# TAX INFORMATION BULLETIN

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## Contents



*This TIB has no appendix*

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*Te Tari Taake*

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## *Where to find us*

Our website is at

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# THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

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

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

The following draft items are available for review/comment this month, having a deadline of 31 May 2001. Please see page 33 for details on how to obtain copies:

| Ref. | Draft type | Description |
|---|---|---|
| PU0059 | Public Rulings | These nine rulings replace both public rulings BR Pub 96/1 and BR Pub 96/2A as some of the conclusions in those earlier rulings have changed as a result of the House of Lords decision in *Ingram v IRC* [1999] 1 All ER 297. |
| IP3502 | Issues paper | Interest deductibility in certain arrangements. This paper deals with the issues of whether interest is deductible in certain arrangements where the borrowed funds on which interest is payable is not directly used in an income earning activity or business. Follows on from a previous issues paper (IRRUIP3) and details the Commissioner's proposed new approach. |

# BINDING RULINGS

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

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

For full details of how binding rulings work, see our information booklet *Adjudication & Rulings, a guide to Binding Rulings (IR 715)* or the article on page 1 of *Tax Information Bulletin* Vol 6, No 12 (May 1995) or Vol 7, No 2 (August 1995).

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

# GST – WHEN THE SUPPLY OF LEASEHOLD LAND IS AN EXEMPT SUPPLY

## PUBLIC RULING – BR Pub 01/01

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

### Taxation Law

This ruling applies in respect of section 14(1)(ca) of the Goods and Services Tax Act 1985.

### The Arrangement to which this ruling applies

This ruling applies to the supply of leasehold land, in exchange for rent, by a registered person.

This ruling applies to what are generally referred to as ground leases, where the lease or rental payable under the terms of the lease relate solely to the use of land.

The ruling does not apply to any leases of land together with improvements associated with that land.

### How the Taxation Law applies to the Arrangement

The taxation law applies to the arrangement in the following manner.

In respect of the supply of leasehold land by way of rental:

- Where the leasehold land that is the subject of the supply is only used for the principal purpose of accommodation in a dwelling erected on that land, the supply is exempt from GST;
- Where the leasehold land that is the subject of the supply is not used, to any degree, for the principal purpose of accommodation in a dwelling erected on that land, the supply is not exempt from GST;
- Where the leasehold land that is the subject of the supply is used for the principal purpose of accommodation in a dwelling erected on that land and for another use, the supply is exempt from GST to the extent that the leasehold land is used for the principal purpose of accommodation in a dwelling erected on that land, irrespective of whether the predominant use of the land is for the principal purpose of accommodation in a dwelling erected on that land;
- Where the leasehold land that is the subject of the supply is used for the principal purpose of accommodation in a dwelling erected on that land and for another use, the apportionment of the value of the supply between the exempt and non-exempt uses must be made on the basis of allocating that proportion of the supply that is fairly attributable to the exempt supply.
- Where a lease is entered into for leasehold land, and that land is to be used for the principal purpose of accommodation in a dwelling erected on that land, the supply of that leasehold land pursuant to the lease (or the relevant portion of the lease) is not exempt until the dwelling has been erected.

The words "not being a grant or sale of the lease of that land" in section 14(1)(ca) refer to any payment made for:

- The creation of a leasehold interest in that land, other than a payment of rent; or
- The sale of the leasehold interest in the land.

## The period for which this ruling applies

This ruling applies to a supply of leasehold land by way of rental when the time of supply occurs between 1 July 1999 and 31 January 2006.

This ruling is signed by me on the 30th day of March 2001.

**Martin Smith**

General Manager (Adjudication & Rulings)

# COMMENTARY ON PUBLIC RULING BR PUB 01/01

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 01/01 ("the ruling").

The ruling is a reissue of public binding ruling BR Pub 96/7, issued on 25 March 1996. The Commissioner's view, as expressed in this ruling, is not intended to differ from BR Pub 96/7. Any changes between this ruling and the previous ruling are only intended to assist the reader's understanding.

## A note as to legislative history

This ruling and commentary refers to section 14(1)(ca) of the Goods and Services Tax Act 1985. That section was originally enacted (pursuant to section 12(1) of the Goods and Services Tax Amendment Act 1986 and with effect from 3 December 1985, the date of enactment of the principal Act) as section 14(ca).

The Taxation (GST and Miscellaneous Provisions) Act 2000 amended section 14 and made it section 14(1) (with the subsidiary changes that section 14(ca) became section 14(1)(ca), section 14(c) became section 14(1)(c), etc). This was necessary due to the enactment of the new sections 14(2) and 14(3).

In this commentary, sections 14(ca) and sections 14(1)(ca) will consistently be referred to as section 14(1)(ca). Therefore, where necessary references to section 14(1)(ca) should be read as a reference to section 14(ca).

Similarly, section 14(1)(c) of the Act should be read as, where appropriate, section 14(c).

## Background

Section 14(1)(ca) exempts from GST the supply of leasehold land by way of rental, to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on that land. The section expressly excludes from the exemption any grant or sale of the lease of the land.

In the Commissioner's view, section 14(1)(ca) applies to the supply of leasehold land by way of rental when it is supplied separately from any buildings or other improvements to that land. This form of lease is commonly known as a "ground lease". Under a ground lease the rental is generally based on the unimproved value of the land. In such cases the head lessor owns the land, and the head lessee usually owns the buildings and any other improvements to the land.

Section 14(1)(ca) was inserted into the Act [originally as section 14(ca)] by section 12(1) of the Goods and Services Tax Amendment Act 1986. That amendment was effective from 3 December 1985, being the date of enactment of the principal Act and prior to the commencement of GST.

The amendment was enacted to correct a deficiency in the principal Act. In the absence of the amendment, residential lessees of leasehold land would have had to pay GST on their ground lease rental payments. This was seen as inequitable when compared with the position of residential owners of freehold properties, who generally do not pay GST on the acquisition of a private home, and lessees of residential accommodation. The supply of residential rental accommodation is GST exempt under section 14(1)(c). Section 14(1)(ca) was therefore intended to provide an extension to the section 14(1)(c) exemption.

There has been some uncertainty regarding the scope and effect of the section 14(1)(ca) exemption. In particular, uncertainty may arise when there is a supply of leasehold land used for both commercial and residential purposes. Doubt has also arisen regarding the meaning of the words "not being a grant or sale of the lease of that land" in section 14(1)(ca).

Hence, public binding ruling 96/7 was issued by the Commissioner to clarify the position. This public binding ruling is not intended to change the Commissioner's view of section 14(1)(ca) as expressed in that ruling. Rather, any changes are intended to clarify the Commissioner's view.

## Legislation

Section 14(1) exempts certain supplies from GST.
Section 14(1)(ca) exempts:

> The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on that land:

Section 14(1)(c) also exempts:

> The supply of accommodation in any dwelling by way of -
> (i) Hire; or
> (ii) A service occupancy agreement; or
> (iii) A licence to occupy:

Section 2 defines "dwelling" as meaning:

> … any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling:

Section 10(18) states:

> Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

## Application of the legislation

Section 14(1)(ca) exempts "the supply of leasehold land by way of rental … to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on that land". The Commissioner's view is that this means that to the extent that leasehold land is used, by the lessee, "for the principal purpose of accommodation in a dwelling erected on that land" the supply of that land is exempt.

The term "principal purpose of accommodation in a dwelling" refers to the use to which the dwelling, erected on the leasehold land, or a portion of the leasehold land, is being put. It does not refer to the use to which the leasehold land is being put as a whole. Therefore, it is not necessary for the principal purpose to which the leasehold land is being put to be accommodation in a dwelling. It is sufficient if part of the leasehold land is being used for "the principal purpose of accommodation in a dwelling erected on that land".

Therefore, in applying section 14(1)(ca) to any ground lease, the use or uses to which the leasehold land is being put must be considered. Such consideration will allow the extent to which the supply of the leasehold land is exempt to be determined. When all the land and any buildings erected on that land are used for the principal purpose of accommodation in a dwelling, the full rental in respect of the ground lease is exempt from GST. When all the land and any buildings erected on that land are used for commercial or other non-dwelling purposes, the ground lease is subject to GST. When leasehold land and any building erected on that land are used in part for the principal purpose of accommodation in a dwelling and in part for commercial or other non-exempt purposes, the ground lease is only exempt to the extent that the use to which the leasehold land is being put relates to the provision of accommodation in a dwelling. This requires apportioning the ground lease rental and imposing GST only on that part of the rental that relates to the non-exempt purpose(s).

### *Alternative interpretation*

It is also arguable that section 14(1)(ca) only exempts the supply of leasehold land when all the land is used for the principal purpose, i.e., more than 50%, of accommodation in a dwelling. The exemption then only applies to the extent that the land is so used. For example, the ground lease rental of land on which a building is situated that is used as to 75% for accommodation and 25% for offices, is exempt from GST as to 75%. However, the ground lease rental of land on which a building is situated that is used as to 25% for accommodation and 75% for offices, is not exempt from GST.

While this is an arguable interpretation, the Commissioner considers that it is unduly narrow and restrictive, and that the interpretation that has been adopted (and expressed in the Ruling) better effects the purpose of the section. The Commissioner's view is that the primary focus of the provision is on that portion of the land that is used for accommodation purposes, rather than, as the alternative interpretation proposes, the predominant use of the land as a whole. To limit the exemption to only those instances where accommodation in a dwelling is the primary, or predominant, use to which the land being put would be to effectively ignore the apportionment requirement. It is considered that the better view is that the purpose of the section is to exempt from GST that element of total use that relates to the principal purpose of accommodation and that this purpose is best effected by a broad interpretation.

### *Apportionment*

Section 14(1)(ca) is silent as to the correct way to apportion the lease payments in respect of the supply of the leasehold land between the exempt and non-exempt uses. The section only states that the supply is exempt "to the extent" that the use to which the land is being put is the exempt use.

Section 10(18) of the Act also deals with the apportionment of consideration between exempt and taxable supplies. However, that section similarly does not specify the basis for determining the apportionment—rather it simply deems the taxable supply to be for that part of the consideration as is properly attributable to it.

It is the Commissioner's view that it is not possible to specify a method of apportionment that must be applied in all instances. The appropriate method must be determined on a case by case basis, taking into account the provisions of the lease and bearing in mind that section 14(1)(ca) requires the apportionment to be undertaken taking into account the uses to which the land is being put.

The following examples are intended to be indicative only of the approach that may be taken to apportionment:

- a six-storey building is erected on leasehold land. Calculated on the basis of the floor area used, 60% was used for offices, 20% for a restaurant and the remaining 20% for residential apartments. The residential apartments are used for the principal purpose of private accommodation in a dwelling. Pursuant to section 14(1)(ca), 20% of the ground lease rental is exempt from GST.
- an area of rural leasehold land is used, on an area basis, as to 90% for grazing and 10% for a house and its curtilage. That house is used for the principal purpose of accommodation in a dwelling. Pursuant to section 14(1)(ca), 10% of the ground lease rental is exempt from GST.

In some cases, the ground lease rental may be expressly calculated with reference to the different uses to which the land is to be put. For example:

- a person leases ten hectares of rural land. A term of the lease is that one hectare can be used to erect a dwelling, but the remaining nine hectares must be left as pasture. The lease further provides that the pasture is to be leased at the rate of $10 per hectare per week, while the remaining land is leased at $50 per week. While the total rent payable under the lease is $140 per week, $50 will be GST exempt.

