally charge for the use of its lines.
7. Under the discount scheme Waipa provides discounts to its customers by way of a credit to each customer’s line charge on their electricity account in the month (or other period) in which the discount is provided.
8. The directors of Waipa have established two different methods for the provision of discounts to consumers:

##### *Line Charge Reduction for a Period*

Under this basis the discount will be provided to consumers by reducing the consumers line charge for a period. The discount may be a fixed amount for each day a consumer is connected during the period, or may be by way of providing a period during which the consumer is not charged a line charge (e.g. one weeks free use of the lines). The directors consider that this option will be simple to administer in the new regulatory regime as it is fully under their control.

##### *Consumption basis*

This option will base the discounts on the electricity consumption levels of consumers i.e. the amount consumers use Waipa’s reticulation system. Accordingly, customers with relatively high electricity consumption levels will receive larger discounts than those with lower electricity consumption levels. The ability to pursue this option in the new regulatory environment will depend upon the ability of Waipa to obtain consumers energy consumption details and the cost of obtaining these details.

9. Waipa has implemented the discount scheme as it feels it will:
  - Reduce the threat of price control;
  - Keep profits within an acceptable band;
  - Promote customer goodwill;
  - Encourage greater levels of electricity consumption by consumers and promote better utilisation of Waipa’s asset base;

- Lower the overall cost of electricity relative to other forms of energy (such as gas) and thereby protect the cashflows of the company;
- Promote consumer perception of Waipa as a corporate which makes a positive contribution to the community. It is envisaged this perception will contribute to lower levels of fraud, theft of electricity, and bad debts.

## **Assumptions made by the Commissioner**

This Ruling is made subject to the following assumptions:

- i) Waipa has no dominant purpose to sell the reticulation system within the ordinary course of trade.
- ii) The reticulation system was not acquired or purchased by Waipa for the purpose of sale.
- iii) The reticulation system was not acquired or purchased by Waipa for the purpose of exchange.

## **How the Taxation Law applies to the Arrangement**

Subject in all respects to any assumption stated above, the Taxation Law applies to the Arrangement as follows:

- Waipa's electrical reticulation system is not "trading stock" as defined in section OB 1 for the purposes of sections GD 1 and GD 2.
- As Waipa's electrical reticulation system is not trading stock as defined in section OB 1 for the purpose of section GD 1, GD 1 cannot apply.
- As Waipa's electrical reticulation system is not trading stock as defined in section OB 1 for the purpose of section GD 2, GD 2 cannot apply.
- The provision of discounts to Waipa's customers does not constitute a "tax avoidance arrangement" for the purposes of section BG 1.

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

This Ruling will apply for the period from 9 August 2000 to 8 August 2003.

This Ruling is signed by me on the 9th day of August 2000.

**Martin Smith**

General Manager (Adjudication & Rulings)

## NEW LEGISLATION

### STUDENT LOAN SCHEME AMENDMENT ACT 2000

#### Introduction

The Student Loan Scheme Amendment Act 2000, enacted in September, changes the Student Loan Scheme Act 1992 to reflect that, from 1 January 2000, the Department of Work and Income took over the role of the Ministry of Education in the delivery of student loans, including consideration of objections to loan balances.

The Act also clarifies that student loan contracts entered into by people under the age of 18 are legally enforceable.

The Act is primarily administrative.

#### Background

From 1 January 2000 delivery of student loans was transferred from the Ministry of Education to the Department of Work and Income. This Act, together with the Education Amendment Act 1999, completes the legislative authority for the Department of Work and Income to deliver student loans.

#### Key features

References in the Student Loan Scheme Act 1992 have been amended to reflect that the Department of Work and Income is now responsible for making loans available to tertiary students and for the administrative processes, including deciding whether to allow an objection to the amount of a loan balance, before loans are transferred to Inland Revenue.

The Act also puts beyond doubt that student loan contracts entered into by people under the age of 18 are legally enforceable.

#### Application date

The Act came into effect on 19 September 2000, the day following assent.

### INDUSTRY NEW ZEALAND ACT 2000

The Industry New Zealand Act 2000 was assented to on 6 September 2000.

The Act establishes Industry New Zealand (INZ) through which the Government will deliver programmes aimed at promoting regional and industry development.

On the basis of criteria set out in *CIR v Medical Council of NZ* [1997] 18 NZTC 13,088, INZ is a public authority. However, for the purposes of clarifying the law, section 45 of the new Act deems it to be a public authority for the purposes of the Inland Revenue Acts. This ensures that any income derived by INZ will be exempt income in terms of section CB 3(a) of the Income Tax Act 1994.

### USE-OF-MONEY INTEREST RATES

The use-of-money interest rates payable on underpayments and overpayments of tax and duties are being increased in line with current market interest rates. The new rates are:

- Underpayment rate: 12.62% (currently the rate is 10.84%)
- Overpayment rate: 5.74% (currently the rate is 4.67%)

The new rates apply from 8 November 2000, the commencement date for interest relating to the second instalment of provisional tax for standard balance date taxpayers.

The rates are reviewed regularly to ensure they are in line with market interest rates. They were last changed in March this year.

The new rates are consistent with the base lending rate and the 90 day bill rate.

The new rates were enacted by Order in Council on 2 October 2000.

## **GENERAL INTEREST ITEMS**

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### **TRANSFER PRICING GUIDELINES**

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The appendix to this *TIB* contains guidelines on the application of New Zealand's transfer pricing rules. They provide a general overview of the framework within which transfer pricing operates, discuss documentation taxpayers should be looking to prepare if they are to evidence compliance with the arm's length principle, and consider the more specific areas of intangible property, intra-group services, and cost contribution arrangements. The introduction also discusses briefly the Competent Authority procedure and advance pricing agreements (APAs).

The material in these guidelines was released for consultation in draft form in two parts. Part 1, released in October 1997, provided a general overview of the framework within which transfer pricing operates, including a discussion on documentation. Part 2, released in January 2000, dealt with intangible property, intra-group services, and CCAs. No changes have been made to Part 2 following consultation, other than to update cross-references. Some changes have been made to Part 1, but these do not affect substantive issues.

Transfer pricing is not an exact science. For this reason, the guidelines have been drafted as a practical guide, rather than as prescriptive rules. These guidelines are not issued as a binding public ruling.

Inland Revenue fully endorses the positions set out in chapters 1 to 8 of the OECD guidelines and proposes to follow those positions in administering New Zealand's transfer pricing rules. Consequently, these guidelines should be read as supplementing the OECD guidelines, rather than superseding them. This applies for the domestic application of New Zealand's rules, as well as in relation to issues raised under New Zealand's double taxation agreements.

These guidelines apply only to the application of section GD 13 to transactions between separate entities. They do not apply to transactions within a single entity, such as between a parent company and its branch operation. Those transactions are subject instead to the apportionment rules in section FB 2.



