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This TIB has no appendix

Inland Revenue
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This *Tax Information Bulletin* is also available on the internet in PDF format. Our website is at:

www.ird.govt.nz

It has other Inland Revenue information that you may find useful, including any draft binding rulings and interpretation statements that are available, and many of our information booklets.

If you find that you prefer to get the *TIB* from our website and no longer need a paper copy, please let us know so we can take you off our mailing list. You can do this by completing the form at the back of this *TIB*, or by emailing us at **IRDTIB@datamail.co.nz** with your name and details.

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 item is available for review/comment this month, having a deadline of 30 April 2002.

Ref.	Draft type	Description
IS3448	Interpretation Statement	Home as a business site or work base—Motor vehicle use—FBT consequences

Please see page 25 for details on how to obtain a copy.

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**

PRODUCT RULING – BR PRD 01/35

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by Hertz Fleetlease Limited.

Taxation Laws

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

This Ruling applies in respect of sections BG 1, CI 3(1), GC 15, GC 17, and Schedule 2, Part A, clause 1(c).

The Arrangement to which this Ruling applies

The Arrangement is the leasing of motor vehicles by Hertz Fleetlease Limited ("Hertz") to employers ("Lessees") under its 12x12x12-month lease product, when the Lessees provide the motor vehicles to their employees for their private use and enjoyment. Further details of the Arrangement are set out in the paragraphs below.

1. Hertz conducts a fleet leasing business. One of the options offered to customers is a motor vehicle lease with a lease term of 12 months, and the possibility of entering two further leases of 12 months respectively. This option is referred to as a 12x12x12-month lease.

2. The lease from Hertz to the Lessee is made under the terms and conditions contained in the Master Lease Agreement and Guarantee ("MLA"), the Vehicle Quotation and the Vehicle Schedule (copies of which were received by the Rulings Unit on 10 November 2001. In addition, a revised version of the Vehicle Quotation for this particular Arrangement was received on 30 November 2001).

3. There are no penalties imposed on Lessees if they do not take up a further lease of the vehicle.

4. There is no provision in the lease documentation that offers an incentive to Lessees if they take up a further lease of the vehicle.

5. Hertz expects Lessees to find the 12x12x12-month lease product appealing because it provides greater flexibility to employers than standard leasing arrangements.

6. The leasing of the motor vehicles by Hertz to lessees comprises the following steps:

   1. Initial Processes

   After an initial sales enquiry Hertz consults with the potential customer to determine their leasing requirements. This may be a combination of full maintenance or non-maintained leases, fleet management services and other lease services.

   A proposal is constructed and presented to the customer for consideration. This document sets out in broad detail what products and services Hertz offers. A credit application form is also attached. Completion of this form is the next step should the prospective lessee wish to apply for approval to commence a relationship with Hertz.

   Once the lessee's credit application is approved, a Master Lease Agreement is drafted and sent to the lessee for their consideration. This document establishes all the terms and conditions on which the business relationship between the lessee and Hertz will be based. All vehicles that are subsequently leased to the lessee are subject to this Master Lease Agreement. The individual vehicle schedules produced at the start of each vehicle lease term refer back to the Master Lease Agreement.

If the employer is already a client of Hertz, and wishes to extend their relationship with Hertz, the lessee can request Hertz to provide a quotation for a particular vehicle. The request should outline the vehicle make and model, accessories required, the lease term and the required kilometres. Hertz will then provide the lessee with a quotation. If the prospective lessee accepts the quotation a vehicle requisition is produced detailing the order. Once the requisition is signed and returned to Hertz an order is placed with the vehicle distributor.

On delivery of the vehicle a vehicle schedule is produced confirming the details of the lease (delivery date, lease term, driver details, vehicle details etc). The schedule discloses, in addition to the customer's personal number (referred to as the "contract number") a schedule number that is unique to each individual lease that is entered.

2. Terms and Conditions of the Master Lease Agreement

The Master Lease Agreement does not refer to the particular vehicles subject to its terms. Specific details such as the make and model, the registration number, the term of the lease and the cost of the lease are contained in the vehicle schedule, which is the Second Schedule to the Master Lease Agreement. An example of a completed vehicle schedule is enclosed with this application. The terms of the vehicle schedule are incorporated into the Master Lease Agreement.

Items 12(a) and 12(b) of the vehicle schedule specify the contract start date and the expected contract end date. The term of the lease is specified as 12 months. There is no obligation or right of renewal on the part of either party to the lease. In addition, there are no penalties imposed if a further lease is not entered.

3. Procedure at the end of the lease

Prior to the end of the original lease term Hertz advises lessees that the vehicle lease is due to expire and asks whether the lessee wishes to enter a new lease (the standard letter issued by Hertz for this purpose is enclosed).

If the lessee intends to enter into a subsequent lease in respect of the leased vehicle, a new lease is entered for a further 12-month term. We have enclosed an example of a vehicle schedule issued when a lessee enters a second or third lease. A separate schedule number is assigned to the new lease. The new rental rate will be lower, subject to the expected mileage being adhered to, and is based on the depreciated value of the vehicle.

4. Vehicle Valuation

Under item 7 of the standard vehicle schedule Hertz is required to specify the market value of the vehicle at the start of the 12-month lease period. The market value assessment takes into account the type of car, its age, condition and mileage. When providing a quotation Hertz provides lessees with market value forecasts of the value of the motor vehicle for subsequent periods. However, these forecasts are for indicative purposes only. Market values are reviewed prior to the commencement of any subsequent leases.

7. At a time between one and three months prior to the end of each separate lease term, Hertz contacts Lessees to advise that the vehicle lease is due to expire and asks whether the lessee wishes to enter a new lease. The customer is asked for the current kilometre reading as well as the expected usage for the next lease period (if one is to be entered into). The customer is also asked whether they wish to have Excess Kilometre charges settled as a separate charge or amortised over any new lease. From this information, a new quote is put to the client for approval or rejection.

8. The standard letter advising a Lessee that the lease term is due to expire is sent one month before the expiry of the lease (a revised copy of this standard letter was received by the Rulings Unit on 12 December 2001).