## A grant or sale of the lease of that land

The words "not being a grant or sale of the lease of that land" create an exception to the exemption under the main body of section 14(1)(ca). The words in section 14(1)(ca) "not being a grant or sale of the lease of that land" refer to any payment made for:

- The creation of a leasehold interest in that land, other than a payment of rent; or
- The sale of the leasehold interest in the land.

Any grant or sale by the head lessor (owner of the land) of a ground lease of that land, where the ground lease is exempt from GST to the extent that it is used for the principal purpose of supplying accommodation in a dwelling, is not exempt from GST. Whether GST is payable on the sale or grant depends on whether the sale or grant is made in the course or furtherance of a taxable activity carried on by the head lessor.

## Examples

The following examples do not form part of the ruling.

### *Example 1*

A, a GST registered person, owns a vacant piece of land. She leases that land to S who constructs a building that is used to carry on her business as a drycleaner. The building occupies the entire piece of land, leaving only a narrow alley providing access to the rear entrance. No part of the land is used for the principal purpose of accommodation in a dwelling and therefore no part of the supply from A to S is exempt.

### *Example 2*

S constructs an apartment above her drycleaning business and rents it to E. The floor area of the apartment is exactly the same as that of the drycleaners, so 50% of the ground rent charged by A to S is GST exempt.

### *Example 3*

S sold her drycleaning business and the building, including the apartment, to E. E negotiated a new ground lease with A. 50% of the ground rent was exempt as it related to the apartment.

In addition to the ground lease rental payments, in order to facilitate the negotiation of the new lease E agreed to make a one off payment to A of $5,000. None of that payment is exempt from GST as it relates to the grant of the lease and is excluded from the exemption.

# "TRANSITIONAL CAPITAL AMOUNT" – DEFINITION

## Public Ruling – BR Pub 01/02

**Note** (not part of ruling): This ruling is essentially the same as public rulings BR Pub 96/6 which was published in *TIB* Vol 7, No 12 (April 1996) and BR 98/1 published in *TIB* Vol 10, No 2 (February 1998).
BR Pub 98/1 applies up until 31 March 2001. This new ruling takes into account minor wording changes made to the legislation since BR Pub 98/1 was issued and its period of application is from 1 April 2001 to 31 March 2006.

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 to the definition of factor "j" in the formula within the definition of "transitional capital amount" in section OB 1 of the Income Tax Act 1994.

### The Arrangement to which this Ruling applies

This Ruling applies to companies that liquidate on or after 1 July 1994 and distribute to shareholders the same class of capital that the company has, prior to 1 July 1994, written off against its losses.

### How the Taxation Law applies to the Arrangement

The "total amount of capital paid up before 1 July 1994" in factor "j" of the formula within the definition of "transitional capital amount" includes all paid-up capital that has been, prior to 1 July 1994, written off against losses incurred by the company

### The period for which this Ruling applies

This Ruling applies to liquidations (as defined in section OB 1), and to distributions from such liquidations, during the period 1 April 2001 to 31 March 2006.

This Ruling is signed by me on the 14th day of March 2001.

**Martin Smith**

General Manager, Adjudication & Rulings

## COMMENTARY ON PUBLIC RULING BR PUB 01/02

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

The subject matter covered in the Ruling was previously dealt with in Public Ruling BR 98/1 (*TIB* Vol 10, No 2 (February 1998) at page 4 under the heading "*Definition of "transitional capital amount")*. This Ruling covers the period from 1 April 2001 to 31 March 2006.

### Background

The Companies Act 1993 enacted major reforms in the company law area. One of the most significant was the removal of the concept of "paid-up capital". Consequently the Income Tax Amendment Act 1994 was enacted to accommodate the changes to company law. In particular, the Income Tax Amendment Act 1994 introduced, with application from 1 July 1994, a definition of "available subscribed capital" for tax purposes.

The Income Tax Amendment Act 1994 also repealed section 4A(1)(h) of the Income Tax Act 1976. Section 4A(1)(h) allowed the Commissioner to exclude from dividends such amount distributed to a shareholder of the company, as the Commissioner considered just and reasonable where:

- The company had reduced the amount of the paid-up capital of the shareholder by writing off with High Court approval, losses incurred by the company; and
- The company was subsequently wound up; and
- Upon the winding up of the company, an amount (whether in money or money's worth) was distributed to the shareholder in excess of the amount paid up on the shares of the shareholder.

The effect of the repeal of section 4A(1)(h), is that there is no reduction of the "available subscribed capital" of a company when the company has, prior to 1 July 1994, written off losses against paid-up capital.

To calculate the available subscribed capital for companies existing prior to 1 July 1994, the "transitional capital amount" must be determined.

The terms "available subscribed capital" and "transitional capital amount" are discussed in more detail in *TIB* Vol 6, No 6 (December 1994) – Company Law Reform.

The definition of "transitional capital amount" was amended in 1998 by adding a new paragraph (b)—which does not affect this ruling—and, at the same time, the wording was changed to bring it into line with the current legislative style. In particular the former wording of "**aggregate** amount of capital" was changed to read "**total** amount of capital". The Commissioner considers that this wording change does not affect the interpretation of the definition or the calculation of item "j".

## Legislation

Section OB 1 states:

" **Transitional capital amount**", of a share in a company means -

(a) Unless paragraph (b) applies, the amount calculated using the formula:

$$\frac{j + k \times m}{l}$$

where

j is the total **amount of capital paid up before 1 July 1994** for shares of the same class as the share (whenever issued and including the share), not being [Emphasis added] -

- (i) An amount paid up by a bonus issue made after 31 March 1982 and before 1 October 1988, except if -
  - (A) The date of the acquisition, redemption, other cancellation, or liquidation falls more than 10 years after the date of the bonus issue; or
  - (B) The amount was paid up by way of application of an amount of qualifying share premium; or
  - (C) The relevant time is the time of liquidation of the company; or
- (ii) An amount paid up by a bonus issue (other than a taxable bonus issue) made on or after 1 October 1988, except if the amount was paid up by way of application of an amount of qualifying share premium; and

k is the total of qualifying share premium paid to the company before 1 July 1994 for shares of that class (whenever issued and including the share), not being an amount that is later (but before 1 July 1994) applied to pay up capital on shares in the company; and

l is the number of shares of that class (including the share) ever issued before the close of 30 June 1994; and

m is the number of shares of that class (including the share) on issue at the close of 30 June 1994:

(b) In the case of a company that is a group investment fund to which either section CZ 4A or CZ 4B applies, the value of the superannuation fund interest at the close of business on 31 March 1999. (Emphasis added).

## Application of legislation

The "total amount of capital paid up before 1 July 1994" in factor "j" of the definition of "transitional capital amount" includes all paid-up capital that has been, prior to 1 July 1994, written off against losses incurred by the company. This allows a company to restore the written-off capital upon liquidation, without the distribution being treated as a dividend to the shareholders.

### *Example*

1990 M Ltd issues 1,000 fully paid-up shares at $1 each.

1992 Pursuant to High Court approval, M Ltd writes off $500 (50 cents per share) of paid-up capital from its accumulated losses.

1994 Paid-up capital at 30 June 1994 is $500.

1995 Shareholders decide to liquidate M Ltd. There have been no movements in the capital of M Ltd since the capital reduction in 1992. After the sale of assets the distribution per share will be 75c.

Because M Ltd existed before 1 July 1994, its "available subscribed capital" is determined by calculating its "transitional capital amount". To calculate M's transitional capital amount, the following formula is used:

$$\frac{j + k \times m}{l}$$

where-

| | | |
|---|---|---|
| j | is paid-up capital at the close of 30 June 1994 | $500 |
| | add back capital reduction | $500 |
| | **total capital paid up before 1 July 1994** as defined in the Ruling | $1,000 |
| k | qualifying share premium assume is | 0 |
| l | number of shares ever issued before 1 July 1994 | 1,000 |
| m | shares on issue at 1 July 1994 | 1,000 |

$$\frac{\$1{,}000 + 0 \times 1{,}000}{1{,}000} = \$1{,}000 \text{ transitional capital amount}$$

The available subscribed capital per share cancelled equals $1,000/1,000 = $1 per share. The $0.75 per share distributed is not treated as a dividend as it does not exceed the available subscribed capital per share.

# NEW LEGISLATION

## STUDENT LOAN SCHEME – INTEREST RATES AND INTEREST WRITE-OFF THRESHOLD FOR 2001–2002

The total student loan scheme interest rate for the 2001–2002 income year will remain at 7.0%.

The total interest rate has two components—the base interest rate and the interest adjustment rate. These are 6.1% and 0.9% respectively for the 2000–2001 income year. From 1 April 2001 the base interest rate will decrease to 3.1% and the interest adjustment rate will increase to 3.9%. *Student Loan Scheme (Interest Rates) Regulations 2001*

The amount of income that part-time and/or part-year students may earn and still remain entitled to a full interest write-off will increase to $25,073 for the 2001–2002 income year. *Student Loan Scheme (Income Amount for Full Interest Write-off) Regulations 2001*

# 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.

# 2001 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR12

## Introduction

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

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

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 2001. This exemption may be cited as "International Tax Disclosure Exemption ITR12", and the full text appears at the end of this item.

## Scope of exemption

The scope of the 2001 disclosure exemption is the same as the 2000 exemption.

## Interests held by residents

Disclosure is required by residents for these interests:

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

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

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

### *Example*

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

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

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" on page 12).

## Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 2001 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company that is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on an "*Interest in a foreign company disclosure schedule*" *(IR 4G)* form.

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

- Attributed (non-dividend) repatriation rules apply to an "income interest of 10% or greater" in a controlled foreign company (CFC) regardless of the CFC's country of residence.

- To identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company that is resident in a Schedule 3, Part A of the ITA jurisdiction (Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- The requirement for a CFC that is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

## Foreign investment fund interests

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

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

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

- an "income interest of 10% or greater" in a CFC (separate disclosure is required of this as an interest in a foreign company)
- an interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America)
- an interest in an employment-related foreign superannuation scheme
- a qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person's 2001 tax return (See Inland Revenue's booklet *Overseas Private Pensions (IR 257)* for more information.)
- interests in foreign entities held by a natural person other than in that person's capacity as a trustee, if the aggregate cost or expenditure incurred in acquiring the interests remains under $50,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain, or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

A resident who holds an interest in a FIF at any time during the 2001 income year must disclose the interest and calculate FIF income or loss on the form "*Interest in foreign investment fund disclosure schedule*" *(IR 4H* series*)*. The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed four forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods. The respective IR 4H series form to use, for whichever FIF income calculation method you choose to apply, is as follows:

- IR 4H-AP for the accounting profits method
- IR 4H-BE for the branch equivalent method
- IR 4H-CV for the comparative value method
- IR 4H-DR for the deemed rate of return method.

## Overlap of interests

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

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

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

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

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

## Interests held by non-residents

The 2001 disclosure exemption removes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

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

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

## Summary

The 2001 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10% or greater" (that is, it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF must be disclosed.

The 2001 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

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

This exemption may be cited as "International Tax Disclosure Exemption ITR12".