## LEGISLATION AND DETERMINATIONS

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

## FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the six months ending 30 September 2000.

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

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

### Table A

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

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

### Key

|   |
|---|
| X |
| Y |

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

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

### Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 2000. Branch equivalent income for the period 1 October 1999 to 30 September 2000 is 200,000 Hong Kong dollars (HKD).  
 $\text{HKD } 200,000 \div 3.7638 = \text{NZ\$}53,137.78$

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

### Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is an FIF) for 350,000 pesos on 7 September 2000. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP } 350,000 \div 18.8824 = \text{NZ\$}18,535.78$$

Alternatively, the exchange rate can be calculated by averaging the exchange rates “x” that apply to each complete month in the foreign company’s accounting period.

### Example 3

A CFC resident in Singapore was formed on 21 April 2000 and has a balance date of 30 September 2000. During this period, branch equivalent income of 500,000 Singapore dollars was derived.

(i) Calculating the average monthly exchange rate for the complete months May-September 2000:

$$(0.8292 + 0.8154 + 0.7997 + 0.7729 + 0.7282) \div 5 = 0.7891$$

(ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 0.7891 = \text{NZ\$}633,633.25$$

## **Table B**

Table B lists the end-of-month exchange rates acceptable to Inland Revenue for the six month period ending 30 September 2000. Use this table for converting foreign currency amounts to New Zealand dollars for:

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

### **Example 4**

A New Zealand resident with a balance date of 30 September 2000 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 2000 (item “a” of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB } 500,000 \div 17.4087 = \text{NZ\$}28,721.27$$

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

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

| Currency           | Foreign currency to NZ\$ |     | 17 Apr 00<br>12-month<br>rate | 15 May 00<br>12-month<br>rate | 15 Jun 00<br>12-month<br>rate | 17 Jul 00<br>12-month<br>rate | 15 Aug 00<br>12-month<br>rate | 15 Sep 00<br>12-month<br>rate |
|--------------------|--------------------------|-----|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| United States      | Dollar                   | USD | 0.4988                        | 0.4810                        | 0.4740                        | 0.4596                        | 0.4514                        | 0.4191                        |
|                    |                          |     | 0.5161                        | 0.5099                        | 0.5045                        | 0.4994                        | 0.4928                        | 0.4836                        |
| United Kingdom     | Pound                    | GBP | 0.3142                        | 0.3164                        | 0.3160                        | 0.3068                        | 0.2999                        | 0.2977                        |
|                    |                          |     | 0.3211                        | 0.3189                        | 0.3173                        | 0.3151                        | 0.3126                        | 0.3100                        |
| Australia          | Dollar                   | AUD | 0.8315                        | 0.8252                        | 0.7902                        | 0.7865                        | 0.7755                        | 0.7628                        |
|                    |                          |     | 0.8010                        | 0.8000                        | 0.7983                        | 0.7978                        | 0.7947                        | 0.7908                        |
| Austria            | Schilling                | ATS | 7.1358                        | 7.1997                        | 6.7940                        | 6.7362                        | 6.8543                        | 6.6585                        |
|                    |                          |     | 6.9456                        | 6.9487                        | 6.9230                        | 6.8991                        | 6.8951                        | 6.8652                        |
| Bahrain            | Dollar                   | BHD | 0.1878                        | 0.1812                        | 0.1785                        | 0.1731                        | 0.1700                        | 0.1578                        |
|                    |                          |     | 0.1944                        | 0.1920                        | 0.1900                        | 0.1881                        | 0.1856                        | 0.1822                        |
| Belgium            | Franc                    | BEF | 20.9083                       | 21.0889                       | 19.9042                       | 19.7387                       | 20.0832                       | 19.5121                       |
|                    |                          |     | 20.3511                       | 20.3605                       | 20.2847                       | 20.2143                       | 20.2029                       | 20.1151                       |
| Canada             | Dollar                   | CAD | 0.7330                        | 0.7145                        | 0.6958                        | 0.6815                        | 0.6698                        | 0.6228                        |
|                    |                          |     | 0.7573                        | 0.7492                        | 0.7417                        | 0.7342                        | 0.7247                        | 0.7117                        |
| China              | Yuan                     | CNY | 4.1323                        | 3.9850                        | 3.9265                        | 3.8087                        | 3.7407                        | 3.4711                        |
|                    |                          |     | 4.2725                        | 4.2168                        | 4.1691                        | 4.1229                        | 4.0635                        | 4.0046                        |
| Denmark            | Krone                    | DKK | 3.8795                        | 3.9245                        | 3.6836                        | 3.6526                        | 3.7148                        | 3.6147                        |
|                    |                          |     | 3.7563                        | 3.7610                        | 3.7487                        | 3.7369                        | 3.7357                        | 3.7211                        |
| European Community | Euro                     | EUR | 0.5186                        | 0.5232                        | 0.4938                        | 0.4897                        | 0.4982                        | 0.4842                        |
|                    |                          |     | 0.5050                        | 0.5052                        | 0.5033                        | 0.5016                        | 0.5013                        | 0.4991                        |
| Fiji               | Dollar                   | FJD | 1.0346                        | 1.0154                        | 0.9813                        | 0.9689                        | 0.9604                        | 0.9224                        |
|                    |                          |     | 1.0209                        | 1.0160                        | 1.0105                        | 1.0053                        | 0.9987                        | 0.9899                        |
| Finland            | Markka                   | FIM | 3.0837                        | 3.1114                        | 2.9355                        | 2.9121                        | 2.9631                        | 2.8778                        |
|                    |                          |     | 3.0021                        | 3.0034                        | 2.9922                        | 2.9819                        | 2.9803                        | 2.9673                        |
| France             | Franc                    | FRF | 3.4024                        | 3.4330                        | 3.2398                        | 3.2118                        | 3.2691                        | 3.1753                        |
|                    |                          |     | 3.3125                        | 3.3140                        | 3.3017                        | 3.2902                        | 3.2884                        | 3.2741                        |
| French Polynesia   | Franc                    | XPF | 61.6659                       | 62.2078                       | 58.6921                       | 58.2073                       | 59.2244                       | 57.6062                       |
|                    |                          |     | 60.0800                       | 60.0857                       | 59.8590                       | 59.6531                       | 59.6156                       | 59.3693                       |
| Germany            | Deutschemark             | DEM | 1.0146                        | 1.0237                        | 0.9660                        | 0.9566                        | 0.9747                        | 0.9469                        |
|                    |                          |     | 0.9878                        | 0.9882                        | 0.9845                        | 0.9810                        | 0.9805                        | 0.9762                        |
| Greece             | Drachma                  | GRD | 173.2629                      | 176.5315                      | 165.6927                      | 164.4115                      | 167.6549                      | 163.9690                      |
|                    |                          |     | 165.4642                      | 166.1562                      | 166.1040                      | 166.0297                      | 166.3979                      | 166.2410                      |
| Hong Kong          | Dollar                   | HKD | 3.8831                        | 3.7456                        | 3.6928                        | 3.5820                        | 3.5194                        | 3.2675                        |
|                    |                          |     | 4.0088                        | 3.9624                        | 3.9222                        | 3.8837                        | 3.8337                        | 3.7638                        |
| India              | Rupee                    | INR | 21.7117                       | 21.0583                       | 21.0904                       | 20.4471                       | 20.5275                       | 19.0751                       |
|                    |                          |     | 22.3054                       | 22.0891                       | 21.9189                       | 21.7474                       | 21.5460                       | 21.2244                       |
| Indonesia          | Rupiah                   | IDR | 3,798.8098                    | 4,049.0805                    | 4,031.2182                    | 4,361.4025                    | 3,696.7140                    | 3,601.5836                    |
|                    |                          |     | 3,859.8618                    | 3,832.2481                    | 3,834.4678                    | 3,907.0709                    | 3,866.2914                    | 3,820.6209                    |
| Ireland            | Pound                    | IEP | 0.4078                        | 0.4117                        | 0.3880                        | 0.3856                        | 0.3931                        | 0.3798                        |
|                    |                          |     | 0.3976                        | 0.3978                        | 0.3962                        | 0.3948                        | 0.3946                        | 0.3928                        |