9. There is no obligation or right of renewal on either party in relation to any subsequent lease term.

10. If the Lessee does not wish to lease the vehicle for a further lease term of 12 months, the vehicle is returned to Hertz upon expiry of the lease. If the Lessee wishes to retain the vehicle, a new lease is entered into for a further period.

11. This new lease term is assigned a separate Vehicle Schedule number, confirming the fact that a new lease term has been entered into, rather than the old one being extended. In all cases, the old record for the previous lease is noted as having terminated. In addition, a new Vehicle Quotation and Vehicle Schedule are required for each new lease. The general conditions set out in the MLA are incorporated into the new lease agreement.

12. The new Vehicle Schedule will outline the contract start date and the expected contract end date of the new lease.

13. The Vehicle Schedule will also include the specified distance of the lease, the maximum permitted lease term of 12 months and the market value of the vehicle. The Vehicle Schedule will also record the odometer reading of the vehicle at the contract start date and the odometer reading at the contract end date.

14. The rental rates for the second and third agreements (as outlined in the Vehicle Quotation) will be lower than for the first agreement. The rates reduce as the depreciation on the vehicle reduces. The market value of the vehicle is calculated at the time of the commencement of the lease and is included in the new Vehicle

Schedule. The lease documents do not confer on either party to the lease a right or option to renew, extend or vary the term of the lease.

15. Before the new lease commencing, Hertz will determine the market value of the vehicle at the start of each new 12-month lease period, taking into account the type of vehicle, its age, condition and mileage. Hertz advises Lessees of the market valuation of the vehicle, and provides market value forecasts for subsequent periods for indicative purposes only. Market values are reviewed before the commencement of subsequent leases (if any) to ensure whether the forecasts are accurate or need to be changed in any way.

16. The Lessee may not assign or transfer any of its rights or obligations pursuant to clause 21.4 of the MLA.

17. The total term of the leases does not exceed 75% of the estimated useful life of the vehicle.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicles leased by a Lessee under this Arrangement are leased for the private use or enjoyment of their employees or made available for the private use or enjoyment of their employees.

b) The lease is not a "finance lease" as defined in section OB 1.

c) No Lessee is associated with Hertz pursuant to section OD 7.

d) No contract, agreement, plan or understanding (whether enforceable or unenforceable) is entered into between Hertz and the Lessee in relation to the Arrangement, other than the MLA, the Vehicle Quotation and the Vehicle Schedule.

e) Any rental rate for the Lessee for a subsequent lease period is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances and general service components of the lease including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that Lessee.

f) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) that any party will, or will if requested, renew, extend or vary the lease term.

g) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that the parties will enter into a further lease in respect of the vehicle.

h) There is no other documentation, agreements, or contracts that concern or affect the terms of the leases entered into under this Arrangement apart from the MLA, the Vehicle Quotation and the Vehicle Schedule.

i) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that there will be penalties for choosing not to enter into a further lease in respect of the vehicle.

j) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applying to each lease are not in any way based on a lease of the relevant motor vehicle for more than 12 months.

How the Taxation Laws apply to the Arrangement

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

- The market value of a motor vehicle under this arrangement, for the purposes of calculating the fringe benefit value of that vehicle under section CI 3(1) and Schedule 2, Part A, clause 1(c), is determined on the date on which each new 12 month lease commences.
- Section GC 15 does not apply to the Arrangement.
- Section GC 17 does not apply to the Arrangement.
- Section BG 1 does not apply to negate or vary the conclusions above.

The period or income year for which this Ruling applies

This Ruling will apply for the period 21 December 2001 to 21 December 2004.

This Ruling is signed by me on the 21st day of December 2001.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 01/36

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by Hertz Fleetlease Limited.

Taxation Laws

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

This Ruling applies in respect of sections BG 1, CI 3(1), GC 15, GC 17, and Schedule 2, Part A, clause 1(c).

The Arrangement to which this Ruling applies

The Arrangement is the leasing of motor vehicles by Hertz Fleetlease Limited ("Hertz") to employers ("Lessees") under its 15x15x15-month lease product, when the Lessees provide the motor vehicles to their employees for their private use and enjoyment. Further details of the Arrangement are set out in the paragraphs below.

1. Hertz conducts a fleet leasing business. One of the options offered to customers is a motor vehicle lease with a lease term of 15 months, and the possibility of entering two further leases of 15 months respectively. This option is referred to as a 15x15x15-month lease.

2. The lease from Hertz to the Lessee is made under the terms and conditions contained in the Master Lease Agreement and Guarantee ("MLA"), the Vehicle Quotation and the Vehicle Schedule (a copy of the MLA was received by the Rulings Unit on 10 November 2001. The sample Vehicle Quotation, in relation to this particular Arrangement, was received on 30 November 2001 and the sample Vehicle Schedule was received on 6 December 2001).

3. There are no penalties imposed on Lessees if they do not take up a further lease of the vehicle.

4. There is no provision in the lease documentation that offers an incentive to Lessees if they take up a further lease of the vehicle.

5. Hertz expects Lessees to find the 15x15x15-month lease product appealing because it provides greater flexibility to employers than standard leasing arrangements.

6. The leasing of the motor vehicles by Hertz to lessees comprises the following steps:

1. Initial Processes

After an initial sales enquiry Hertz consults with the potential customer to determine their leasing requirements. This may be a combination of full maintenance or non-maintained leases, fleet management services and other lease services.

A proposal is constructed and presented to the customer for consideration. This document sets out in broad detail what products and services Hertz offers. A credit application form is also attached. Completion of this form is the next step should the prospective lessee wish to apply for approval to commence a relationship with Hertz.

Once the lessee's credit application is approved, a Master Lease Agreement is drafted and sent to the lessee for their consideration. This document establishes all the terms and conditions on which the business relationship between the lessee and Hertz will be based. All vehicles that are subsequently leased to the lessee are subject to this Master Lease Agreement. The individual vehicle schedules produced at the start of each vehicle lease term refer back to the Master Lease Agreement.