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 2001. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, unless that interest is held by a non-resident of New Zealand.

2. Interpretation

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

3. Exemption

(i) Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 2001, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, unless the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10% or greater", as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

(ii) Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 2001, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:

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

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

This exemption is signed on the 6th day of April 2001.

**Patrick Goggin**

Acting National Manager, Corporates

# FOREIGN CURRENCY AMOUNTS – CONVERSION TO NZ CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the 12 months ending 31 March 2001.

The conversion rates for the first six months of each income year are published in the *TIB* 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).

HKD 200,000 ÷ 3.6918 = NZ$54,174.12

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

### Example 2

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

PHP 350,000 ÷ 20.0595 = NZ$17,448.09

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

### Example 3

A CFC resident in Singapore was formed on 21 April 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 1999:

(0.8292 + 0.8154 + 0.7997 + 0.7729 + 0.7282) ÷ 5 = 0.7891

(ii) Conversion to New Zealand currency:

SGD 500,000 ÷ 0.7891 = NZ$633,633.25

# Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 12 month period ending 31 March 2001. 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).

THB 500,000 ÷ 17.4087 = 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 | 15-May-00 | 15-Jun-00 | 17-Jul-00 | 15-Aug-00 | 15-Sep-00 | 16-Oct-00 | 15-Nov-00 | 15-Dec-00 | 15-Jan-01 | 15-Feb-01 | 15-Mar-01 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate | 12 month rate |
| United States | Dollar | USD | 0.4988 | 0.4810 | 0.4740 | 0.4596 | 0.4514 | 0.4191 | 0.3979 | 0.3958 | 0.4232 | 0.4473 | 0.4295 | 0.4145 |
| | | | 0.5161 | 0.5099 | 0.5045 | 0.4994 | 0.4928 | 0.4836 | 0.4742 | 0.4642 | 0.4583 | 0.4522 | 0.4473 | 0.4410 |
| United | Pound | GBP | 0.3142 | 0.3164 | 0.3160 | 0.3068 | 0.2999 | 0.2977 | 0.2740 | 0.2765 | 0.2878 | 0.3024 | 0.2946 | 0.2867 |
| Kingdom | | | 0.3211 | 0.3189 | 0.3173 | 0.3151 | 0.3126 | 0.3100 | 0.3073 | 0.3037 | 0.3021 | 0.3008 | 0.2998 | 0.2977 |
| Australia | Dollar | AUD | 0.8315 | 0.8252 | 0.7902 | 0.7865 | 0.7755 | 0.7628 | 0.7532 | 0.7616 | 0.7808 | 0.8003 | 0.8094 | 0.8372 |
| | | | 0.8010 | 0.8000 | 0.7983 | 0.7978 | 0.7947 | 0.7908 | 0.7880 | 0.7848 | 0.7851 | 0.7867 | 0.7896 | 0.7929 |
| Austria | Schilling | ATS | 7.1358 | 7.1997 | 6.7940 | 6.7362 | 6.8543 | 6.6585 | 6.3933 | 6.3342 | 6.5447 | 6.4576 | 6.4288 | 6.2673 |
| | | | 6.9456 | 6.9487 | 6.9230 | 6.8991 | 6.8951 | 6.8652 | 6.8556 | 6.8113 | 6.7948 | 6.7444 | 6.7102 | 6.6504 |
| Bahrain | Dollar | BHD | 0.1878 | 0.1812 | 0.1785 | 0.1731 | 0.1700 | 0.1578 | 0.1499 | 0.1490 | 0.1596 | 0.1686 | 0.1618 | 0.1560 |
| | | | 0.1944 | 0.1920 | 0.1900 | 0.1881 | 0.1856 | 0.1822 | 0.1786 | 0.1748 | 0.1726 | 0.1703 | 0.1685 | 0.1661 |
| Belgium | Franc | BEF | 20.9083 | 21.0889 | 19.9042 | 19.7387 | 20.0832 | 19.5121 | 18.7261 | 18.5642 | 19.1793 | 18.9288 | 18.8308 | 18.3615 |
| | | | 20.3511 | 20.3605 | 20.2847 | 20.2143 | 20.2029 | 20.1151 | 20.0866 | 19.9554 | 19.9073 | 19.7602 | 19.6611 | 19.4855 |
| Canada | Dollar | CAD | 0.7330 | 0.7145 | 0.6958 | 0.6815 | 0.6698 | 0.6228 | 0.5992 | 0.6110 | 0.6410 | 0.6708 | 0.6557 | 0.6435 |
| | | | 0.7573 | 0.7492 | 0.7417 | 0.7342 | 0.7247 | 0.7117 | 0.6987 | 0.6867 | 0.6792 | 0.6722 | 0.6678 | 0.6615 |
| China | Yuan | CNY | 4.1323 | 3.9850 | 3.9265 | 3.8087 | 3.7407 | 3.4711 | 3.2973 | 3.2795 | 3.4924 | 3.6972 | 3.5580 | 3.4328 |
| | | | 4.2725 | 4.2168 | 4.1691 | 4.1229 | 4.0635 | 4.0046 | 3.8964 | 3.8450 | 3.7954 | 3.7439 | 3.7042 | 3.6518 |
| Denmark | Krone | DKK | 3.8795 | 3.9245 | 3.6836 | 3.6526 | 3.7148 | 3.6147 | 3.4427 | 3.4352 | 3.5465 | 3.5020 | 3.4861 | 3.3947 |
| | | | 3.7563 | 3.7610 | 3.7487 | 3.7369 | 3.7357 | 3.7211 | 3.7150 | 3.6915 | 3.6835 | 3.6564 | 3.6388 | 3.6064 |
| European | Euro | EUR | 0.5186 | 0.5232 | 0.4938 | 0.4897 | 0.4982 | 0.4842 | 0.4646 | 0.4605 | 0.4758 | 0.4696 | 0.4672 | 0.4555 |
| Community | | | 0.5050 | 0.5052 | 0.5033 | 0.5016 | 0.5013 | 0.4991 | 0.4984 | 0.4951 | 0.4939 | 0.4902 | 0.4878 | 0.4834 |
| Fiji | Dollar | FJD | 1.0346 | 1.0154 | 0.9813 | 0.9689 | 0.9604 | 0.9224 | 0.8959 | 0.8982 | 0.9411 | 0.9669 | 0.9530 | 0.9467 |
| | | | 1.0209 | 1.0160 | 1.0105 | 1.0053 | 0.9987 | 0.9899 | 0.9815 | 0.9717 | 0.9679 | 0.9636 | 0.9613 | 0.9571 |
| Finland | Markka | FIM | 3.0837 | 3.1114 | 2.9355 | 2.9121 | 2.9631 | 2.8778 | 2.7628 | 2.7376 | 2.8286 | 2.7914 | 2.7778 | 2.7083 |
| | | | 3.0021 | 3.0034 | 2.9922 | 2.9819 | 2.9803 | 2.9673 | 2.9631 | 2.9437 | 2.9366 | 2.9148 | 2.9001 | 2.8742 |
| France | Franc | FRF | 3.4024 | 3.4330 | 3.2398 | 3.2118 | 3.2691 | 3.1753 | 3.0486 | 3.0206 | 3.1435 | 3.0799 | 3.0649 | 2.9883 |
| | | | 3.3125 | 3.3140 | 3.3017 | 3.2902 | 3.2884 | 3.2741 | 3.2695 | 3.2480 | 3.2420 | 3.2179 | 3.2017 | 3.1731 |
| French | Franc | XPF | 61.6659 | 62.2078 | 58.6921 | 58.2073 | 59.2244 | 57.6062 | 55.2938 | 55.0245 | 56.7336 | 55.9847 | 55.5880 | 54.2945 |
| Polynesia | | | 60.0800 | 60.0857 | 59.8590 | 59.6531 | 59.6156 | 59.3693 | 59.2741 | 58.9011 | 58.7721 | 58.3540 | 58.0485 | 57.5436 |
| Germany | Deutsche- | DEM | 1.0146 | 1.0237 | 0.9660 | 0.9566 | 0.9747 | 0.9469 | 0.9090 | 0.9006 | 0.9308 | 0.9184 | 0.9140 | 0.8911 |
| | mark | | 0.9878 | 0.9882 | 0.9845 | 0.9810 | 0.9805 | 0.9762 | 0.9748 | 0.9684 | 0.9660 | 0.9589 | 0.9541 | 0.9455 |
| Greece | Drachma | GRD | 173.2629 | 176.5315 | 165.6927 | 164.4115 | 167.6549 | 163.9690 | 157.7802 | 156.6170 | 162.0416 | 159.9748 | 159.2361 | 155.2190 |
| | | | 165.4642 | 166.1562 | 166.1040 | 166.0297 | 166.3979 | 166.2410 | 166.4456 | 165.8618 | 165.9410 | 165.1983 | 164.6720 | 163.5326 |
| Hong Kong | Dollar | HKD | 3.8831 | 3.7456 | 3.6928 | 3.5820 | 3.5194 | 3.2675 | 3.1016 | 3.0858 | 3.2984 | 3.4876 | 3.3497 | 3.2326 |
| | | | 4.0088 | 3.9624 | 3.9222 | 3.8837 | 3.8337 | 3.7638 | 3.6918 | 3.6144 | 3.5695 | 3.5226 | 3.4859 | 3.4372 |
| India | Rupee | INR | 21.7117 | 21.0583 | 21.0904 | 20.4471 | 20.5275 | 19.0751 | 18.3476 | 18.4509 | 19.7073 | 20.7494 | 19.9304 | 19.2516 |
| | | | 22.3054 | 22.0891 | 21.9189 | 21.7474 | 21.5460 | 21.2244 | 20.9173 | 20.6003 | 20.4587 | 20.3046 | 20.1998 | 20.0289 |
| Indonesia | Rupiah | IDR | 3,798.8098 | 4,049.0805 | 4,031.2182 | 4,361.4025 | 3,696.7140 | 3,601.5836 | 3,542.4767 | 3,702.6934 | 3,942.9966 | 4,287.1462 | 4,127.3600 | 4,213.6150 |
| | | | 3,859.8618 | 3,832.2481 | 3,834.4678 | 3,907.0709 | 3,866.2914 | 3,820.6209 | 3,765.7579 | 3,772.2167 | 3,805.5506 | 3,850.4048 | 3,899.1986 | 3,946.2580 |
| Ireland | Pound | IEP | 0.4078 | 0.4117 | 0.3880 | 0.3856 | 0.3931 | 0.3798 | 0.3659 | 0.3633 | 0.3747 | 0.3699 | 0.3678 | 0.3587 |
| | | | 0.3976 | 0.3978 | 0.3962 | 0.3948 | 0.3946 | 0.3928 | 0.3922 | 0.3896 | 0.3887 | 0.3858 | 0.3839 | 0.3805 |
| Italy | Lira | ITL | 1,004.2100 | 1,013.2185 | 956.1238 | 948.0621 | 964.6396 | 937.1888 | 896.4332 | 891.5048 | 921.1594 | 909.0826 | 904.6305 | 882.0123 |
| | | | 977.5083 | 977.9424 | 974.3129 | 970.9339 | 970.3826 | 966.1754 | 964.5297 | 958.1985 | 955.8801 | 948.7947 | 944.0086 | 935.6888 |
| Japan | Yen | JPY | 52.0958 | 52.1164 | 50.5372 | 49.5395 | 49.4068 | 45.0608 | 42.8901 | 42.7666 | 47.5089 | 52.9082 | 50.0511 | 50.1708 |
| | | | 57.0914 | 55.7547 | 54.5587 | 53.4460 | 52.4376 | 51.5309 | 50.5394 | 49.5753 | 49.2800 | 49.1006 | 48.8596 | 48.7544 |
| Korea | Won | KOR | 554.4800 | 535.7800 | 528.4600 | 511.7750 | 504.1850 | 467.5950 | 449.6550 | 450.0550 | 507.1600 | 571.7500 | 537.5650 | 529.1300 |
| | | | 600.0495 | 587.7282 | 578.5009 | 568.9900 | 556.7655 | 548.2496 | 526.8127 | 520.4162 | 516.0771 | 514.9050 | 513.9238 | 512.2992 |
| Kuwait | Dollar | KWD | 0.1525 | 0.1477 | 0.1450 | 0.1400 | 0.1400 | 0.1300 | 0.1200 | 0.1200 | 0.1297 | 0.1366 | 0.1315 | 0.1272 |
| | | | 0.1574 | 0.1556 | 0.1539 | 0.1522 | 0.1504 | 0.1479 | 0.1450 | 0.1419 | 0.1402 | 0.1384 | 0.1369 | 0.1350 |