| Currency         | Foreign currency to NZ\$ |     | 17 Apr 00<br>12-month<br>rate | 15 May 00<br>12-month<br>rate | 15 Jun 00<br>12-month<br>rate | 17 Jul 00<br>12-month<br>rate | 15 Aug 00<br>12-month<br>rate | 15 Sep 00<br>12-month<br>rate |
|------------------|--------------------------|-----|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Italy            | Lira                     | ITL | 1,004.2100                    | 1,013.2185                    | 956.1238                      | 948.0621                      | 964.6396                      | 937.1888                      |
|                  |                          |     | 977.5083                      | 977.9424                      | 974.3129                      | 970.9339                      | 970.3826                      | 966.1754                      |
| Japan            | Yen                      | JPY | 52.0958                       | 52.1164                       | 50.5372                       | 49.5395                       | 49.4068                       | 45.0608                       |
|                  |                          |     | 57.0914                       | 55.7547                       | 54.5587                       | 53.4460                       | 52.4376                       | 51.5309                       |
| Korea            | Won                      | KOR | 554.4800                      | 535.7800                      | 528.4600                      | 511.7750                      | 504.1850                      | 467.5950                      |
|                  |                          |     | 600.0495                      | 587.7282                      | 578.5009                      | 568.9900                      | 556.7655                      | 548.2496                      |
| Kuwait           | Dollar                   | KWD | 0.1525                        | 0.1477                        | 0.1450                        | 0.1400                        | 0.1400                        | 0.1300                        |
|                  |                          |     | 0.1574                        | 0.1556                        | 0.1539                        | 0.1522                        | 0.1504                        | 0.1479                        |
| Malaysia         | Ringgit                  | MYR | 1.8964                        | 1.8292                        | 1.8026                        | 1.7478                        | 1.7167                        | 1.5934                        |
|                  |                          |     | 1.9616                        | 1.9379                        | 1.9175                        | 1.8980                        | 1.8729                        | 1.8382                        |
| Netherlands      | Guilder                  | NLG | 1.1428                        | 1.1531                        | 1.0876                        | 1.0785                        | 1.0976                        | 1.0666                        |
|                  |                          |     | 1.1128                        | 1.1132                        | 1.1090                        | 1.1051                        | 1.1045                        | 1.0997                        |
| Norway           | Krone                    | NOK | 4.2414                        | 4.3090                        | 4.0639                        | 3.9924                        | 4.0228                        | 3.8865                        |
|                  |                          |     | 4.1256                        | 4.1295                        | 4.1160                        | 4.1019                        | 4.0922                        | 4.0676                        |
| Pakistan         | Rupee                    | PKR | 25.6866                       | 24.7941                       | 24.5033                       | 23.8842                       | 23.8334                       | 22.7435                       |
|                  |                          |     | 26.5674                       | 26.2844                       | 26.0091                       | 25.7574                       | 25.4790                       | 25.1002                       |
| Papua New Guinea | Kina                     | PGK | 1.3123                        | 1.1953                        | 1.1411                        | 1.1268                        | 1.1563                        | 1.1157                        |
|                  |                          |     | 1.4280                        | 1.4127                        | 1.3709                        | 1.3534                        | 1.3307                        | 1.2949                        |
| Philippines      | Peso                     | PHP | 20.3653                       | 19.7950                       | 19.8607                       | 20.2714                       | 20.0596                       | 18.8824                       |
|                  |                          |     | 20.3705                       | 20.2833                       | 20.2477                       | 20.2835                       | 20.2318                       | 20.0595                       |
| Portugal         | Escudo                   | PTE | 104.0295                      | 104.9677                      | 99.0495                       | 98.1659                       | 99.8882                       | 97.0442                       |
|                  |                          |     | 99.2330                       | 99.2833                       | 98.9121                       | 98.5512                       | 98.4945                       | 98.0599                       |
| Singapore        | Dollar                   | SGD | 0.8503                        | 0.8291                        | 0.8154                        | 0.7997                        | 0.7729                        | 0.7282                        |
|                  |                          |     | 0.8714                        | 0.8614                        | 0.8527                        | 0.8457                        | 0.8361                        | 0.8226                        |
| Solomon Islands  | Dollar                   | SBD | 2.5159                        | 2.4318                        | 2.4114                        | 2.3314                        | 2.2893                        | 2.1246                        |
|                  |                          |     | 2.5402                        | 2.5208                        | 2.5057                        | 2.4923                        | 2.4693                        | 2.4297                        |
| South Africa     | Rand                     | ZAR | 3.2818                        | 3.3580                        | 3.2824                        | 3.1596                        | 3.1161                        | 2.9861                        |
|                  |                          |     | 3.1926                        | 3.1854                        | 3.1867                        | 3.1838                        | 3.1739                        | 3.1555                        |
| Spain            | Peseta                   | ESP | 86.2829                       | 87.0648                       | 82.1516                       | 81.4859                       | 82.8929                       | 80.5550                       |
|                  |                          |     | 83.9973                       | 84.0356                       | 83.7232                       | 83.4348                       | 83.3876                       | 83.0279                       |
| Sri Lanka        | Rupee                    | LKR | 36.4501                       | 35.4180                       | 35.2027                       | 36.0069                       | 35.2037                       | 32.6866                       |
|                  |                          |     | 36.9504                       | 36.6541                       | 36.4207                       | 36.3180                       | 36.1040                       | 35.6848                       |
| Sweden           | Krona                    | SEK | 4.3056                        | 4.3269                        | 4.0375                        | 4.0838                        | 4.1505                        | 4.0676                        |
|                  |                          |     | 4.3611                        | 4.3339                        | 4.2897                        | 4.2572                        | 4.2356                        | 4.2088                        |
| Switzerland      | Franc                    | CHF | 0.8142                        | 0.8137                        | 0.7730                        | 0.7587                        | 0.7760                        | 0.7414                        |
|                  |                          |     | 0.8084                        | 0.8067                        | 0.8025                        | 0.7974                        | 0.7951                        | 0.7887                        |
| Taiwan           | Dollar                   | TAI | 15.2000                       | 14.7550                       | 14.5400                       | 14.1800                       | 14.0050                       | 13.0100                       |
|                  |                          |     | 16.3791                       | 16.0664                       | 15.8000                       | 15.5595                       | 15.2886                       | 15.0792                       |
| Thailand         | Baht                     | THB | 18.8119                       | 18.4812                       | 18.3792                       | 18.2173                       | 18.2543                       | 17.4065                       |
|                  |                          |     | 19.4855                       | 19.3084                       | 19.1885                       | 19.1064                       | 18.9608                       | 18.6935                       |
| Tonga            | Pa'anga                  | TOP | 0.8256                        | 0.8112                        | 0.7978                        | 0.7805                        | 0.7734                        | 0.7561                        |
|                  |                          |     | 0.8281                        | 0.8242                        | 0.8203                        | 0.8161                        | 0.8102                        | 0.8035                        |
| Vanuatu          | Vatu                     | VUV | 66.5242                       | 65.4895                       | 64.1885                       | 62.3092                       | 62.0005                       | 58.5052                       |
|                  |                          |     | 66.4328                       | 65.9824                       | 65.6111                       | 65.2036                       | 64.7174                       | 64.0130                       |
| Western Samoa    | Tala                     | WST | 1.5251                        | 1.4881                        | 1.4636                        | 1.4494                        | 1.4307                        | 1.3599                        |
|                  |                          |     | 1.5629                        | 1.5502                        | 1.5387                        | 1.5289                        | 1.5160                        | 1.4911                        |