If the employer is already a client of Hertz, and wishes to extend their relationship with Hertz, the lessee can request Hertz to provide a quotation for a particular vehicle. The request should outline the vehicle make and model, accessories required, the lease term and the required kilometres. Hertz will then provide the lessee with a quotation. If the prospective lessee accepts the quotation a vehicle requisition is produced detailing the order. Once the requisition is signed and returned to Hertz an order is placed with the vehicle distributor.

On delivery of the vehicle a vehicle schedule is produced confirming the details of the lease (delivery date, lease term, driver details, vehicle details etc). The schedule discloses, in addition to the customer's personal number (referred to as the "contract number") a schedule number that is unique to each individual lease that is entered.

2. Terms and Conditions of the Master Lease Agreement

The Master Lease Agreement does not refer to the particular vehicles subject to its terms. Specific details such as the make and model, the registration number, the term of the lease and the cost of the lease are contained in the vehicle schedule, which is the Second Schedule to the Master Lease Agreement. An example of a completed vehicle schedule is enclosed with this application. The terms of the vehicle schedule are incorporated into the Master Lease Agreement.

Items 12(a) and 12(b) of the vehicle schedule specify the contract start date and the expected contract end date. The term of the lease is specified as 15 months. There is no obligation or right of renewal on the part of either party to the lease. In addition, there are no penalties imposed if a further lease is not entered.

3. Procedure at the end of the lease

Prior to the end of the original lease term Hertz advises lessees that the vehicle lease is due to expire and asks whether the lessee wishes to enter a new lease (the standard letter issued by Hertz for this purpose is enclosed).

If the lessee intends to enter into a subsequent lease in respect of the leased vehicle, a new lease is entered for a further 15-month term. We have enclosed an example of a vehicle schedule issued when a lessee enters a second or third lease. A separate schedule number is assigned to the new lease. The new rental rate will be lower, subject to the expected mileage being adhered to, and is based on the depreciated value of the vehicle.

4. Vehicle Valuation

Under item 7 of the standard vehicle schedule Hertz is required to specify the market value of the vehicle at the start of the 15-month lease period. The market value assessment takes into account the type of car, its age, condition and mileage. When providing a quotation Hertz provides lessees with market value forecasts of the value of the motor vehicle for subsequent periods. However, these forecasts are for indicative purposes only. Market values are reviewed prior to the commencement of any subsequent leases.

7. At a time between one and three months prior to the end of each separate lease term, Hertz contacts Lessees to advise that the vehicle lease is due to expire and asks whether the lessee wishes to enter a new lease. The customer is asked for the current kilometre reading as well as the expected usage for the next lease period (if one is to be entered into). The customer is also asked whether they wish to have Excess Kilometre charges settled as a separate charge or amortised over any new lease. From this information, a new quote is put to the client for approval or rejection.

8. The standard letter advising a Lessee that the lease term is due to expire is sent one month before the expiry of the lease (a revised copy of this standard letter was received by the Rulings Unit on 12 December 2001).

9. There is no obligation or right of renewal on either party to the lease in relation to any subsequent lease term.

10. If the Lessee does not wish to lease the vehicle for a further lease term of 15 months, the vehicle is returned to Hertz upon expiry of the lease. If the Lessee wishes to retain the vehicle, a new lease is entered into for a further period.

11. This new lease term is assigned a separate Vehicle Schedule number, confirming the fact that a new lease term has been entered into rather than the old one being extended. In all cases, the old record for the previous lease is noted as having terminated. In addition, a new Vehicle Quotation and Vehicle Schedule are required for each new lease. The general conditions set out in the MLA are incorporated into the new lease agreement.

12. The new Vehicle Schedule will outline the contract start date and the expected contract end date of the new lease.

13. The Vehicle Schedule will also include the specified distance of the lease the maximum permitted lease term of 15 months and the market value of the vehicle. The Vehicle Schedule will also record the odometer reading of the vehicle at the contract start date and the odometer reading at the contract end date.

14. The rental rates for the second and third agreements (as outlined in the Vehicle Quotation) will be lower than for the first agreement. The rates reduce as the depreciation on the vehicle reduces. The market value of the vehicle is calculated at the time of the commencement of the lease and is included in the new Vehicle Schedule. The lease documents do not confer on either party to the lease a right or option to renew, extend or vary the term of the lease.

15. Before the new lease commencing, Hertz will determine the market value of the vehicle at the start of the new 15-month lease period, taking into account the type of vehicle, its age, condition and mileage. Hertz advises Lessees of the market valuation of the vehicles, and provides market value forecasts for subsequent periods for indicative purposes only. Market values are reviewed before the commencement of subsequent leases (if any) to ensure whether the forecasts are accurate or need to be changed in any way.

16. The Lessee may not assign or transfer any of its rights or obligations pursuant to clause 21.4 of the MLA.

17. The total term of the leases does not exceed 75% of the estimated useful life of the vehicle.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicles leased by a Lessee under this Arrangement are leased for the private use or enjoyment of their employees or made available for the private use or enjoyment of their employees.

b) The lease is not a "finance lease" as defined in section OB 1.

c) No Lessee is associated with Hertz pursuant to section OD 7.

d) No contract, agreement, plan, or understanding (whether enforceable or unenforceable) is entered into between Hertz and the Lessee in relation to the Arrangement, other than the MLA, the Vehicle Quotation and the Vehicle Schedule.

e) Any rental rate for the Lessee for a subsequent lease period is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances and general service components of the lease, including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that Lessee.

f) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) that any party will, or will if requested, renew, extend or vary the lease term.

g) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that the parties will enter into a further lease in respect of the vehicle.

h) There is no other documentation, agreements, or contracts that concern or affect the terms of the leases entered into under this Arrangement apart from the MLA, the Vehicle Quotation and the Vehicle Schedule.

i) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that there will be penalties for choosing not to enter into a further lease in respect of the vehicle.

j) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applying to each lease are not in any way based on a lease of the relevant motor vehicle for more than 15 months.

How the Taxation Laws apply to the Arrangement

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

- The market value of a motor vehicle under this arrangement, for the purposes of calculating the fringe benefit value of that vehicle under section CI 3(1) and Schedule 2, Part A, clause 1(c), is determined on the date on which each new 15-month lease commences.
- Section GC 15 does not apply to the Arrangement.
- Section GC 17 does not apply to the Arrangement.
- Section BG 1 does not apply to negate or vary the conclusions above.