| Currency | Foreign to NZ $ | Currency | 17-Apr-00 12 month rate | 15-May-00 12 month rate | 15-Jun-00 12 month rate | 17-Jul-00 12 month rate | 15-Aug-00 12 month rate | 15-Sep-00 12 month rate | 16-Oct-00 12 month rate | 15-Nov-00 12 month rate | 15-Dec-00 12 month rate | 15-Jan-01 12 month rate | 15-Feb-01 12 month rate | 15-Mar-01 12 month rate |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Malaysia | Ringgit | MYR | 1.8964 | 1.8292 | 1.8026 | 1.7478 | 1.7167 | 1.5934 | 1.5134 | 1.5055 | 1.6033 | 1.6973 | 1.6335 | 1.5757 |
| | | | 1.9616 | 1.9379 | 1.9175 | 1.8980 | 1.8729 | 1.8382 | 1.8026 | 1.7648 | 1.7421 | 1.7185 | 1.7003 | 1.6762 |
| Netherlands | Guilder | NLG | 1.1428 | 1.1531 | 1.0876 | 1.0785 | 1.0976 | 1.0666 | 1.0246 | 1.0148 | 1.0487 | 1.0347 | 1.0297 | 1.0040 |
| | | | 1.1128 | 1.1132 | 1.1090 | 1.1051 | 1.1045 | 1.0997 | 1.0982 | 1.0909 | 1.0883 | 1.0803 | 1.0748 | 1.0652 |
| Norway | Krone | NOK | 4.2414 | 4.3090 | 4.0639 | 3.9924 | 4.0228 | 3.8865 | 3.7369 | 3.6954 | 3.8673 | 3.8551 | 3.8400 | 3.7248 |
| | | | 4.1256 | 4.1295 | 4.1160 | 4.1019 | 4.0922 | 4.0676 | 4.0512 | 4.0185 | 4.0100 | 3.9847 | 3.9704 | 3.9363 |
| Pakistan | Rupee | PKR | 25.6866 | 24.7941 | 24.5033 | 23.8842 | 23.8334 | 22.7435 | 23.1927 | 22.1540 | 24.2048 | 26.0128 | 24.9415 | 24.4234 |
| | | | 26.5674 | 26.2844 | 26.0091 | 25.7574 | 25.4790 | 25.1002 | 24.8365 | 24.4574 | 24.3556 | 24.2819 | 24.2646 | 24.1979 |
| Papua New | Kina | PGK | 1.3123 | 1.1953 | 1.1411 | 1.1268 | 1.1563 | 1.1157 | 1.1153 | 1.1762 | 1.2262 | 1.3931 | 1.2810 | 1.2923 |
| Guinea | | | 1.4280 | 1.4127 | 1.3709 | 1.3534 | 1.3307 | 1.2949 | 1.2731 | 1.2549 | 1.2463 | 1.2431 | 1.2239 | 1.2110 |
| Philippines | Peso | PHP | 20.3653 | 19.7950 | 19.8607 | 20.2714 | 20.0596 | 18.8824 | 18.9531 | 19.5703 | 21.0190 | 22.6397 | 20.5042 | 19.8779 |
| | | | 20.3705 | 20.2833 | 20.2477 | 20.2835 | 20.2318 | 20.0595 | 19.9357 | 19.8553 | 19.9404 | 20.0776 | 20.1541 | 20.1499 |
| Portugal | Escudo | PTE | 104.0295 | 104.9677 | 99.0495 | 98.1659 | 99.8882 | 97.0442 | 93.1642 | 92.3113 | 95.3771 | 94.1238 | 93.6637 | 91.3199 |
| | | | 99.2330 | 99.2833 | 98.9121 | 98.5512 | 98.4945 | 98.0599 | 97.9183 | 99.2771 | 99.0370 | 98.2991 | 97.8029 | 96.9254 |
| Singapore | Dollar | SGD | 0.8503 | 0.8291 | 0.8154 | 0.7997 | 0.7729 | 0.7282 | 0.6987 | 0.6890 | 0.7335 | 0.7747 | 0.7490 | 0.7312 |
| | | | 0.8714 | 0.8614 | 0.8527 | 0.8457 | 0.8361 | 0.8226 | 0.8094 | 0.7951 | 0.7872 | 0.7793 | 0.7731 | 0.7643 |
| Solomon | Dollar | SBD | 2.5159 | 2.4318 | 2.4114 | 2.3314 | 2.2893 | 2.1246 | 2.0176 | 2.0079 | 2.1040 | 2.2497 | 2.1803 | 2.1000 |
| Islands | | | 2.5402 | 2.5208 | 2.5057 | 2.4923 | 2.4693 | 2.4297 | 2.3892 | 2.3430 | 2.3129 | 2.2855 | 2.2616 | 2.2303 |
| South Africa | Rand | ZAR | 3.2818 | 3.3580 | 3.2824 | 3.1596 | 3.1161 | 2.9861 | 2.9773 | 3.0217 | 3.2630 | 3.4942 | 3.3787 | 3.2600 |
| | | | 3.1926 | 3.1854 | 3.1867 | 3.1838 | 3.1739 | 3.1555 | 3.1442 | 3.1326 | 3.1528 | 3.1808 | 3.2055 | 3.2149 |
| Spain | Peseta | ESP | 86.2829 | 87.0648 | 82.1516 | 81.4859 | 82.8929 | 80.5550 | 77.3306 | 76.6083 | 79.1554 | 78.1125 | 77.7293 | 75.7839 |
| | | | 83.9973 | 84.0356 | 83.7232 | 83.4348 | 83.3876 | 83.0279 | 82.9126 | 82.3733 | 82.1731 | 81.5644 | 81.1537 | 80.4294 |
| Sri Lanka | Rupee | LKR | 36.4501 | 35.4180 | 35.2027 | 36.0069 | 35.2037 | 32.6866 | 31.4226 | 31.6695 | 34.5577 | 37.3971 | 36.8516 | 34.8722 |
| | | | 36.9504 | 36.6541 | 36.4207 | 36.3180 | 36.1040 | 35.6848 | 35.2788 | 34.8615 | 34.8028 | 34.7682 | 34.8881 | 34.8115 |
| Sweden | Krona | SEK | 4.3056 | 4.3269 | 4.0375 | 4.0838 | 4.1505 | 4.0676 | 3.9542 | 3.9841 | 4.0756 | 4.1584 | 4.2322 | 4.1781 |
| | | | 4.3611 | 4.3339 | 4.2897 | 4.2572 | 4.2356 | 4.2088 | 4.1934 | 4.1663 | 4.1555 | 4.1349 | 4.1360 | 4.1295 |
| Switzerland | Franc | CHF | 0.8142 | 0.8137 | 0.7730 | 0.7587 | 0.7760 | 0.7414 | 0.7040 | 0.7011 | 0.7165 | 0.7238 | 0.7169 | 0.7007 |
| | | | 0.8084 | 0.8067 | 0.8025 | 0.7974 | 0.7951 | 0.7887 | 0.7846 | 0.7761 | 0.7704 | 0.7617 | 0.7548 | 0.7450 |
| Taiwan | Dollar | TAI | 15.2000 | 14.7550 | 14.5400 | 14.1800 | 14.0050 | 13.0100 | 12.5450 | 12.7450 | 13.9250 | 14.5600 | 13.8550 | 13.4500 |
| | | | 16.3791 | 16.0664 | 15.8000 | 15.5595 | 15.2886 | 15.0792 | 14.6209 | 14.4646 | 14.3275 | 14.1188 | 14.0296 | 13.8975 |
| Thailand | Baht | THB | 18.8119 | 18.4812 | 18.3792 | 18.2173 | 18.2543 | 17.4065 | 17.1987 | 17.1785 | 18.3053 | 19.2363 | 18.1279 | 17.9993 |
| | | | 19.4855 | 19.3084 | 19.1885 | 19.1064 | 18.9608 | 18.6935 | 18.4560 | 18.2434 | 18.1879 | 18.1755 | 18.1731 | 18.1330 |
| Tonga | Pa'anga | TOP | 0.8256 | 0.8112 | 0.7978 | 0.7805 | 0.7734 | 0.7561 | 0.7547 | 0.7673 | 0.8314 | 0.8820 | 0.8590 | 0.8446 |
| | | | 0.8281 | 0.8242 | 0.8203 | 0.8161 | 0.8102 | 0.8035 | 0.7980 | 0.7925 | 0.7944 | 0.7990 | 0.8039 | 0.8070 |
| Vanuatu | Vatu | VUV | 66.5242 | 65.4895 | 64.1885 | 62.3092 | 62.0005 | 58.5052 | 56.5073 | 56.8062 | 60.5216 | 62.7549 | 61.0206 | 60.3177 |
| | | | 66.4328 | 65.9824 | 65.6111 | 65.2036 | 64.7174 | 64.0130 | 63.3236 | 62.5607 | 62.3030 | 62.0077 | 61.7927 | 61.4121 |
| Western | Tala | WST | 1.5251 | 1.4881 | 1.4636 | 1.4494 | 1.4307 | 1.3599 | 1.3202 | 1.3213 | 1.3846 | 1.4350 | 1.3998 | 1.3738 |
| Samoa | | | 1.5629 | 1.5502 | 1.5387 | 1.5289 | 1.5160 | 1.4911 | 1.4728 | 1.4519 | 1.4427 | 1.4296 | 1.4230 | 1.4126 |