**Table B: End of month exchange rates**

| Currency           | Foreign currency to NZ\$ |     | 28 Apr 00  | 31 May 00  | 30 Jun 00  | 30 Jul 00  | 31 Aug 00  | 29 Sep 00  |
|--------------------|--------------------------|-----|------------|------------|------------|------------|------------|------------|
| United States      | Dollar                   | USD | 0.4875     | 0.4594     | 0.4682     | 0.4570     | 0.4298     | 0.4128     |
| United Kingdom     | Pound                    | GBP | 0.3095     | 0.3070     | 0.3083     | 0.3040     | 0.2948     | 0.2821     |
| Australia          | Dollar                   | AUD | 0.8279     | 0.7960     | 0.7768     | 0.7775     | 0.7478     | 0.7567     |
| Austria            | Schilling                | ATS | 7.3700     | 6.7896     | 6.7632     | 6.8035     | 6.6172     | 6.4528     |
| Bahrain            | Dollar                   | BHD | 0.1836     | 0.1731     | 0.1762     | 0.1722     | 0.1616     | 0.1555     |
| Belgium            | Franc                    | BEF | 21.5904    | 19.8981    | 19.8129    | 19.9385    | 19.3887    | 18.9092    |
| Canada             | Dollar                   | CAD | 0.7194     | 0.6910     | 0.6944     | 0.6750     | 0.6343     | 0.6191     |
| China              | Yuan                     | CNY | 4.0397     | 3.8059     | 3.8807     | 3.7870     | 3.5566     | 3.4270     |
| Denmark            | Krone                    | DKK | 3.9910     | 3.6910     | 3.6654     | 3.6851     | 3.5864     | 3.5004     |
| European Community | Euro                     | EUR | 0.5357     | 0.4936     | 0.4916     | 0.4945     | 0.4810     | 0.4694     |
| Fiji               | Dollar                   | FJD | 1.0176     | 0.9776     | 0.9694     | 0.9652     | 0.9259     | 0.9094     |
| Finland            | Markka                   | FIM | 3.1849     | 2.9346     | 2.9239     | 2.9396     | 2.8592     | 2.7885     |
| France             | Franc                    | FRF | 3.5142     | 3.2380     | 3.2253     | 3.2436     | 3.1554     | 3.0772     |
| French Polynesia   | Franc                    | XPF | 63.6385    | 58.6574    | 58.4420    | 58.8062    | 57.2138    | 55.7159    |
| Germany            | Deutschemark             | DEM | 1.0478     | 0.9654     | 0.9617     | 0.9676     | 0.9409     | 0.9176     |
| Greece             | Drachma                  | GRD | 179.2149   | 165.7496   | 165.3349   | 166.4416   | 162.3226   | 158.9394   |
| Hong Kong          | Dollar                   | HKD | 3.7959     | 3.5783     | 3.6487     | 3.5624     | 3.3510     | 3.2177     |
| India              | Rupee                    | INR | 21.2070    | 20.3875    | 20.8169    | 20.3882    | 19.5881    | 18.8871    |
| Indonesia          | Rupiah                   | IDR | 3,873.2653 | 3,959.0439 | 4,094.0968 | 4,083.3851 | 3,579.7218 | 3,630.6429 |
| Ireland            | Pound                    | IEP | 0.4215     | 0.3879     | 0.3868     | 0.3885     | 0.3781     | 0.3684     |
| Italy              | Lira                     | ITL | 1,037.1033 | 955.6561   | 951.8880   | 957.3777   | 931.2587   | 908.1951   |
| Japan              | Yen                      | JPY | 51.8239    | 48.9037    | 49.2092    | 50.0383    | 45.7348    | 44.3818    |
| Korea              | Won                      | KOR | 541.5500   | 522.3100   | 522.4550   | 510.6700   | 476.1900   | 461.7650   |
| Kuwait             | Dollar                   | KWD | 0.1498     | 0.1400     | 0.1450     | 0.1400     | 0.1300     | 0.1250     |
| Malaysia           | Ringgit                  | MYR | 1.8539     | 1.7472     | 1.7813     | 1.7380     | 1.6323     | 1.5727     |
| Netherlands        | Guilder                  | NLG | 1.1804     | 1.0872     | 1.0842     | 1.0889     | 1.0595     | 1.0343     |
| Norway             | Krone                    | NOK | 4.3580     | 4.1089     | 4.0162     | 4.0531     | 3.8834     | 3.7520     |
| Pakistan           | Rupee                    | PKR | 25.1059    | 23.6931    | 24.2192    | 24.0963    | 23.2517    | 23.6128    |
| Papua New Guinea   | Kina                     | PGK | 1.2329     | 1.1019     | 1.1285     | 1.1968     | 1.1354     | 1.1169     |
| Philippines        | Peso                     | PHP | 19.9439    | 19.4049    | 19.9014    | 20.2626    | 19.1717    | 18.7867    |
| Portugal           | Escudo                   | PTE | 107.4400   | 98.9503    | 98.6113    | 99.1279    | 96.4342    | 94.0400    |
| Singapore          | Dollar                   | SGD | 0.8299     | 0.7941     | 0.8101     | 0.7916     | 0.7385     | 0.7186     |
| Solomon Islands    | Dollar                   | SBD | 2.4624     | 2.3171     | 2.3656     | 2.3182     | 2.1795     | 2.0932     |
| South Africa       | Rand                     | ZAR | 3.3310     | 3.2106     | 3.1878     | 3.1765     | 2.9856     | 3.0086     |
| Spain              | Peseta                   | ESP | 89.1166    | 82.1200    | 81.7901    | 82.2816    | 80.0281    | 78.0195    |
| Sri Lanka          | Rupee                    | LKR | 35.6688    | 34.0461    | 35.9606    | 35.6513    | 33.3995    | 32.4843    |
| Sweden             | Krona                    | SEK | 4.3621     | 4.1399     | 4.1367     | 4.1886     | 4.0529     | 4.0007     |
| Switzerland        | Franc                    | CHF | 0.8418     | 0.7754     | 0.7655     | 0.7655     | 0.7443     | 0.7157     |
| Taiwan             | Dollar                   | TAI | 14.8800    | 14.1650    | 14.3800    | 14.1950    | 13.3100    | 12.9050    |
| Thailand           | Baht                     | THB | 18.4424    | 17.8926    | 18.1965    | 18.7289    | 17.4581    | 17.4087    |
| Tonga              | Pa'anga                  | TOP | 0.8145     | 0.7906     | 0.7867     | 0.7768     | 0.7598     | 0.7664     |
| Vanuatu            | Vatu                     | VUV | 65.3108    | 63.4266    | 62.6364    | 62.0747    | 59.4674    | 57.7020    |
| Western Samoa      | Tala                     | WST | 1.5007     | 1.4298     | 1.4418     | 1.4426     | 1.3777     | 1.3491     |