The period or income year for which this Ruling applies

This Ruling will apply for the period 21 December 2001 to 21 December 2004.

This Ruling is signed by me on the 21st day of December 2001.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 01/37

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by Hertz Fleetlease Limited.

Taxation Laws

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

This Ruling applies in respect of sections BG 1, CI 3(1), GC 15, GC 17, and Schedule 2, Part A, clause 1(c).

The Arrangement to which this Ruling applies

The Arrangement is the leasing of motor vehicles by Hertz Fleetlease Limited ("Hertz") to employers ("Lessees") under its 12x12x12x9-month lease product, when the Lessees provide the motor vehicles to their employees for their private use and enjoyment. Further details of the Arrangement are set out in the paragraphs below.

1. Hertz conducts a fleet leasing business. One of the options offered to customers is a motor vehicle lease with a lease term of 12 months, and the possibility of entering into three further leases with lease terms of 12 months, 12 months and 9 months respectively. This option is referred to as a 12x12x12x9-month lease.

2. The lease from Hertz to the Lessee is made under the terms and conditions contained in the Master Lease Agreement and Guarantee ("MLA"), the Vehicle Quotation, and the Vehicle Schedule (the original MLA and a sample 12 month Vehicle Schedule were received by the Rulings Unit on 10 November 2001. The Vehicle Quotation in relation to this particular Arrangement was received by the Rulings Unit on 30 November 2001, and a sample Vehicle Schedule for a 9-month lease term was provided to the Rulings Unit on 6 December 2001).

3. There are no penalties imposed on Lessees if they do not take up a further lease of the vehicle.

4. There is no provision in the lease documentation that offers an incentive to Lessees if they take up a further lease of the vehicle.

5. Hertz expects Lessees to find the 12x12x12x9-month lease product appealing because it provides greater flexibility to employers than standard leasing arrangements.

6. The leasing of the motor vehicles by Hertz to lessees comprises the following steps:

   1. Initial Processes

   After an initial sales enquiry Hertz consults with the potential customer to determine their leasing requirements. This may be a combination of full maintenance or non-maintained leases, fleet management services and other lease services.

   A proposal is constructed and presented to the customer for consideration. This document sets out in broad detail what products and services Hertz offers. A credit application form is also attached. Completion of this form is the next step should the prospective lessee wish to apply for approval to commence a relationship with Hertz.

   Once the lessee's credit application is approved, a Master Lease Agreement is drafted and sent to the lessee for their consideration. This document establishes all the terms and conditions on which the business relationship between the lessee and Hertz will be based. All vehicles that are subsequently leased to the lessee are subject to this Master Lease Agreement. The individual vehicle schedules produced at the start of each vehicle lease term refer back to the Master Lease Agreement.

   If the employer is already a client of Hertz, and wishes to extend their relationship with Hertz, the lessee can request Hertz to provide a quotation for a particular vehicle. The request should outline the vehicle make and model, accessories required, the lease term and the required kilometres. Hertz will then provide the lessee with a quotation. If the prospective lessee accepts the quotation a vehicle requisition is produced detailing the order. Once the requisition is signed and returned to Hertz an order is placed with the vehicle distributor.

   On delivery of the vehicle a vehicle schedule is produced confirming the details of the lease (delivery date, lease term, driver details, vehicle details etc). The schedule discloses, in addition to the customer's personal number (referred to as the "contract number") a schedule number that is unique to each individual lease that is entered.

   2. Terms and Conditions of the Master Lease Agreement

   The Master Lease Agreement does not refer to the particular vehicles subject to its terms. Specific details such as the make and model, the registration number, the term of the lease and the cost of the lease are contained in the vehicle schedule, which is the Second Schedule to the Master Lease Agreement. An example of a completed vehicle schedule is

enclosed with this application. The terms of the vehicle schedule are incorporated into the Master Lease Agreement.

Items 12(a) and 12(b) of the vehicle schedule specify the contract start date and the expected contract end date. The term of the lease is specified as 12 (or 9 months if a fourth lease is entered). There is no obligation or right of renewal on the part of either party to the lease. In addition, there are no penalties imposed if a further lease is not entered.

3. Procedure at the end of the lease

Prior to the end of the original lease term Hertz advises lessees that the vehicle lease is due to expire and asks whether the lessee wishes to enter a new lease (the standard letter issued by Hertz for this purpose is enclosed).

If the lessee intends to enter into a subsequent lease in respect of the leased vehicle, a new lease is entered for a further 12 (or 9 months if three 12 month leases have expired). We have enclosed an example of a vehicle schedule issued when a lessee enters a second or third lease. A separate schedule number is assigned to the new lease. The new rental rate will be lower, subject to the expected mileage being adhered to, and is based on the depreciated value of the vehicle.

4. Vehicle Valuation

Under item 7 of the standard vehicle schedule Hertz is required to specify the market value of the vehicle at the start of each lease period. The market value assessment takes into account the type of car, its age, condition and mileage. When providing a quotation Hertz provides lessees with market value forecasts of the value of the motor vehicle for subsequent periods. However, these forecasts are for indicative purposes only. Market values are reviewed prior to the commencement of any subsequent leases.

7. At a time between one and three months prior to the end of each separate lease term, Hertz contacts Lessees to advise that the vehicle lease is due to expire and asks whether the Lessee wishes to enter a new lease. The customer is asked for the current kilometre reading as well as the expected usage for the next lease period (if one is to be entered into). The customer is also asked whether they wish to have Excess Kilometre charges settled as a separate charge or amortised over any new lease. From this information a new quote is put to the client for approval or rejection.

8. The standard letter advising a Lessee that the lease term is due to expire is sent one month before the expiry of the lease (a revised copy of this standard letter was received by the Rulings Unit on 12 December 2001).

9. There is no obligation or right of renewal on either party in relation to any subsequent lease term.

10. If the Lessee does not wish to lease the vehicle for a further lease term of 12 months (or 9 months if a fourth lease is entered into), the vehicle is returned to Hertz upon expiry of the lease. If the Lessee wishes to retain the vehicle, a new lease is entered into for a further period.