# Table B: End of month exchange rates

| Country | Currency | Code | 28-Apr-00 | 31-May-00 | 30-Jun-00 | 31-Jul-00 | 31-Aug-00 | 29-Sep-00 | 31-Oct-00 | 30-Nov-00 | 29-Dec-00 | 31-Jan-01 | 28-Feb-01 | 30-Mar-01 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| United States | Dollar | USD | 0.4875 | 0.4594 | 0.4682 | 0.4570 | 0.4298 | 0.4128 | 0.4034 | 0.4036 | 0.4394 | 0.4408 | 0.4325 | 0.4094 |
| United Kingdom | Pound | GBP | 0.3095 | 0.3070 | 0.3083 | 0.3040 | 0.2948 | 0.2821 | 0.2775 | 0.2837 | 0.2944 | 0.3013 | 0.2995 | 0.2868 |
| Australia | Dollar | AUD | 0.8279 | 0.7960 | 0.7768 | 0.7775 | 0.7478 | 0.7567 | 0.7681 | 0.7724 | 0.7939 | 0.8045 | 0.8229 | 0.8303 |
| Austria | Schilling | ATS | 7.3700 | 6.7896 | 6.7632 | 6.8035 | 6.6172 | 6.4528 | 6.5792 | 6.4639 | 6.5122 | 6.5360 | 6.4861 | 6.3800 |
| Bahrain | Dollar | BHD | 0.1836 | 0.1731 | 0.1762 | 0.1722 | 0.1616 | 0.1555 | 0.1518 | 0.1520 | 0.1656 | 0.1664 | 0.1628 | 0.1543 |
| Belgium | Franc | BEF | 21.5904 | 19.8981 | 19.8129 | 19.9385 | 19.3887 | 18.9092 | 19.2782 | 18.9424 | 19.0774 | 19.1488 | 19.0041 | 18.6942 |
| Canada | Dollar | CAD | 0.7194 | 0.6910 | 0.6944 | 0.6750 | 0.6343 | 0.6191 | 0.6168 | 0.6222 | 0.6593 | 0.6623 | 0.6603 | 0.6438 |
| China | Yuan | CNY | 4.0397 | 3.8059 | 3.8807 | 3.7870 | 3.5566 | 3.4270 | 3.3464 | 3.3510 | 3.6399 | 3.6464 | 3.5840 | 3.3886 |
| Denmark | Krone | DKK | 3.9910 | 3.6910 | 3.6654 | 3.6851 | 3.5864 | 3.5004 | 3.5604 | 3.5045 | 3.5315 | 3.5436 | 3.5210 | 3.4600 |
| European Community | Euro | EUR | 0.5357 | 0.4936 | 0.4916 | 0.4945 | 0.4810 | 0.4694 | 0.4781 | 0.4700 | 0.4733 | 0.4751 | 0.4715 | 0.4638 |
| Fiji | Dollar | FJD | 1.0176 | 0.9910 | 0.9694 | 0.9652 | 0.9259 | 0.9094 | 0.9144 | 0.9129 | 0.9541 | 0.9737 | 0.9659 | 0.9502 |
| Finland | Markka | FIM | 3.1849 | 2.9346 | 2.9239 | 2.9396 | 2.8592 | 2.7885 | 2.8431 | 2.7938 | 2.8136 | 2.8247 | 2.8033 | 2.7573 |
| France | Franc | FRF | 3.5142 | 3.2380 | 3.2253 | 3.2436 | 3.1554 | 3.0772 | 3.1369 | 3.0825 | 3.1044 | 3.1167 | 3.0931 | 3.0423 |
| French Polynesia | Franc | XPF | 63.6385 | 58.6574 | 58.4420 | 58.8062 | 57.2138 | 55.7159 | 56.9000 | 56.0322 | 56.4292 | 56.6833 | 56.2257 | 55.3195 |
| Germany | Deutsche-mark | DEM | 1.0478 | 0.9654 | 0.9617 | 0.9676 | 0.9409 | 0.9176 | 0.9354 | 0.9193 | 0.9263 | 0.9293 | 0.9224 | 0.9073 |
| Greece | Drachma | GRD | 179.2149 | 165.7496 | 165.3349 | 166.4416 | 162.3226 | 158.9394 | 162.4588 | 159.8851 | 161.2697 | 162.0310 | 160.6686 | 158.0450 |
| Hong Kong | Dollar | HKD | 3.7959 | 3.5783 | 3.6487 | 3.5624 | 3.3510 | 3.2177 | 3.1449 | 3.1506 | 3.4261 | 3.4371 | 3.3726 | 3.1925 |
| India | Rupee | INR | 21.2070 | 20.3875 | 20.8169 | 20.3882 | 19.5881 | 18.8871 | 18.7262 | 18.8615 | 20.4292 | 20.3765 | 20.0820 | 19.0073 |
| Indonesia | Rupiah | IDR | 3,873.2653 | 3,959.0439 | 4,094.0968 | 4,083.3851 | 3,579.7218 | 3,630.6429 | 3,795.4852 | 3,826.2099 | 4,206.1803 | 4,128.7272 | 4,269.2100 | 4,256.3350 |
| Ireland | Pound | IEP | 0.4215 | 0.3879 | 0.3868 | 0.3885 | 0.3781 | 0.3684 | 0.3763 | 0.3689 | 0.3733 | 0.3740 | 0.3712 | 0.3651 |
| Italy | Lira | ITL | 1,037.10 | 955.66 | 951.89 | 957.38 | 931.26 | 908.20 | 925.93 | 909.80 | 916.22 | 919.92 | 912.88 | 897.94 |
| Japan | Yen | JPY | 51.8239 | 48.9037 | 49.2092 | 50.0383 | 45.7348 | 44.3818 | 43.9238 | 44.8695 | 50.2609 | 51.0490 | 50.2642 | 50.5379 |
| Korea | Won | KOR | 541.5500 | 522.3100 | 522.4550 | 510.6700 | 476.1900 | 461.7650 | 459.6050 | 486.2000 | 550.4800 | 556.4850 | 540.5150 | 540.7200 |
| Kuwait | Dollar | KWD | 0.1498 | 0.1400 | 0.1450 | 0.1400 | 0.1300 | 0.1250 | 0.1250 | 0.1240 | 0.1341 | 0.1351 | 0.1325 | 0.1261 |
| Malaysia | Ringgit | MYR | 1.8539 | 1.7472 | 1.7813 | 1.7380 | 1.6323 | 1.5727 | 1.5360 | 1.5382 | 1.6707 | 1.6736 | 1.6450 | 1.5554 |
| Netherlands | Guilder | NLG | 1.1804 | 1.0872 | 1.0842 | 1.0889 | 1.0595 | 1.0343 | 1.0539 | 1.0356 | 1.0429 | 1.0471 | 1.0392 | 1.0221 |
| Norway | Krone | NOK | 4.3580 | 4.1089 | 4.0162 | 4.0531 | 3.8834 | 3.7520 | 3.7819 | 3.7746 | 3.9112 | 3.8928 | 3.8826 | 3.7154 |
| Pakistan | Rupee | PKR | 25.1059 | 23.6931 | 24.2192 | 24.0963 | 23.2517 | 23.6128 | 22.9540 | 22.9269 | 25.2086 | 25.5962 | 25.6310 | 24.6318 |
| Papua New Guinea | Kina | PGK | 1.2329 | 1.1019 | 1.1285 | 1.1968 | 1.1354 | 1.1169 | 1.1620 | 1.1449 | 1.2765 | 1.3122 | 1.3133 | 1.2601 |
| Philippines | Peso | PHP | 19.9439 | 19.4049 | 19.9014 | 20.2626 | 19.1717 | 18.7867 | 20.4026 | 19.9106 | 21.7593 | 21.5298 | 20.7545 | 20.0467 |
| Portugal | Escudo | PTE | 107.4400 | 98.9503 | 98.6113 | 99.1279 | 96.4342 | 94.0400 | 95.8719 | 94.2003 | 94.8736 | 95.2449 | 94.5249 | 92.9778 |
| Singapore | Dollar | SGD | 0.8299 | 0.7941 | 0.8101 | 0.7916 | 0.7385 | 0.7186 | 0.7074 | 0.7085 | 0.7595 | 0.7681 | 0.7527 | 0.7360 |
| Solomon Islands | Dollar | SBD | 2.4624 | 2.3171 | 2.3656 | 2.3182 | 2.1795 | 2.0932 | 2.0468 | 2.0502 | 2.2102 | 2.2175 | 2.1781 | 2.0803 |
| South Africa | Rand | ZAR | 3.3310 | 3.2106 | 3.1878 | 3.1765 | 2.9856 | 3.0086 | 3.0433 | 3.1370 | 3.3243 | 3.4293 | 3.3334 | 3.2929 |
| Spain | Peseta | ESP | 89.1166 | 82.1200 | 81.7901 | 82.2816 | 80.0281 | 78.0195 | 79.5579 | 78.1825 | 78.7312 | 79.0383 | 78.4441 | 77.1572 |
| Sri Lanka | Rupee | LKR | 35.6688 | 34.0461 | 35.9606 | 35.6513 | 33.3995 | 32.4843 | 31.9336 | 32.5514 | 35.9644 | 38.6431 | 37.0290 | 35.1117 |
| Sweden | Krona | SEK | 4.3621 | 4.1399 | 4.1367 | 4.1886 | 4.0529 | 4.0007 | 4.0582 | 4.0833 | 4.1892 | 4.2066 | 4.2715 | 4.2492 |
| Switzerland | Franc | CHF | 0.84 | 0.78 | 0.77 | 0.77 | 0.74 | 0.72 | 0.73 | 0.71 | 0.72 | 0.73 | 0.73 | 0.71 |
| Taiwan | Dollar | TAI | 14.8800 | 14.1650 | 14.3800 | 14.1950 | 13.3100 | 12.9050 | 13.0400 | 13.3500 | 14.5550 | 14.1250 | 13.9850 | 13.3850 |
| Thailand | Baht | THB | 18.4424 | 17.8926 | 18.1965 | 18.7289 | 17.4581 | 17.4087 | 17.5507 | 17.5893 | 18.8512 | 18.7174 | 18.3958 | 18.1377 |
| Tonga | Pa'anga | TOP | 0.8145 | 0.7906 | 0.7867 | 0.7768 | 0.7598 | 0.7664 | 0.7745 | 0.7945 | 0.8609 | 0.8823 | 0.8660 | 0.8463 |
| Vanuatu | Vatu | VUV | 65.3108 | 63.4266 | 62.6364 | 62.0747 | 59.4674 | 57.7020 | 57.8018 | 57.9273 | 62.2787 | 62.3308 | 62.3229 | 60.4022 |
| Western Samoa | Tala | WST | 1.5007 | 1.4298 | 1.4418 | 1.4426 | 1.3777 | 1.3491 | 1.3435 | 1.3453 | 1.4131 | 1.4300 | 1.4144 | 1.3730 |

# STANDARD PRACTICE STATEMENTS

These statements describe how the Commissioner will, in practice, exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

# NON-STANDARD BALANCE DATES FOR MANAGED FUNDS AND "AS AGENT" RETURNS

## Standard Practice Statement IR-SPS GNL-120

### Introduction

This Standard Practice Statement (SPS) extends operational practice relating to consent for the use of non-standard balance dates to recognise special taxpayer/administrator situations.

The SPS provides indicative examples of situations where Inland Revenue may consent to applications by taxpayers to adopt non-standard balance dates for managed funds (unit trusts, group investment funds and superannuation funds) and agents for non-resident insurers (in respect of "as agent" returns).

### Application

This SPS applies from 1 May 2001.

This SPS applies only to applications by:

- managed funds to adopt a non-standard balance date in common with the manager or trustee if Inland Revenue recognises a parent–subsidiary like relationship between parties, and
- entities deemed to be agents of non-resident insurers to file "as agent" returns in terms of section CN 4(3) of the Income Tax Act 1994.