## 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.

## COMMISSIONER'S APPLICATION TO STRIKE OUT JUDICIAL REVIEW PROCEEDINGS SUCCESSFUL

|                       |                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| <b>Case:</b>          | <i>CIR v Ti Toki Cabarets (1989) Ltd and Others</i>                                                                                  |
| <b>Decision date:</b> | 4 September 2000                                                                                                                     |
| <b>Act:</b>           | Judicature Amendment Act 1972, Tax Administration Act 1994 and Goods and Services Act 1985                                           |
| <b>Keywords:</b>      | <i>Judicial review, striking-out, declaration, matrimonial property agreement (MPA), legitimate expectation, collateral process.</i> |

The alleged MPA was implemented by transfer of each property from the company in question to Mr Haines and from him to Mrs Haines. This settlement was said by the Respondents to have been made in reliance upon and within the terms of *TIB* Vol 1, No 6 (December 1989), which dealt with GST and MPAs. The ruling stated that transfer of the ownership of the assets of a taxable activity in terms of an MPA was deemed to be neutral for GST purposes, and no output tax was to be charged on the transfer.

The Commissioner did not agree that the transactions came within the ambit of the *TIB*, and so proposed adjustments to the Haines Group companies that had made such transfers, for GST on the transfer to Mr Haines. Four Haines Group companies issued a challenge to the assessments and Mr Haines, the assessed companies and the balance of the companies in the Group, commenced judicial review proceedings. In these proceedings the Commissioner applied for orders staying or dismissing the review pursuant to R 477 of the High Court Rules. The Respondents sought a declaration that the agreements transferring Haines Group properties to Mr Haines were an MPA and that the Commissioner was obliged to comply with the *TIB*.

In the High Court, Nicholson J found for the Respondents on all grounds. On the issue of whether the plaintiffs had a legitimate expectation that the *TIB* would be followed, his Honour held that this extended to outcome as well as procedure. In so doing he read down *Lawson v Housing New Zealand* [1997] 2 NZLR 474, and relied upon the House of Lords decision *Preston v IRC* [1985] 2 All ER 327, and a dictum of Baragwanath J in *Miller & Ors v CIR (No 1)* (1997) 18 NZTC 13,001.

### Summary

The Commissioner was successful in his appeal against a decision of the High Court not to strike out judicial review proceedings pursuant to R 477 of the High Court Rules.

### Facts

The fifth and eighth respondents (Mr and Mrs Haines) were husband and wife until they separated in 1993. The other respondents were companies in which they had equal shareholdings as property developers.

In 1996 the couple agreed to settle matrimonial property claims between them by Mrs Haines transferring her shareholding in the companies to Mr Haines in return for Mrs Haines receiving unencumbered title to certain of the companies properties (the alleged MPA).

On the issue of consolidation, the Court noted that review proceedings are brought in addition to and not instead of challenge proceedings. Citing McKay J in *Golden Bay Cement Company Ltd v CIR* (1996) 17 NZTC 12,580 and Richardson P in *New Zealand Wool Board v CIR* (1997) 18 NZTC 13,113, His Honour drew the principle that "...in special circumstances review proceedings can be heard as well as challenge proceedings but should be consolidated and heard together".

His Honour accordingly declined to dismiss the review proceedings and directed that they be consolidated with the challenge proceedings.

The Commissioner appealed the decision on all grounds.

## Decision

It was submitted for the Commissioner that challenges to proposed adjustments were to be dealt with under Part VIIIA of the Tax Administration Act 1994 (the TA Act) and that judicial review is a collateral procedure only directed at the validity of the procedure employed by the Commissioner. The primacy of the challenge procedure is eroded if judicial review of substantive matters is permitted to continue ahead of or alongside the statutory challenge procedure.

The Court of Appeal, in a reserved decision delivered by Gault J, found for the Commissioner on all issues. The review proceedings were struck out and costs awarded the Commissioner in both Courts.

The Court acknowledged that an application to strike out should be acceded to only in a clear case and the effect of section 109 of the TA Act was such that the assessments in dispute could only be challenged under Part VIIIA of the TA Act. The Court rejected the Respondents' arguments that the alleged failure of the Commissioner to apply the *TIB* was a reviewable procedural error. The decision of the Commissioner that the *TIB* did not apply was held to be a substantive decision and an essential plank in the reasoning underpinning the assessment. As such, review was inappropriate and any like arguments, including whether the Commissioner was estopped in any way by prior statements of policy, could be answered in the substantive challenge hearing.

Alleged errors of law did not provide grounds to invoke a collateral process when such matters, as here, fell squarely within the ambit of Part VIIIA of the TA Act. The Court did not say that judicial review on the ground of legitimate expectation could never be brought in tax matters, rather that it is to be limited to procedural error, defects resulting in *ultra vires*, unlawfulness, bad faith, abuse of power and errors of law going to the legitimacy of process rather than correctness of decision.