11. This new lease term is assigned a separate Vehicle Schedule number, confirming the fact that a new lease term has been entered into, rather than the old one being extended. In all cases, the old record for the previous lease is noted as having terminated. In addition, a new Vehicle Quotation and Vehicle Schedule are required for each new lease. The general conditions set out in the MLA are incorporated into the new lease agreement.

12. The new Vehicle Schedule will outline the contract start date and the expected contract end date of the new lease.

13. The Vehicle Schedule will also include the specified distance of the lease, the maximum permitted lease term of 12 or 9 months and the market value of the vehicle. The Vehicle Schedule will also record the odometer reading of the vehicle at the contract start date and the odometer reading at the contract end date.

14. The rental rates for the second, third and fourth agreements (as outlined in the Vehicle Quotation) will be lower than for the first agreement. The rates reduce as the depreciation on the vehicle reduces. The market value of the vehicle is calculated at the time of the commencement of the lease and is included in the new Vehicle Schedule. The lease documents do not confer on either party to the lease a right or option to renew, extend or vary the term of the lease.

15. Before the new lease commencing, Hertz will determine the market value of the vehicle at the start of the new 12-month lease (or 9-month lease if a fourth lease period is entered into), taking into account the type of vehicle, its age, condition and mileage. Hertz advises Lessees of the market valuation of the vehicles, and provides market value forecasts for subsequent periods for indicative purposes only. Market values are reviewed before the commencement of subsequent leases (if any) to ensure whether the forecasts are accurate or need to be changed in any way.

16. The Lessee may not assign or transfer any of its rights or obligations pursuant to clause 21.4 of the MLA.

17. The total term of the leases does not exceed 75% of the estimated useful life of the vehicle.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicles leased by a Lessee under this Arrangement are leased for the private use or enjoyment of their employees or made available for the private use or enjoyment of their employees.

b) The lease is not a "finance lease" as defined in section OB 1.

c) No Lessee is associated with Hertz pursuant to section OD 7.

d) No contract, agreement, plan, or understanding (whether enforceable or unenforceable) is entered into between Hertz and the Lessee in relation to the Arrangement, other than the MLA, the Vehicle Quotation and the Vehicle Schedule.

e) Any rental rate for the Lessee for a subsequent lease period is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances, and general service components of the lease including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that Lessee.

f) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) that any party will, or will if requested, renew, extend or vary the lease term.

g) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that the parties will enter into a further lease in respect of the vehicle.

h) There is no other documentation, agreements, or contracts that concern or affect the terms of the leases entered into under this Arrangement apart from the MLA, the Vehicle Quotation and the Vehicle Schedule.

i) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally unenforceable or not) at the time of entering into any lease under this Arrangement, that there will be penalties for choosing not to enter into a further lease in respect of the vehicle.

j) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applying to each lease are not in any way based on a lease of the relevant motor vehicle for more than 12 months (or 9 months if a fourth lease is entered into).

How the Taxation Laws apply to the Arrangement

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

- The market value of a motor vehicle under this arrangement, for the purposes of calculating the fringe benefit value of that vehicle under section CI 3(1) and Schedule 2, Part A, clause 1(c), is determined on the date on which each new 12- or 9-month lease commences.
- Section GC 15 does not apply to the Arrangement.
- Section GC 17 does not apply to the Arrangement.
- Section BG 1 does not apply to negate or vary the conclusions above.

The period or income year for which this Ruling applies

This Ruling will apply for the period 21 December 2001 to 21 December 2004.

This Ruling is signed by me on the 21st day of December 2001.

Martin Smith
General Manager (Adjudication & Rulings)

NEW LEGISLATION – ORDERS IN COUNCIL

STUDENT LOAN SCHEME – INTEREST RATES FOR 2002–03

The total student loan scheme interest rate for the 2002-03 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 3.1% and 3.9% respectively for the 2001–02 income year. From 1 April 2002 the base interest rate will increase to 5.1% and the interest adjustment rate will decrease to 1.9%

Student Loan Scheme (Interest Rates) Regulations 2002

FRINGE BENEFIT TAX – PRESCRIBED RATE OF INTEREST ON LOW-INTEREST, EMPLOYMENT-RELATED LOANS

The prescribed rate of interest used to calculate fringe benefit tax for low-interest, employment-related loans has decreased from 7.19% to 6.7% for the quarter beginning 1 January 2002.

The new rate applies from the quarter beginning 1 January 2002.

The rate is reviewed regularly to ensure it is in line with the Reserve Bank's survey of first mortgage interest rates. It was last changed with effect from the quarter beginning 1 October 2001.

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2002

TAX SIMPLIFICATION – REDUCING COMPLIANCE COSTS FOR NON-RESIDENT CONTRACTORS

The tax rules for non-resident contractors who come to New Zealand to work for short periods each year have been simplified. Under the non-resident contractors' withholding tax requirements, payments to non-resident contractors are subject to a 15% withholding tax, unless the contractor holds a certificate of exemption from tax in New Zealand. Non-resident contractors—or their employers—must apply for this exemption even if they are exempt from paying tax in New Zealand. For example, the non-resident contractor may be from a country with whom New Zealand has a double tax agreement that exempts the contract activity being undertaken.

Under an amendment to Regulation 4 of the Income Tax (Withholding Payments) Regulations 1979, non-resident contractors who are exempted from tax under a double tax agreement and are present in New Zealand for less than 62 days in all in any 12-month period will no longer have to apply for a certificate of exemption. The change will apply to contract payments made on or after 1 April 2002.

Example of when the amendment will apply

An independent contractor resident in the United Kingdom has a contract with a New Zealand company to provide building re-fit services. The non-resident contractor will be present in New Zealand for two different periods, from 1 April to 1 May 2002, and 1 June to 15 June 2002. If this is the aggregate time that is spent in New Zealand, the amendment will apply, as the contractor will be present in New Zealand for less than 62 days in total in the 12-month period beginning 1 April 2002.