### Summary

Inland Revenue's current practice in relation to providing consent for the use of non-standard balance dates is set out in *Tax Information Bulletins* Vol 3, No 9 and Vol 5, No 11.

This SPS extends the existing parent–subsidiary criteria to include analogous situations that exist between managed funds and the entities that are responsible for their administration.

Consent may be given for managed funds and agents for non-resident insurers to adopt a balance date other than 31 March if:

- Inland Revenue recognises that a parent–subsidiary like relationship exists between the parties, eg the relationship between the managed fund and its trustee or manager. This is demonstrated by the manager/trustee preparing accounts, promoting the entity, making strategic investment decisions and providing other administration services to the trust.
- An employer superannuation fund is established for the benefit of the employees and there is a close relationship between the employer and the superannuation fund.
- The agent of a non-resident insurer is required to file "as agent" returns on behalf of the non-resident.

The purpose of the SPS is to reduce compliance costs of taxpayers.

### Background

Under current practice taxpayers may adopt a balance date other than 31 March (a "non-standard balance date") only if:

- the nature of their business makes a 31 March balance date inappropriate, or
- a subsidiary wishes to align its balance date with its parent company, or
- an estate wishes to adopt the deceased's date of death, or
- a shareholder–employee wants the same balance date as the company.

Managed funds and agents for non-resident insurers do not qualify for a non-standard balance date under the existing practice statement.

# Legislation

Section 38 of the Tax Administration Act 1994 reads:

38. RETURNS TO ANNUAL BALANCE DATE—

(1) Instead of furnishing a return in accordance with section 33 for any year ending with 31 March, a taxpayer (other than a taxpayer to whom [section 33A (1) or (5)] applies) may, with the consent of the Commissioner, elect to furnish a return for the year ending with the date of the annual balance of the person's accounts, and in any such case the taxable income for that year shall for the purposes of the Income Tax Act 1994 be deemed to be the taxable income for the year ending with the 31 March nearest to that date.

(2) For the purposes of this section and section 39, 30 September in any year shall be deemed to be nearer to the last preceding 31 March than to the next succeeding 31 March.

(3) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until it is altered by the taxpayer with the prior approval in writing of the Commissioner.

Section OB 1 of the Income Tax Act 1994 defines group investment fund, superannuation fund, superannuation scheme and unit trust as follows:

"**Group investment fund**" means a Group Investment Fund established under the Trustee Companies Act 1967 or the Public Trust Office Act 1957:

"**Superannuation fund**" means any superannuation scheme, which is registered under the Superannuation Schemes Act 1989:

**"Superannuation scheme"** means –

(a) Any trust or unit trust established by its trust deed principally for the purpose of providing retirement benefits to beneficiaries who are natural persons; or

(b) Any company (not being a unit trust) that -

(i) Is not resident in New Zealand; and

(ii) Has been established principally for the purpose of providing retirement benefits to members or relatives of members who are natural persons; or

(c) Any arrangement constituted under an Act of Parliament of New Zealand, other than the Social Security Act 1964, principally for the purpose of providing retirement benefits to natural persons; or any similar arrangement constituted under the legislation of any country, territory, state, or local authority outside New Zealand;-

and where the superannuation scheme is a trust, any reference in this Act to a superannuation scheme includes a reference to the trustees of that scheme:

"**Unit trust**" means any scheme or arrangement, whether made before or after the commencement of this Act, that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers, purchasers, or contributors, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust; but does not include—

(a) a trust for the benefit of debenture holders; or

(b) The Common Fund of the Public Trustee or any Group Investment Fund established by the Public Trustee; or

(c) The Common Fund of the Maori Trustee; or

(d) Any Group Investment Fund established under the Trustees Companies Act 1967; or

(e) Any friendly society registered under the Friendly Societies and Credit Unions Act 1982; or

(f) Any superannuation fund; or

(g) Any employee share purchase scheme; or

(h) Any other trust of any specified kind that is declared by the Governor-General, by Order in Council, not to be a unit trust for the purposes of HE 1: [the definition of trust].

# Definition of terms

"**As agent**" is a person deemed to be an agent of a non-resident insurer in accordance with section CN 4(3) of the Income Tax Act 1994.

"**Non-standard balance date**" means a balance date other than 31 March.

# Standard Practice

Inland Revenue will consider consent to applications for non-standard balance dates from the following entities:

- The trustee of a unit trust that wishes to align its balance date with that of its manager.
- The trustee of a group investment fund that wishes to align its balance date with that of its manager.
- The trustee of a superannuation fund that wishes to align its balance date with that of its trustee or, where the fund is administered by an employer for the benefit of its employees, the balance date of the employer.
- A resident required to file an "as agent" return that wishes to align the balance date of that return with the taxpayer's own non-standard balance date.

### Indicative examples of Recognised Relationships

**1. A unit trust wishes to align its balance date with that of its manager**

A unit trust may align its balance date to that of its manager. The manager is the entity with responsibility for the management of the unit trust and is appointed in the trust deed.

**2. A group investment fund wishes to align its balance date with that of its manager**

A group investment fund is administered and overseen by a manager. The fund may have a separate trustee, although there is no requirement that the trustee and manager be separate entities. Consent will only be granted to align the fund's balance date with that of the manager.

As with unit trusts, the concession applies when the manager has retained the responsibility for day to day administration of the trust and for preparing the trust's accounts. When these functions have been contracted out to a third party, it is not appropriate to adopt the manager's balance date.

**3. Superannuation funds**

- **An employer superannuation fund wishes to align its balance date with that of the employer**

A scheme established for the benefit of employees of an employer may apply to adopt the balance date of that employer.

- **Any other superannuation fund (eg a wholesale or retail fund) wishes to align its balance date with that of its trustee**

The trust deed under which a superannuation fund is established will appoint a trustee to supervise the fund. Consent will be given for a fund to align its balance date with that of the trustee.

**4. A taxpayer who is agent of a non-resident insurer wishes to align the balance date of its "as agent" return to its own non-standard balance date**

A taxpayer who insures with a non-resident insurer is required to return part of the premiums paid as income in a return known as an "as agent" return (section CN 4(3) of the Income Tax Act 1994). This income is returned by the taxpayer "as agent" for the non-resident insurer.

Taxpayers with an approved non-standard balance date for their own returns will be granted consent to align the balance dates of their "as agent" returns to this date.

## Summary

In recognition of the equivalent of a parent–subsidiary relationship, Inland Revenue will consent to applications to adopt the following non-standard balance dates –

| Entity | Approved non-standard balance date |
|---|---|
| Unit trust | Balance date of unit trust manager |
| Group Investment Fund | Balance date of group investment fund manager |
| Employer Superannuation Fund | Balance date of employer |
| Other Superannuation Fund | Balance date of trustee |
| "As agent" return | Balance date of entity preparing "as agent" return |

### Applications

Applications for consent to non-standard balance dates are to be in writing and should provide the following information:

- Full name of the entity seeking the non-standard balance date.
- Name of tax agent.
- Full details of the reason why consent should be given to the use of a non-standard balance date.
- Details of the nature of the relationship between the entity applying for a change in balance date and the entity to which the balance date is being aligned.
- Any other reasons to demonstrate why a proposed non-standard balance date is considered appropriate.

### Indicative examples where consent will not be given for a non-standard balance date

The anniversary date of the commencement of the business is not a valid reason for a non-standard balance date. Inland Revenue will not consent to the use of a non-standard balance date if it is for the reasons of tax deferral or tax avoidance, or to take undue advantage of a tax incentive or concession.

Consent will not be given where the election is made to spread the balance dates of a number of funds in order to smooth the workflow of the manager or the trustee of those funds.

In cases where administrative functions have been contracted out to a third party (for example, a specialist administration manager) Inland Revenue will not provide consent to adopt the manager's balance date.

All requests for consent to non-standard balance date elections for unit trusts, group investment funds, superannuation funds and taxpayers required to file "as agent" returns should be sent to:

> Managed Funds Industry Desk
> Insurance Sector
> Corporates Segment, Inland Revenue
> PO Box 2198
> WELLINGTON

The adoption of a non-standard balance date will continue until the date is changed by a further election. The process for change of non-standard balance dates is the same as above.

This Standard Practice Statement was signed by me on April 2001.

**Margaret Cotton**

National Manager
Technical Standards

# ARRANGEMENTS FOR PAYMENT OF TAX DEBT

## Standard Practice Statement RDC 6.1

## Introduction

This Standard Practice Statement states the Commissioner's practice on providing relief by way of an arrangement when taxpayers are in debt with Inland Revenue. It does not relate to arrangements for payment of child support arrears.

The legislation that allows the Commissioner to enter into arrangements for payment of tax debt was amended on 10 October 2000 to:

- dispense with the requirement that applications for arrangements be made in writing
- extend the relief provisions to include all taxes and duties (limited exceptions apply)
- remove the requirement to obtain approval from the Minister of Finance where the amount of relief sought exceeds $50,000.

This Standard Practice Statement refers in part to *Tax Information Bulletin Vol 6, No 14 (June 1995),* taxpayers in financial difficulties. The TIB should be read as if updated for the legislation changes described above.

## Application

This Standard Practice Statement replaces Standard Practice Statement RDC 6 originally published in *Tax Information Bulletin Vol 12, No 3 (March 2000)*. This amended Standard Practice Statement applies to applications for relief by way of arrangement made on or after 1 April 2001.

## Summary

Section 177 of the Tax Administration Act 1994 specifically allows for relief by way of arrangement for taxpayers who are, or are likely to become liable for payment of tax.

An arrangement can be for one lump sum payment or 2 or more payments (instalment arrangement).

Applications for relief by way of arrangement may be made orally or in writing.

The taxpayer must be in financial difficulties at the time of application. The Commissioner will require relevant financial information to be provided in support of the application.

When considering an application, section 177 requires Inland Revenue to ensure that the relief granted will maximise net present value for tax debts, or will lead to the collection of highest net revenue over time for student loan repayment obligation debts.

There is no legislative time limit for an arrangement. However, arrangements will generally be over the shortest period of time in order to maximise the net present value of any recovery.

Penalties and interest will continue to accrue during the term of an arrangement. However, if a taxpayer adheres to the conditions of an arrangement, the penalties will be cancelled from the date the arrangement was entered into. Interest cannot be cancelled and will remain payable.

When Inland Revenue accepts an arrangement, Inland Revenue will issue written confirmation of the arrangement that will set out the taxpayer's obligations and Inland Revenue's obligations.

## Legislation

All legislative references are to the Tax Administration Act 1994 (TAA) unless otherwise stated.

Section 177 provides:

177 Discretion to grant relief in cases of financial hardship

(1) A taxpayer, or a person on a taxpayer's behalf, may apply for relief if the taxpayer—
   (a) Is, or is likely to become, liable for payment of tax; and
   (b) Is at the time of applying, in financial difficulties.

(2) An application for relief by way of remission must be in writing.

(3) If subsection (1) applies, the Commissioner may, if the Commissioner considers it necessary or desirable to do so to maximise the net present value, calculated on the date of the application, of recovery or likely recovery from the taxpayer of the tax, or part of the tax, grant relief to the taxpayer by—
   (a) Remitting all or part of the tax; or
   (b) Entering into an arrangement with the taxpayer for the payment of all or part of the tax in one or more payments; or
   (c) Applying both paragraphs (a) and (b).