The Court emphasised that "exceptional circumstances" are required in order for concurrent review and objection proceedings to stand. Gault J cited *Golden Bay Cement Co Ltd v CIR* [1996] 2 NZLR 665 at 673 as an example of such circumstances where validity arguments had been raised in the taxpayer's objection and all relevant facts had been set out in the objection:

"If a similar situation should arise in future, the Courts are unlikely to exercise their discretion to grant a remedy in review proceedings in favour of a taxpayer who chooses not to pursue the objection procedure provided by the legislature."

The Court accordingly held that the parties other than the assessed companies had no standing in these or the challenge proceedings. Insofar as they purported to be affected by the Commissioner's assessments, the resolution of the challenge proceedings may have some bearing on their liability or otherwise.

As to whether a declaration was appropriate, the Court said:

"... The Court might be prepared to treat the proceeding in this respect as not for judicial review but for a declaration under the Declaratory Judgments Act 1908. The unlikelihood of undisputed facts (indeed the absence of any factual foundation) leaves us unconvinced that this is sufficient reason to allow what is, in effect, an attempt to pre-empt possible assessments of income tax by the Commissioner."

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# UNSUCCESSFUL INTERLOCUTORY APPLICATION BY COMMISSIONER TO PROVIDE DOCUMENTS TO PLAINTIFF OR DETERMINE SEPARATE QUESTION BEFORE TRIAL

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**Case:** *Tagasoft v CIR*  
**Decision date:** 1 September 2000  
**Act:** Goods and Services Tax Act 1985  
**Keywords:** *Interlocutory application*

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## Decision

The plaintiff opposed the application on the grounds that:

- A significant portion of the substantive proceeding in this case deals with the proper treatment of the documents.
- The Statement of Claim alleges that the purported SOP in Reply filed by the Commissioner is invalid because it is in breach of the Commissioner's obligation as to secrecy.
- If the SOP in Reply is invalid to the extent that the documents in question are excluded from the SOP, they will be excluded from further review in challenge proceedings by the operation of the evidence exclusion rule in section 138G.
- Even if the material were to be received and reviewed by the plaintiff, there is no mechanism by which those views can be communicated to the adjudicator, the formal steps of the disputes process having closed.

## Summary

The Commissioner's application that documents be provided to the plaintiff, or alternatively that a separate question be determined before trial, was dismissed.

## Facts

The Commissioner conducted an audit into the tax affairs of the plaintiff. The audit centered on a large GST refund claimed by the plaintiff, attributable to the purchase price of software, which was purchased for US\$9 million. The Commissioner disputes its entitlement to a refund.

Notices of Proposed Adjustment were issued, and the Plaintiff filed Notices of Response in reply. A Statement of Position was issued by the Commissioner, and by the plaintiff, and a further SOP in Reply was also issued by the Commissioner. The SOP in Reply was filed on 23 December 1999, after a Disclosure Notice was issued.

The effect of a Disclosure Notice is that the parties to the dispute can only rely at the hearing on the evidence disclosed in their SOPs. The plaintiff argued that certain documents (being part of the Commissioner's SOP in Reply) were not able to be relied upon because the SOP in Reply was filed after the Disclosure Notice, and because they were in breach of the Commissioner's obligation as to secrecy in that they disclosed information about the tax affairs of a third party. The Commissioner intended that the documents in question be supplied to the Adjudication Unit (in the event, they were not). However, the plaintiff received only the Schedule attached to the SOP in Reply, and not the documents themselves. The Commissioner, in a third amended interlocutory application, then sought orders that the documents be provided to the plaintiff, or alternatively that a separate question be determined before trial.

Master Thomson noted that, regardless of anything else, the technical problems with the application indicated that the matter is not one which should be dealt with in a preliminary way on an interlocutory application. He also noted that the application and the amended applications indicate that the Court should be very wary of agreeing to determine in this way what is substantially the issue as pleaded in the plaintiff's Statement of Claim.

As to the argument regarding the Disclosure Notice, the Master was inclined to the idea that the SOP in Reply is deemed to be part of the Commissioner's SOP under section 89M(9) and is thus, in general terms, admissible. He also observed that it was surely for the third party to complain that its tax affairs were being introduced into evidence, rather than for the plaintiff.

The Master contemplated joining the third party as a party to the proceedings, however the plaintiff's objections to the third party seeing any of the plaintiff's documents reinforced the Master's view that the matter involved serious issues which should not be attempted to be resolved at an interlocutory level.



Master Thomson concluded by stating that the question as to how far other taxpayer's affairs may be introduced into the adjudication procedure has not yet been before the Courts, and that the issues sought to be resolved involve important matters of principle which should be properly heard and determined on the Plaintiff's substantive proceeding. The Commissioner's application was therefore dismissed.

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## APPLICATION FOR JUDICIAL REVIEW – ASSESSMENTS OF INCOME TAX BY COMMISSIONER BARRED BY SECTION 25 OF THE INCOME TAX ACT 1976

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**Case:** *Vela Fishing Limited v Commissioner of Inland Revenue*  
**Decision date:** 5 September 2000  
**Act:** Judicature Amendment Act 1972  
**Keywords:** *Judicial Review*

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On 7 March 1998 the accountant for Vela Fishing Limited wrote to the Commissioner and sought an extension of time to comply with requests made by the Commissioner.

At a meeting between the parties on 20 March 1998, a waiver of the time bar to make further assessments in respect of the 1991 income year was requested by the Commissioner.

On 24 March 1998 the taxpayer by its agent wrote to the Commissioner confirming that the information requested under section 17 of the Act had not been collated. A further extension of time to provide the information was sought. The letter concluded by statement that a waiver of the time bar per the Commissioner's request was enclosed.

The waiver was in the form requested by the Commissioner and purported to extend the time for the Commissioner to make assessments for the 1991 income year until 30 September 1998.

On 30 September 1998 the Commissioner created, dated and sent to the plaintiff a document headed "Notice of Assessment for the Income Tax Year 1991" which recorded tax payable as \$2,007,119.40 with the due date for payment as 30 November 1998.

On 1 October 1998 the Commissioner created, dated and sent to Vela Fishing Limited a document headed "Notice of Assessment". That document recorded payment due of \$8,727,349.03 and noted the due date was "overdue".

### Summary

The plaintiff was successful.

### Facts

This was an application for review under Part I of the Judicature Amendment Act 1972. The plaintiff is a fishing company. It sought declarations that assessments of income tax made by the Commissioner in respect of the 1990-1991 income year on 30 September 1998 and 1 October 1998 were issued unlawfully and were consequently of no legal effect. The outcome of the proceeding turned essentially on the validity or otherwise of a waiver signed by the plaintiff on 24 March 1998.

Between July 1995 and September 1998 the Commissioner conducted an investigation into the tax affairs of Vela Fishing Limited. This investigation included the issue of letters pursuant to section 17 of the Tax Administration Act 1994 ("the Act").

On 20 February 1998 the Commissioner issued a Notice of Proposed Adjustment in respect of the taxation affairs of Vela Fishing Limited for the 1991 income year.