Examples of when the amendment will not apply

1. An Australian resident company is contracted to supply well-head engineering services to a New Zealand company drilling for oil. The Australian company is expected to be present in New Zealand for 50 days to perform the contract. Article 5(4)(b) of New Zealand's double tax agreement with Australia, however, deems Australian contractors doing this type of work to have a permanent establishment (and therefore be taxable) in New Zealand. So even though its presence in New Zealand will be for less than 62 days, the Australian company is not exempt under the relevant double tax agreement and consequently cannot apply the amendment.

2. A Canadian company has a contract to provide technical assistance to a New Zealand company. The Canadian contractor is expected to be present in New Zealand for less than 62 days in total to perform the relevant service. However, under Article 12(3)(b) of New Zealand's double tax agreement with Canada, payments for such assistance are regarded as a "royalty" and are not exempt from tax in New Zealand. Once again, even though the non-resident contractor is present in New Zealand for less than 62 days, the amendment will not apply.

Remedial Changes

Under an amendment to Regulation 2 of the Income Tax (Withholding Payments) Regulations 1979, the definition of "contract activity" has been clarified by removing the redundant "contract project" concept from the Regulations. Before the scope of the Regulations was widened in the early 1990s to include all non-resident contractors performing services in New Zealand, only non-resident contractors performing services in connection with a "contract project" (typically, large-scale construction and exploration activities) were subject to withholding tax.

Regulation 12 of the Income Tax (Withholding Payments) Regulations 1979 has also been amended to remove an exemption for shearing contractors from deducting and paying PAYE.

These remedial changes will apply from 1 April 2002.

Income Tax (Withholding Payments) Amendment Regulations 2002

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 ARRANGEMENT

Case:	Commissioner of Inland Revenue v R Peterson
Decision date:	19 February 2002
Act:	Income Tax Act 1976
Keywords:	*Film loss claim, tax avoidance arrangement, BNZI knowledge, special partnership*

Summary

This was an appeal from a decision of Judge Willy reported as Case U6 (1999) 19 NZTC 9,038. It concerns one of the "films cases" that originated in the 1980s. The Commissioner's appeal was unsuccessful.

Facts

The objector was a lawyer who attended to the legalities of a film venture. He was also investor in the venture. The film, "Lie of the Land", was to be produced, marketed and distributed by a special partnership, which was also to acquire the rights to the film. The partnership was funded by equity investment and loans. Part of the funding was by way of limited recourse loans (where the lender could only expect to be repaid out of any profits from the film).

The film was made, but was not a success. After an investigation, the Commissioner took the view that, to the extent the funding was non-recourse (and apparently circular) that was not deductible to the taxpayer. He further concluded that certain expenses for marketing were not in fact incurred. The objector objected and was successful before the TRA.

The Commissioner appealed.

Decision

After considering the general scheme used to make the film Justice Hammond, by way of introduction, was careful to say that the role of the Courts was not to "evolve tax policy", particularly with regard to mass marketed tax schemes. His Honour acknowledged that films (and their financing) were a high-risk industry and concluded that this case was not a "true test case".

He then relied heavily upon the Court of Appeal's decision in *CIR v BNZI* (2001) 20 NZTC 17,103 to find against the Commissioner. His Honour quoted from *CIR v BNZI*:

"The first is as to the extent of the arrangement; the second is as to whether it has the purpose or effect of tax avoidance and the third, which arises only where the second is answered affirmatively, is as to the adjustment to be made to counteract the tax advantage. The adjustment can be made against both a party to the arrangement and a person affected, who is not necessarily a party. But it can be made only where a tax advantage has been obtained "under that arrangement". (Blanchard J at par 175 in *BNZI*)

He adopted the mutuality test developed in *BNZI* (Richardson P at par 50 and 52 of *BNZI*) and concluded there was no evidence of actual knowledge of the circular funding involved in the financing. Nor was there any evidence to conclude that the objector was wilfully blind as to the financing arrangements. Finally there was no evidence that Mr M (as the promoter) could be properly characterised as the objector's agent due to the particular nature of special partnerships:

"The scheme of the legislation [creating special partnerships] recognised two classes of partners, general partners and special partners. Special partners are pure investors… these persons are really "sleeping partners". … General partners, on the other hand, in functional terms are managing partners. They are jointly and severally responsible as general partners are now by law. The general law of partnership does not apply to any special partnership except so far as it is (expressly) declared to be applicable by the statute. This conceptual scheme is reflected in the actual deed of participation.

[The taxpayer's counsel] submitted that there is here "no relevant agency". In my view the submission is well founded. A special partnership is sui generis. To contend, as here, that it constitutes an "agency" for the purpose of the test in CIR v BNZ seems to me to fly in the face of the fundamental conception of a special partnership." (at par 72 to 73)

Justice Hammond also rejected the Commissioner's argument that certain costs had not been incurred. The Commissioner submitted that marketing costs had not been incurred but, His Honour concluded that the contract entered into was a fixed price contract and it was wrong to break it down to component parts.

"Put shortly, both the commercial context of the transaction and the essential incidents of it, support the taxpayer's position that this was a fixed price contract"(at par 79)

UNCLAIMED MONEY

Case:	Commissioner of Inland Revenue v Thomas Cook Limited
Decision date:	21 February 2002
Act:	Unclaimed Money Act 1971
Keywords:	*Unpresented drafts, unclaimed money,*

Summary

The Commissioner lost his claim that unpresented drafts are unclaimed money.

Facts

Thomas Cook Ltd ("Thomas Cook"), in the course of its business, receives money in respect of which it issues documents headed "international cheques". The drafts specify a payee, an amount in foreign currency, and a foreign bank, which is to make the payment of the specified amount to the payee.

This case concerns drafts issued by Thomas Cook prior to 31 December 1992 and which were not presented by the relevant payee within six years of the purchase of those drafts. In the years prior to 31 December 1992, there was no written contract or other terms or conditions set out in writing applicable to the particular transaction as between Thomas Cook and the customer. Upon the issue of a draft, the customer was simply provided with confirmation of the relevant foreign currency, the amount of that foreign currency, the exchange rate for that foreign currency, the New Zealand dollar equivalent amount, the serial number of the draft, the payee's details, and the details of the commission and the total amount payable.