(4) The Commissioner may, if the Commissioner thinks fit, issue an amended assessment to give effect to any action taken under subsection (3).

(5) The Commissioner may cancel all or part of the relief granted under this section if—

(a) The Commissioner has reason to believe that the information provided by the taxpayer to enable the Commissioner to apply this section is misleading in any respect such that the Commissioner considers that it was inappropriate for all or part of the relief to have been granted; or

(b) The Commissioner receives further information relating to the taxpayer's affairs, as they were on the date on which relief was granted, such that the Commissioner considers that it was inappropriate for all or part of the relief to have been granted.

(6) If subsection (5) applies, the taxpayer is liable for the payment of the tax as if relief had never been granted.

(7) A Commissioner's decision to grant or cancel relief may not be objected to or challenged

Other relevant legislation is contained in:

- section 3 TAA—definition of "tax"
- section 6A TAA—the care and management of taxes
- section 156 TAA—the mode of recovery of unpaid tax
- section 183B TAA—cancellation of late payment penalties under instalment arrangement.

# Standard Practice

## *Application for relief by way of arrangement need not be in writing*

Inland Revenue is able to enter into arrangements for payment of tax debt over the telephone or following written application. In doing so, it must be established that the taxpayer is in financial difficulties and that the proposed arrangement maximises net present value.

In all cases it will be necessary to obtain financial information, either over the telephone or in writing, to enable these decisions to be made. In some cases, it will be necessary for Inland Revenue to obtain written financial information to verify or further support the information already supplied by the taxpayer.

A taxpayer may start making voluntary payments immediately, before an arrangement has been agreed to (refer to *IR 262 Let us help you pay your bill ...).* However, any cancellation of penalties only applies from the date the arrangement is agreed to (refer to "Entering into an arrangement" on page 26).

## *Amount that is, or is likely to become, liable for payment*

A taxpayer may make application for an arrangement for any amount that is in arrears, or any amount that will become due for payment.

In practical terms, a taxpayer making payments towards a tax debt before that amount is due, does not need to enter into an arrangement unless the amount owing will not be paid prior to the due date (refer to *IR 262 Let us help you pay your bill …*).

If a taxpayer determines that an amount will be outstanding after the due date, then that taxpayer should apply to Inland Revenue prior to the due date for a pre-emptive arrangement to receive the full benefits of the cancellation provisions (refer to "Cancellation of penalties" on page 27 for more information).

## *Definition of "tax"*

Section 177 of the Tax Administration Act allows for relief in cases of financial hardship if the taxpayer is, or is likely to become liable for payment of tax. Tax is defined in section 3 of the Tax Administration Act but does not include:

- financial support as defined in the Child Support Act 1991
- a student loan repayment obligation.

"Tax" also includes use-of-money interest and civil penalties (late payment, late filing, shortfall and non-electronic filing penalties).

## *Financial difficulties at the time of application*

Section 177 provides for relief for taxpayers who are in financial difficulties at the time of application. Inland Revenue considers "financial difficulties" arise when a taxpayer's financial position is such that debts cannot be paid on time, and either:

- there is a real prospect that creditors will be able to have the taxpayer put into liquidation, or adjudicated bankrupt, or
- the taxpayer's debts are a substantial limitation in carrying out normal income producing activities.

For further discussion on "financial difficulties" refer to *Tax Information Bulletin Vol 6, No 14 (June 1995).*

In order for Inland Revenue to determine if a taxpayer is in financial difficulty, Inland Revenue will request details of the taxpayer's financial position, which would normally include details of income and expenditure, assets and liabilities. It may be necessary for Inland Revenue to obtain this information in writing.

On reviewing the information provided, and depending on the amount of debt and/or the length of time of the proposed arrangement, Inland Revenue may request a more detailed breakdown or further information. For example, asset valuations, profit and loss statements, balance sheets, lists of debtors and creditors.

If a taxpayer has the ability to realise assets (eg the ability to refinance, sell property, or surrender insurance policies) to pay the debt, then an arrangement may not be appropriate. However, the size of the debt and the length of time of the proposed arrangement will be taken into account by Inland Revenue when considering an application for an arrangement.

In addition, Inland Revenue will recognise a spouse's "protected interest" in a matrimonial home or any rights protected by the *Joint Family Homes Act 1964*.

Where the debt is only a few hundred dollars and will be paid within a short period of time, Inland Revenue would not expect property, such as a house to be sold before accepting an instalment arrangement.

## Net present value

When considering an application for an arrangement Inland Revenue will consider the net present value of the proposed payments.

The net present value calculation recognises the time value of money—interest, as well as the probability of payment—risk. The proposed payments are discounted for the time value of money and for the likelihood of receiving the money. Inland Revenue needs to determine the amount, date, and probability of each payment and apply an appropriate discount rate. The discount rate is calculated from published government stock rates. Inland Revenue uses a calculation that involves:

- the amount of payment, multiplied by
- the probability of payment (for risk), divided by
- the discount factor appropriate to the term (for interest).

In order to ensure the net present value of a recovery is maximised, the proposal then needs to be compared to the net present value of other viable options. To achieve this Inland Revenue will compare the net present value of an arrangement against the net present value of other actions, ie deferred collection or legal proceedings.

Where a proposed arrangement is for an amount less than $10,000 and for less than 12 months duration the Commissioner considers net present value to be maximised when the following conditions are met:

- the proposed arrangement would lead to a monetary return to Inland Revenue
- write-off or remission would produce less return than the proposed arrangement
- legal proceedings would produce less return than the proposed arrangement over the same duration
- Inland Revenue would incur costs by taking legal proceedings.

Where the debt is greater than $10,000 or the proposed arrangement is for longer than 12 months, then a net present value calculation will be required if there are other viable options. A detailed explanation (and examples) of the net present value calculation can be found in *Tax Information Bulletin Vol 6, No 14 (June 1995)* which sets out Inland Revenue's practice for hardship relief applications.

## Other considerations

When considering a request for an arrangement, Inland Revenue will also take into account the following factors:

- whether the proposal is realistic
- the taxpayer's compliance history
- the likelihood of future compliance
- whether the taxpayer previously had and adhered to an arrangement
- whether the taxpayer has filed all required returns
- protection of the integrity of the tax system (if a taxpayer is continuing in business, or has a continuing income stream which is not subject to source deductions, then future compliance must also be considered).

## Entering into an arrangement

### *Date arrangement is entered into*

The date the arrangement is "entered into" is taken into account when cancelling penalties. Inland Revenue considers two possible dates that can be used are:

- the date the application is received (telephone call or letter), or
- the date that additional information is received in support of the application.

If an application is incomplete Inland Revenue will require any additional information to be received by a set date. Therefore a date will need to be agreed to by Inland Revenue and the taxpayer, otherwise for practical purposes, the arrangement will start on the date that the complete information is received.

### *Length of arrangement*

There is no legislative time limit for an arrangement. However, the Commissioner considers it necessary and desirable, in order to maximise the net present value of any recovery, that arrangements are over a shorter period of time, rather than a longer period of time. This is because the longer the period of time the greater the risk of non-payment and the greater the loss for time value of money.

### One or more payments

Relief by way of an arrangement can be by one lump sum payment or payment by instalments. Instalments need not be at regular time intervals or of regular amounts however this may be preferable for ease of payment.

### Cancellation of relief

Section 177 (5) provides for relief to be cancelled if:

- information provided by the taxpayer is misleading
- Inland Revenue receives further information relating to the taxpayers affairs, as they were on the date on which relief was granted, and
- the Commissioner considers it was inappropriate in light of the information received to have granted relief.

By way of examples:

- if a taxpayer advises they were paying rent but in fact they were paying a mortgage on their own home, and had equity in that home, it may not have been appropriate for the Commissioner to have granted relief
- where a taxpayer has a vested right to income or assets of a trust, and this was not disclosed to the Commissioner.

### No right of objection or challenge

There is no statutory right to challenge or object to any decision of the Commissioner to grant or cancel relief under section 177(3) or 177(5).

However if a taxpayer does not agree with the Commissioner's decision not to grant relief, the taxpayer has other review options open to them, eg a request for review can be initially made to the Inland Revenue officer involved or their reporting officer, or to the Office of the Ombudsmen. Judicial review may also be an available option.

### Arrangements for student loan repayment obligations

The definition of tax in section 3 TAA specifically excludes student loan repayment obligations. Therefore Inland Revenue cannot enter into arrangements with taxpayers for repayment of student loan repayment obligations under section 177 TAA.

Inland Revenue considers that when the general recovery provisions, as provided for in section 156 TAA are exercised in conjunction with the Commissioner's discretion under section 6A, the Commissioner is allowed to enter into arrangements for student loan debt, if in the circumstances, there is a reasonable basis for believing that such steps will result in the collection of the highest net revenue over time, having regard to the factors listed in section 6A(3).

To ensure consistency, it is appropriate to have substantially the same criteria and processes for all arrangements. Therefore the criteria the Commissioner will use for arrangements for outstanding student loan repayment obligations are:

- any application for relief by way of arrangement may be made orally or in writing
- an application for relief must be for an amount that is, or is likely to become, liable for payment
- the taxpayer must be in financial difficulties at the time of application
- an arrangement must result in the collection of highest net revenue over time
- an arrangement can be for one lump sum payment or two or more instalments.

### Collection of highest net revenue over time

The "collection of highest net revenue over time" is not defined in the Tax Acts and has yet to be absolutely defined by the Courts. However, it would appear to be more than just collecting "as much as possible in as short a time as possible". Consideration also needs to be given to the continuing collection of revenue over a longer period of time.

For example, a taxpayer may be able to repay a student loan debt by instalment over nine months by continuing in business, and by continuing in business will be able to pay future taxes on time.

However, in a similar example, a taxpayer may be able to repay a student loan debt by instalment over nine months by continuing in business, but the future prospects of that business show that the taxpayer will not be able to meet future taxes on time. This creates the risk of future debt arising. In this instance, some other form of action (such as issuing legal proceedings) may result in the collection of highest net revenue over time.

When considering the collection of highest net revenue Inland Revenue will take into account the factors listed under "Other Considerations".

## All arrangements

### Cancellation of penalties

If an arrangement has been complied with, section 183B TAA allows the Commissioner to:

- reduce the first late payment penalty by 60% if the arrangement was agreed to before the due date, and
- cancel any late payment penalties incurred on the debt during the term of the arrangement.

Cancellation applies where a debt has been paid by way of one or more payments under an arrangement with the Commissioner.

As cancellation of penalties only applies if a taxpayer has complied with the taxpayer's obligations under the arrangement, the penalties are cancelled at the end of the arrangement. Penalties will continue to be shown on *Statements of account* until the end of the arrangement.

Interest will continue to accrue and be payable on the debt, throughout the term of the arrangement, as provided by legislation.

Pursuant to section 6A TAA Inland Revenue will also cancel penalties applicable to arrangements for payment of student loan repayment obligations.