The Adjustment Notice disallowed certain deductions claimed for expenditure on a performance bond to which reference had been made in earlier correspondence.

## Decision

Penlington J isolated several key matters which he considered pertinent:

*Section 25 of the Income Tax Act 1976 is saved* – The taxpayer was correct in submitting that section 25 continued to co-exist side by side with section 108 of the Act. His Honour rejected the Commissioner’s argument that section 108 of the Act although initially in exactly the same form as section 25 of the Income Tax Act 1976 replaced that Act. He considered that the clear intent of Parliament was that section 25 of the Income Tax Act 1976 should remain in full force and effect to cover the years prior to the commencement of the two 1994 Acts. Section 108 of the Act on the other hand was to apply prospectively.

*Commencement of new Acts* – The Act was declared to commence on 1 April 1995 and “where appropriate” was to apply with respect to the tax on income derived in the income year 1995/96 and subsequent years. Counsel for the Commissioner submitted that it would be “appropriate” to give retrospective effect to the Act by allowing a measure of judgment as to how the Act applied. Counsel pointed to a number of provisions in the Act, which he contended justified a reaching back to earlier income years before the 1995/96 income year. His Honour rejected counsel’s submission and referred to section 7 of the Interpretation Act 1999 which provides that an enactment does not have retrospective effect.

*The purpose of the Tax Administration Act* – While accepting the Commissioner’s proposition that the two Acts of 1994 provide for a continuity in the collection and administration of tax in New Zealand His Honour preferred the submission made by the taxpayer which in his view more correctly identified the relationship between the Tax Administration Act 1994 and the Income Tax Act 1976. Counsel for the taxpayer submitted that section 2(4) of the Tax Administration Act 1994 provided that nothing in that Act affected, *inter alia*, the Income Tax Act 1976 which included section 25 “except as otherwise expressly provided” and there is no such provision.

*The absence of a waiver provision* – His Honour considered it significant that neither the Income Tax Act 1994 nor the Tax Administration Act 1994 initially contained a waiver provision.

His Honour also noted that while the new section 108 was in harness with section 108B there was no corresponding harnessing of section 25 of the Income Tax Act 1976 and section 108B.

Further, the new section 108 unequivocally stated when and to what it was to apply. Section 108(4) provided that it was to apply “to all returns filed on or after 1 April 1997”. In His Honour’s view there was no room in the provision for any retrospective effect.

His Honour considered that he could arrive at the same conclusion via a different route. Section 25 of the Income Tax Act 1976 is not referred to in either the new section 108 or in section 108B as originally enacted or elsewhere. It follows then that section 25(1) of the Income Tax Act 1976 continued in full force and effect by virtue of section YB(2) of the Income Tax Act 1994 and was unaffected by either section 108 or section 108B of the Tax Administration Act 1994 as amended in 1996.

His Honour also considered counsel for the Commissioner’s alternative argument that if the time bar is contained in section 25 of the Income Tax Act 1976, then by virtue of the transitional provision contained in section 227(4)(5) of the Act, the reference to section 108 must be construed as including a reference to section 25 of the Income Tax Act 1976, as it must be regarded as a corresponding provision. His Honour rejected the submission on the basis that the new section 108, to which section 108B is linked, is in a different form to section 25.

The final point that His Honour considered was in relation to the 1999 legislation. The taxpayer contended that the replacement section 108B did not create a power of waiver on the part of the taxpayer in respect of a return for the income year 1990–1991. Counsel for the Commissioner contended that section 101 validated the waivers under the old section 108B which was replaced by section 101 of the Taxation (Accruals Rules and Other Remedial Matters) Act 1999. His Honour concluded that section 101 of that Act did not invalidate the waiver.

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## “FEES” PAID BY TAXPAYER TO SUBSIDIARY WERE CAPITAL IN NATURE AND NON-DEDUCTIBLE

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**Case:** *Mainzeal Holdings Limited v Commissioner of Inland Revenue*

**Decision date:** 29 September 2000

**Act:** Income Tax Act 1976

**Keywords:** *Capital revenue, fees, loan, joint venture agreement, investment*

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At paragraphs 57 and 58 of the judgment his Honour stated:

[57] In *De Vigier v IRC* [1964] 1 WLR 1,073 at 1,080 Lord Pierce said:

“Where the circumstances of a payment clearly indicate an intention by all concerned that there should be repayment, the Court can properly infer that the money was lent.”

[58] There is no cogent evidence about whether the parties intended that [Subsidiary] would make repayment when the payments started in April 1986, although the inclusion of provision for repayment in the event of profit in the July 1986 agreement indicate an intention that there should be repayment. Having regard to the prospect that, because of the relationship between the parties, [Mainzeal] would ultimately receive at least 90% of the benefit of any profit from the Strathpine/Gregory Terrace projects, and in the absence of evidence clearly indicating an intention when the payment arrangement was made in April 1986 that there should be repayment, I consider that the true nature of the transaction was investment of capital rather than a loan. However, whichever of the two it was, it was not my view, having regard to all the circumstances, payment of a fee by [Mainzeal] to [Subsidiary] and expenditure qualifying for deduction from income pursuant to s 104 of the Act as modified.”

### Summary

The Court of Appeal held that the Commissioner was correct in disallowing the deductions claimed by the taxpayer, the amounts being capital in nature and non-deductible.

### Facts

Mainzeal Holdings Limited (“Mainzeal”) claimed deductions for amounts paid to its Australian subsidiary (Subsidiary) in the 1986 and 1987 income years.

The Subsidiary was a property developer that was having cash flow difficulties. Pursuant to an agreement, Mainzeal paid “fees” to the Subsidiary to cover the Subsidiary’s interest expenses on two projects (Strathpine and Gregory). Under the terms of the agreement, upon the sale of the developments, any profits were to be first paid towards the “fees” paid as reimbursement and secondly split 50/50 between Mainzeal and the Subsidiary.

Upon sale of the developments no profits arose. Mainzeal therefore claimed the fees paid as expenses and deductible for tax purposes

### Decision

His Honour Nicholson J considered the evidence before the Court including the expert witness for the Commissioner, Mr Anthony Frankham. Mr Frankham’s evidence was of assistance to his Honour, while the evidence given by the witnesses for Mainzeal was considered to be unclear and confusing. The evidence from the Mainzeal witnesses was also considered to be inconsistent with the contemporary documentary evidence.

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## SHORTFALL PENALTY SUCCESSFULLY IMPOSED FOR UNACCEPTABLE INTERPRETATION PURSUANT TO SECTION 141B OF THE TAX ADMINISTRATION ACT 1994

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**Case:** TRA Number 046/99. Decision Number 19/2000

**Decision date:** 19 September 2000

**Act:** Goods and Services Tax Act 1985

**Keywords:** Shortfall Penalty; Unacceptable Interpretation

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### Decision

Judge Barber reviewed the requirements of section 141B, and held that both limbs of section 141B(1) had to be satisfied for there to have been an ‘unacceptable interpretation’. This meant that firstly, there had to be an ‘interpretation’ of a tax law (or, alternatively, an interpretation of an application of a tax law) and secondly, that the required standard of ‘being about as likely as not to be correct’ must fail to be satisfied on an objective basis. He went on to consider what was needed to satisfy these limbs.