The Commissioner claimed that Thomas Cook is holding, in respect of unpresented drafts issued before 31 December 1992, more than $400,000, which, the Commissioner said, is "unclaimed money" in terms of the Unclaimed Money Act 1971. He said that Thomas Cook has an obligation to pay the money to the Crown under section 3. He sought declaratory relief. Thomas Cook asserted that the money is not "unclaimed money" and accordingly is not so payable.

Decision

The High Court held that there can be no doubt that the drafts are bills of exchange as defined in section 3 of the Bills of Exchange Act 1908. It is a fundamental tenet of New Zealand law that bills "must be duly presented for payment" (see Bills of Exchange Act, section 45(1)). Where the bill is payable on demand, presentment must be made within a reasonable time after its issue in order to render the drawer liable (see section 45(2)(b)). Similar provisions are to be found in most jurisdictions (see *Byles on Bills of Exchange* (26th ed), chapter 12). It is important to note that our Bills of Exchange Act effectively copied the United Kingdom Bills of Exchange Act 1882, which was itself a codification of English common law. That code was adopted as the basis of the law in the United States, the former British dominions, and other countries in the British Commonwealth of Nations (see *Byles*, p 3, and *International Ore & Fertilizer Corporation v East Coast Fertiliser Co. Ltd* [1987] 1 NZLR 9 (CA) at 14).

The key is presentment. Until presentment, the money is not payable. The High Court held that is the simple answer to this case. These drafts have never been presented, with the consequence that the money has not become payable by Thomas Cook. The money is therefore not "unclaimed money" within section 4(1)(e) of the Unclaimed Money Act.

In view of its decision on the first issue, the Court did not go on to consider whether the money was situated in New Zealand.

VALID ASSESSMENT

Case:	TRA No 02/01. Decision No 6/2002
Decision date:	14 February 2002
Act:	Tax Administration Act 1994
Keywords:	*Valid Notice of Determination*

Summary

Judge Barber in his interim decision, decided in favour of the Commissioner.

Facts

The disputant filed his 1992 income tax return claiming a tax loss in 1996. In 1999 one of the Commissioner's investigators commenced an investigation into the loss. It was determined that the loss was not claimable in the 1992 tax year, as it arose when a company was struck off in December 1990 (the 1991 income tax year). It was further considered that the loss might not be claimable at all.

Consequently, the investigator issued an assessment without first issuing a NOPA. In doing so the investigator relied upon section 89C(b) of the Tax Administration Act 1994 (TAA) as he had formed the opinion that the return contained a simple or obvious mistake or oversight, which the assessment merely corrected.

The disputant commenced a challenge on the basis there was no simple or obvious mistake or oversight. The correctness of the assessment was NOT challenged. The Commissioner pointed out that the opinion formed under section 89C was unable to be challenged (section 138E(1)(e)(iv) TAA). The matter went to Adjudication and Rulings where it was determined (broadly) that the taxpayer was correct regarding the assessment, but that there was no remedy available to him.

The disputant continued his challenge to the Taxation Review Authority.

Decision

His Honour accepted that the Commissioner's opinion under section 89C(b) was not capable of being challenged before the Authority due to the plain and ordinary meaning of the words in section 138E(1)(e)(iv) TAA.

Judge Barber accepted that "the legislation indicates that failure to issue a NOPA will not invalidate an assessment" as the disputant at section 89D can challenge an assessment whether or not the Commissioner complied with section 89C before making the assessment. If a breach of section 89C invalidated an assessment, there would be no need to challenge it, as it wouldn't be an assessment at all.

He noted the disputant had not challenged the assessment on the basis that it was tentative or provisional or not a genuine attempt to make an assessment, and concluded:

"Prima facie, there is no remedy that this Authority can offer the disputant in this case as he has not challenged the correctness of the assessment, and it must, therefore, be assumed that the assessment is correct"(par 63)

His Honour accepted the argument for the Commissioner that, unless the procedural defect relied upon by the disputant meant the assessment was incorrect, then there was no remedy available. His Honour accepted that he must find the assessment was valid and correct, as there was no appropriate challenge to it.

However, His Honour went on to say that he did not think there was a simple mistake or oversight and that the Commissioner had not merely corrected that mistake or oversight. His Honour considered the situation to be unsatisfactory as the loss had effectively "evaporated". But he also acknowledged that the disputant had proceedings related to the 1991 tax year pending (par 74).

His Honour expressed himself "keen" to deal with the substantive matter and made an order that "there be an amended assessment to exclude the said loss in that year [1992] on the basis that I am not presently satisfied of its deductibility, and not as merely a correction.".

DEPRECIATION OF TRADEMARKS

Case:	Trustees in the N C Simkin Trust v CIR. Trustees in the C B Simkin Trust
Decision date:	26 February 2002
Act:	Income Tax Act 1994
Keywords:	*Depreciation, trademark, ownership/owner of right to use*

Summary

The plaintiffs' claim for depreciation of various trademarks was disallowed.

Facts

These two challenges were heard together as their facts are very similar.

A company, Constellation Enterprises Ltd, registered the trademark "The Mill" and sold the names "The Mill", "the Mill Liquor Store" and the trademark "The Mill" to the first plaintiffs on 17 October 1995 for $1,154,000 plus GST. On the same day, the first plaintiffs, by deed of licence, gave Constellation Enterprises Ltd the right to use the trademark for seven years, for an annual royalty of $230,800 plus GST.

By deed of licence, the first plaintiffs sold the residual rights to the trademark to Riversdale Enterprises Ltd on 7 December 1995 for $155,790 plus GST. The trademark remained the property of the first plaintiffs until 17 October 2002.

The first plaintiffs depreciated the trademark for five months in the 1996 tax year (claiming $59,417) and for the entire 1997 tax year (claiming $142,601). The Commissioner disallowed the depreciation claimed on the basis that intangible assets are only allowed to be depreciated in certain circumstances.

The facts in relation to the second plaintiffs are very similar, though relate to different trademarks and different amounts.

Decision

Ronald Young J noted that the right to depreciate intangible assets was a relatively new one, the current regime having been introduced in 1994.