### *Conditions*

Any arrangement entered into with Inland Revenue will be subject to certain conditions including:

- all current taxes must be paid, and returns filed, by the due date
- termination of the arrangement if the terms are not adhered to without prior agreement
- interest will be charged and payable up to the date of payment in full (taxpayers should contact Inland Revenue for the final instalment amount)
- any credits that arise in the taxpayer's account will be offset against the amount owed
- late payment penalties incurred during the course of an instalment arrangement will be cancelled, providing all payments are made on time.

### *Adhering to the arrangement*

If a taxpayer cannot meet one of the payments by the agreed date, they should contact Inland Revenue to advise the reason that the payment will not be made on time. Any late payment is a breach of the arrangement and Inland Revenue may cancel the arrangement, depending on the reason for the late payment and the number of payments missed.

### *Reviewing arrangements*

Where arrangements are over a long period of time, eg over 12 months, Inland Revenue considers it appropriate to review the arrangement and the taxpayer's circumstances. Such a review will consider whether the arrangement is still appropriate to the taxpayer's financial circumstances and may therefore require updated financial information from the taxpayer.

### *Making the payments*

Inland Revenue prefers that taxpayers pay their instalment arrangement on a regular basis by automatic payment from their bank account. Another option is to make payments to any WestpacTrust branch with cash or by cheque, or to send cheques to Inland Revenue by the agreed dates.

### *Confirmation*

Inland Revenue will issue confirmation of an arrangement in writing. This will include the terms and conditions and the commencement date of the arrangement. If the taxpayer disagrees with any of the terms and conditions they should contact the Inland Revenue officer who issued the confirmation immediately.

This Standard Practice Statement was signed by me on 11 April 2001.

**Margaret Cotton**

National Manager
Technical Standards

# 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.

# TAX AVOIDANCE SCHEME – UNSUCCESSFUL APPEAL AGAINST COMMISSIONER'S ASSESSMENTS

| | |
|---|---|
| **Case:** | *O'Neil v CIR* |
| **Decision date:** | 11 April 2001 |
| **Act:** | Income Tax Act 1976 |

## Summary

The taxpayers' appeal from the Court of Appeal decision reported at [1999] 1 NZLR 275 was dismissed.

## Facts

The four appellants were participants in the JG Russell template tax avoidance scheme. They had challenged the correctness of the assessments and their validity through a series of proceedings in the Taxation Review Authority, High Court and Court of Appeal (reported as *Case R25* (1994) 16 NZTC 6,120, *Miller & O'Neil v CIR* 18 NZTC 13,001, (1997) 18 NZTC 13, 127 and (1997) 18 NZTC 13, 219 in the High Court and in the Court of Appeal as [1999] 1 NZLR 275). They consistently failed, and appealed against the judicial review aspects of the Court of Appeal judgment. As a result, however, the correctness of the assessments was also challenged collaterally.

The scheme worked by converting the profits of the trading companies into capital receipts to the shareholders. The first step was for the shareholders to agree to sell their shares to a company controlled by Mr Russell, the price being left outstanding and secured by a mortgage over the shares. This transaction was not intended to be a sale in any commercial sense. The vendors declared themselves trustees of the shares for Mr Russell's company but remained on the register and remained directors, continuing to run the company as before. They also had an option to repurchase the shares when the scheme had run its course. The sale had two purposes, both of which were entirely tax-related. The first was to make the appellants' company part of a group of companies controlled by Mr Russell, some of which had tax losses. This would enable Mr Russell to take advantage of the group relief provisions in section 191. The second was to create a debt to the shareholders which could be satisfied out of the profits of their company.

The next step was for the trading company to agree to pay its net profits, half-yearly, to the purchaser company controlled by Mr Russell. This was an administration charge. It was income in the hands of the purchaser company, but group relief under section 191 was relied upon to avoid tax. In reality the administration charge was partly a conduit for the money which was to be returned to the shareholders and partly a fee payable to Mr Russell for the use of the scheme. The proportion was calculated by reference to the amount of tax saved. In addition, the company paid a consultancy fee representing 5% of the administration charge to another Russell company.

The third stage was for the Russell company to pay the shareholders their part of the administration charge. This was designated an instalment of the purchase price. The amount of the purchase price was calculated, not by reference to the value of the company but to enable the scheme to mop up a given number of years of expected net profit. When that had been accomplished, the appellants could exercise their option to repurchase the company and carry on as if nothing had happened. Alternatively (as happened in the case of the O'Neils) Mr Russell's company could agree to buy a release of the option for a sum which would create a sufficient new capital debt to enable the scheme to start up again.

# Decision

## Section 99

The Russell scheme is a plain case of tax avoidance. The distinction between tax mitigation and tax avoidance is unhelpful: it describes the conclusion rather than providing a signpost to it. It is unwise to use the "impropriety" test endorsed by Baragwanath J in the High Court proceedings. This suggests a moral judgement which is inappropriate. It is better to concentrate on the nature of the concepts by reference to which tax has been imposed. In many cases the legislation will use terms such as income, loss and gain, which refer to commercially real concepts, not constrained by precise legal analysis. A composite transaction which may appear not to create any tax liability if it is analysed with "due regard to the juristic autonomy of each of its parts", can be viewed in commercial terms as a unitary arrangement. This is a prime example of the kind of arrangement which section 99 was intended to counteract: section 99 enables the transaction to be taxed consistently with its commercial reality. On the other hand, the adoption of a course of action which avoids tax should not fall within section 99 if the legislation, upon its true construction, was intended to give the taxpayer the choice of avoiding it in that way.

## The limits of judicial review

Apart from what was, in substance, an allegation of bad faith in the Commissioner's motive for making the assessments, all the other points taken in the judicial review proceedings and on appeal were directed to showing that the assessments were erroneous in law or based upon an incorrect appreciation of the facts. These are matters which it was open to the appellants to raise in the statutory objection and, on further appeal, to the courts. In view of the course which the proceedings had taken, their Lordships dealt with all of the points. But they must not be taken as accepting that relief by way of judicial review would have been appropriate. It will only be in exceptional cases that judicial review should be granted where the challenges can be addressed in the statutory objection procedure. Such exceptional circumstances may arise most typically where there is abuse of power, but they have also been held to arise where the error of law claimed is fatal to the exercise of statutory power and where it would be wasteful to require recourse to the objection procedure.

## Reopening under the time bar

The taxpayers' argument was that they had included various sums paid by way of remuneration by the trading companies, and that the Commissioner's reconstruction had treated the money they received under the scheme as if it were remuneration, so that money was income of a nature and from a source which had been disclosed.

This argument, their Lordships held, is based upon a misapprehension about the effect of a reconstruction. The Commissioner's duty is to make an assessment with regard to what, in his opinion, was likely to have happened if there had been no scheme. But that does not mean that he is actually rewriting history. The reconstruction is purely hypothetical and provides a yardstick for the assessment. Although the income is deemed to have been derived by the person assessed (see section 99(4)), the nature and source of the income remains what it is was, namely the company's net profits routed to the shareholders through Mr Russell's company. None of this was disclosed. Therefore the Commissioner was entitled to reopen.

## The effect of non-compliance with the section 99 Policy Statement

The Commissioner's delegate had in fact complied with the Policy Statement set out in *TIB* Vol 1, No 8 (February 1990). In any event this statement was not intended to lay down conditions at all. It simply reassures the public that the Commissioner and his officers will think very carefully about whether section 99 applies to any particular case. But his statutory duty is to reassess the taxpayer in any case in which section 99 applies and this duty cannot be made subject to internal conditions.

## Irrationality

An allegation that the assessments were clearly wrong on their face, so must be irrational and therefore void, was met with the response that "Their Lordships consider that this submission can only be called preposterous".

## Abuse of power

The Commissioner had started his Russell strategy by assessing the trading companies for avoided tax. This was known, after the event, as "Track A". It transpired that these companies, by the time of assessment and collection at least, were often empty shells. The Commissioner changed his strategy to assessing the shareholders. This was known as "Track B".

The allegation was that the Commissioner, in assessing the taxpayers with funds, was motivated solely by the fact that those taxpayers could pay the resultant assessments, irrespective of whether they were truly liable. Their Lordships considered whether this was this the case, and if so, did that invalidate the assessments.

Their Lordships held that the first point was decided against the taxpayers as a matter of fact, in that while these taxpayers' ability to pay was clearly a reason, it was not the sole reason.

On the second point, they held that there was no reason why an arrangement should not confer tax advantages upon more than one person and this one plainly did. There was no reason why the Commissioner should not adjust the assessable income of each or any of these persons, provided his assessments were consistent with each other. He was entitled to assess any party who had obtained a tax advantage.

### *Inconsistent assessments*

While "Track A" and "Track B" reassessments were mutually inconsistent by virtue of section 99(4), their Lordships considered that an assessment which wrongly includes income deemed, by virtue of section 99(4), to be the income of someone else is not void, any more than an assessment which is wrong on some other ground. It is merely open to objection under section 30. It follows that the Commissioner or Taxation Review Authority may remedy the position by amending the inconsistent assessment at any time before the objection proceedings have run their course. It is only when the assessments are no longer open to amendment that an objection on grounds of inconsistency will be incapable of remedy.

### *Tentative assessments*

The change from Track A to Track B did not mean that the Track B assessments were tentative or provisional in terms of the decision in *Commissioner of Inland Revenue v Canterbury Frozen Meat Co Ltd* [1994] 2 NZLR 681, which was far removed from the present case. As the Commissioner had defended his Track B assessments through thick and thin in the various lower courts, in all of which they have been held to be valid, the Privy Council concluded that "It would be a misuse of language to describe them as tentative".

# REGULAR FEATURES

# DUE DATES REMINDER

## May 2001

7 **Employer deductions and Employer monthly schedule**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

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

21 **Employer deductions**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

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

**Employer deductions and Employer monthly schedule**

Small employers (less than $100,000 PAYE and SSCWT deductions per annum)

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

31 **ACC due date for employers:**

- Annual 2001 *ACC residual claims levy statement (IR 68A)* and payment due

**FBT return and payment due**

**GST return and payment due**

## June 2001

5 **Employer deductions and Employer monthly schedule**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

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

20 **Employer deductions**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

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

**Employer deductions and Employer monthly schedule**

Small employers (less than $100,000 PAYE and SSCWT deductions per annum)

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

29 **GST return and payment due**

*These dates are taken from Inland Revenue's* Smart business tax due date calendar 2001–2002

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

This page shows the draft public binding rulings, interpretation statements, standard practice statements, and other items that we now have available for your review. You can get a copy and give us your comments in these ways:

**By post:** Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our other offices.

**By internet:** Visit **www.ird.govt.nz/rulings/**
Under the Adjudication & Rulings heading, click on "Drafts out for comment" to get to "The Consultation Process". Below that heading, click on the drafts that interest you. You can return your comments by the internet.

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________________________________

| | *Public rulings* | *Comment deadline* |
|---|---|---|
| ☐ | **PU0059:** Nine rulings dealing with the application of the Estate and Gift Duties Act 1968 and the Income Tax Act 1994 to nine different arrangements. These rulings replace BR Pub 96/1 and BR Pub 96/2A, as conclusions in those earlier rulings have changed as a result of the House of Lords decision in *Ingram v IRC* [1999] 1 All ER 297 | 31 May 2001 |

| | *Issues papers* | *Comment deadline* |
|---|---|---|
| ☐ | **IP3502:** Interest deductibility in certain arrangements | 31 May 2001 |

*Items are not generally available once the comment deadline has passed*

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

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