He then said, at pages 13 and 14:

*“The disputant emphasised that he merely made a mistake about a material fact i.e. he assumed that the vendor was GST registered. However, he thought that no invoice was needed in the situation because he thought the agreement became the necessary invoice, and that is an unacceptable interpretation. His mistake of law may have been based on a mistake of fact but there was still an unacceptable interpretation of the tax law.”*

Judge Barber subsequently held that in terms of the legislation, a shortfall penalty of 20% of the tax shortfall was payable by the disputant. However, both the disputant and the Commissioner accepted that section 141I of the Tax Administration Act 1994 (temporary shortfall) applied to enable a 75% reduction in the penalty. Accordingly, Judge Barber confirmed the assessment that the shortfall penalty imposed on the disputant was \$2,500.

### Summary

The Commissioner was successful in his imposition of a shortfall penalty.

### Facts

The disputant company is registered for GST on an invoice basis. On 14 November 1997 it entered into an Agreement for Sale and Purchase as purchaser of property. This property was a one-off purchase for the company’s own use. The vendor was not GST-registered. The purchase price was \$750,000, and a deposit of \$300,000 was payable at the date of possession (17 December 1997), with the balance of the purchase price being paid at a later date in February 1998.

The disputant claimed a GST input credit for the two-monthly period ended 30 November 1997 in relation to the full purchase price of the property, at a time when only the deposit on the purchase price had been paid.

The Commissioner subsequently determined that a shortfall penalty for an unacceptable interpretation pursuant to section 141B of the Tax Administration Act 1994 should be imposed. The shortfall penalty amounted to \$10,000 (being a 20% penalty on the GST input credit overclaimed, ie  $\frac{1}{5}$  GST fraction of the \$450,000 balance purchase price = \$50,000), which was reduced by 75% on the basis of it being a temporary shortfall. Accordingly, the Commissioner imposed a shortfall penalty at the reduced amount of \$2,500.

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## APPLICATION FOR JUDICIAL REVIEW SEEKING TO STRIKE OUT TRA DECISIONS AND SEEKING DISCOVERY ORDERS AGAINST COMMISSIONER

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**Case:** *J G Russell & Ors v Taxation Review Authority and Commissioner of Inland Revenue*

**Decision date:** 2 October 2000

**Act:** Judicature Amendment Act 1972

**Keywords:** *Judicial Review*

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### Summary

The judgment of Fisher J is in response to an application made by the Commissioner to strike out the proceedings.

### Facts

Judicial review proceedings are brought by a series of taxpayer companies and their financial agent Mr Russell. The primary objective is to quash or prohibit decisions of the first defendant, the Taxation Review Authority. In addition, the plaintiffs seek discovery orders against the second defendant, the Commissioner of Inland Revenue, utilising a special jurisdiction in equity. The Commissioner has applied to strike out the proceedings, principally upon the ground that they seek to relitigate matters which have already been decided, or which were already before the Courts, in other proceedings

### Decision

#### **First Cause of Action: Case R25**

The plaintiffs alleged a denial of natural justice at the hands of the TRA in the case of R25. The particular complaint was that the plaintiffs were denied the ability to challenge the process leading up to the assessment by the Commissioner and that the Authority issued its decision without hearing evidence on particular matters. Fisher J was not persuaded that any special circumstances existed which would warrant a departure from the normal course of striking out the current proceeding in relation to *Case R25* on the ground that the issues now raised are barred by issue estoppel and are an abuse of process. He determined that he had no jurisdiction to quash the TRA's decision in *Case R25* given the earlier endorsement of that decision by the Court of Appeal. Hence the cause of action in relation to *Case R25* should be struck out.

#### **Second Cause of Action: Case T52**

Although the decision is currently on appeal, the plaintiffs sought to raise "errors of law" for breach of natural justice, on a "without prejudice" basis to the appeal. Fisher J determined that it was unnecessary for him to come to any final conclusion because the matters should be traversed in the currently pending appeal to the High Court rather than judicial review proceedings. Hence this cause of action was stayed pending further order of the Court.

#### **Third Cause of Action: T59**

The plaintiffs claimed that the Authority should not be permitted to make a decision without hearing further evidence. His Honour noted that the Authority had given an interim decision but not a final decision. Clearly then any review of the processes undertaken by the TRA would be premature and any challenge to the TRA decision should be brought before the Court in the form of an appeal from the Authority's decision. Hence this cause of action was stayed pending further order of the Court.

#### **Fourth Cause of Action: Misconduct Claims (all TRA cases)**

The plaintiffs pleaded that the Commissioner miscondacted himself in various ways in the process of arriving at Russell case assessments and in his conduct at the subsequent TRA appeal hearings. Fisher J noted that the plaintiffs' allegations were so badly pleaded that it was difficult to make sense of them and there had been no attempt to relate them to specific TRA hearings. In the course of the hearing, counsel for the plaintiffs sought time to prepare and file an amended pleading which would rectify some of the deficiencies. Fisher J noted that whether the deficiencies were curable is an open question. However, as to the plaintiffs' allegation that during hearings the Commissioner called the wrong witnesses, Fisher J held that he was not aware of any legal obligation upon the Commissioner to call any witness or witnesses in proceedings before the TRA. He further noted that given the application for leave to file an amended statement of claim it was premature to strike out this cause of action. He urged the plaintiffs to give careful consideration to the question of whether, after proper legal analysis, there are legally recognisable causes of action left under this heading. A stay is appropriate in the meantime.

***Fifth Cause of Action: Discovery Claims***

The plaintiffs pleaded that the Commissioner has discoverable documents relevant to various objections still before the TRA; that he refuses to disclose the documents; that he has engaged in “fraudulent and dishonest activities, and abusing his powers” such that legal professional privilege does not apply; and that the Court “has the power in its equitable jurisdiction to order the Commissioner to make discovery of the documents”. Fisher J determined that the proper course was to pursue conventional discovery before the TRA. He noted that it is conceivable that if the TRA refused to properly exercise its discovery powers, and a sufficient case for it could be made out on the merits, the High Court could make an order in the nature of mandamus requiring it to do so. The case would no doubt have to be an extraordinary one. Fisher J concluded that he saw no basis for this Court to independently exercise an equitable jurisdiction requiring the Commissioner to make discovery for the purpose of the TRA proceedings when there are already adequate powers for the TRA to provide the necessary remedy. This cause of action was struck out.

## REGULAR FEATURES

### DUE DATES REMINDER

#### November 2000

- 6 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
- 30 GST return and payment due

#### December 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

*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.

### 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**