Section EG 1 permits deductions for depreciable property. Intangible property is generally unable to be depreciated unless it comes within the definition of "depreciable intangible property":

"depreciable intangible property" means intangible property of a type listed in Schedule 17, which Schedule describes intangible property that has –

(a) A finite useful life that can be estimated with a reasonable degree of certainty on the date of its creation or acquisition; and

(b) If made depreciable, a low risk of being used in tax avoidance schemes:

Schedule 17 of the Income Tax Act 1994 lists depreciable intangible property. "The right to use a trademark" is depreciable intangible property.

Ronald Young J noted that:

"Depreciation is concerned to allow for the replacement of wasting assets. Thus a limited economic life underlies depreciation. A trademark has effectively an unlimited right. It can be renewed in perpetuity. In contrast, the right to use a trademark will have a finite life".

The plaintiffs argued that "the right to use" the trademark was the ownership of the right to use, held by the trusts. The Commissioner argued that "the right to use" was held by the licensees who had licensed it from the trusts.

At the moment the trusts acquired the trademarks, they had the right to hold them in perpetuity. His Honour concluded that the fact that the trusts had decided to sell the trademarks in seven years' time was not relevant. That was their choice. The submission that triggered a "finite life", as required by the definition of depreciable intangible property, was rejected. His Honour concluded: "This is inconsistent with the concept of depreciation based on wasting assets and a limited economic life."

LUPTON VERSUS CRANSON LINE OF AUTHORITY

Case:	TRA No 023/01. Decision No 08/2002
Decision date	27 February 2002
Act:	Income Tax Act 1976
Keywords:	*Redundancy payment, retiring leave payment*

Summary

The objector was not successful in his challenge.

Facts

The objector was employed by Telecom Wellington Limited ("Telecom") as a Design and Build Consultant. At material times, the objector was 56 years old and had 41 years' service with Telecom.

The objector's conditions of employment were governed by the Telecom Individual Contract Employees' Standard Conditions of Employment dated 29 September 1992. The redundancy and early retirement provisions in that contract were materially identical to those contained in the Telecom Employees' Collective Employment Contract 1992 and 1993 (TECEC).

By letter dated 22 February 1993, the objector was advised by Telecom that his position had become surplus to Telecom's needs due to restructuring. The objector was asked to indicate his preferred option of either ceasing or remaining with Telecom, but was advised that the opportunities for redeployment were extremely limited. The objector expressed a preference for "severance with early retirement".

In March, Telecom advised the objector that his preference had been accepted and approved, and that his cessation date would be 2 April 1993. Shortly after being notified, the objector discussed the tax consequences of the "retiring leave" component of his severance payment with Telecom, who advised that he was being made redundant rather than taking early retirement, therefore his payment would be taxed.

In a memorandum dated 11 March 1993, the objector asked Telecom to review his severance with a view to making the "retiring leave" a retirement allowance so tax would not be payable. The next day, Telecom confirmed to the objector that he was being made redundant as a result of his position being declared surplus to needs.

The objector's employment ceased on 2 April 1993, and on 8 April 1993 he received a gross severance payment of $104,317.92, which included $29,400 "cessation leave". Telecom deducted PAYE on the full amount of the payment.

The gross severance payment was calculated in accordance with the clause in the objector's contract that related to termination of employment by redundancy. This provided a number of components to the payment: length of service, number of dependants, and either "retiring leave" for employees with 20 years' or more qualifying service or "cessation leave" for employees with less than 20 years' service.

In May 1994, the objector filed his income tax return for the year ended 31 March 1994 and declared his income to be in accordance with the IR12 deduction certificate issued by Telecom, which included the full amount of the severance payment. However, following assessment of the objector's 1994 return of income for the year ended 31 March 1994, the objector considered that Telecom was incorrect in deducting tax from the retiring leave payment, and he sought a refund of that tax.

Decision

His Honour Judge Barber considered it clear from section 68(2) that, where any payment is made in a lump sum by way of a retiring allowance other than a redundancy payment, in respect of the employment or service of a taxpayer on the termination of that employment or service, that termination being the occasion of the taxpayer's retirement, the payment is deemed not to be assessable income.

He also noted that the character of a severance payment is to be determined from the legal arrangements entered into by the parties, irrespective of the nomenclature used by the parties, and from considering the surrounding circumstances to ascertain why employment was terminated.

On the evidence, His Honour found that the objector was specifically told by Telecom that his position was surplus to requirements, and that the payment in issue was made to the objector because of redundancy. He went on to state that:

"Whether the $29,400 ingredient of the total payment is called a cessation leave payment or a retiring leave payment, it was not made on the occasion of the objector's retirement because the objector did not in fact retire. He was made redundant."

He further considered that the true nature of the legal arrangement between the parties was made under clause 7.3(b) of the objector's contract, which dealt with employees who have been made redundant:

"The objector was made redundant and, in view of his past service, he became entitled, as a component of his voluntary severance payment, to a cash sum calculated in accordance with the scale for "retiring leave"."

In terms of section 68(2), then, the lump sum paid to the objector was not paid as a retiring allowance due on the termination of his employment by Telecom; nor was it paid on the occasion of the objector's retirement. The objector had not retired, but had been made redundant.

Accordingly, the payment of $29,400 labelled "cessation leave" was not made on the occasion of the objector's retirement, and His Honour held that the Commissioner has acted correctly in not reassessing the objector's income tax to exclude as assessable the "retirement leave" component of the objector's severance payment. The assessment regarding the 1994 financial year was confirmed.

REGULAR FEATURES

DUE DATES REMINDER

APRIL 2002

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

8 **End-of-year income tax**

- 7 April 2002, 2001 end-of-year income tax due for clients of agents with a March balance date
- 7 February 2003, 2002 end-of-year income tax due for people and organisations with a March balance date and who do not have an agent

22 **Employer deductions**

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

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

Employer deductions and employer monthly schedule

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

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

30 **GST return and payment due**

MAY 2002

6 **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

31 **GST return and payment due**

FBT return and payment due

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

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	Draft interpretation statement	*Comment deadline*
☐	IS3448: Home as a business site or work base—Motor vehicle use—FBT consequences	30 April 2002

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