

# TAX INFORMATION BULLETIN

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*This TIB has no appendix*

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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.

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

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

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

The following draft items are available for review/comment this month, with a deadline of 31 May 2002.

Ref.	Draft type	Description
ED0027	Standard Practice Statement	Requests to amend assessments
ED0029	Standard Practice Statement	Remission of penalties and interest

Please see page 29 for details on how to obtain a copy.

## NEW LEGISLATION

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### HEALTH AND DISABILITY SERVICES (SAFETY) ACT 2001 (2001/93)

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The Health and Disability Services (Safety) Act 2001 was enacted on 30 November 2001. It establishes a system under which the Ministry of Health designates private sector providers of health care services. It makes a number of consequential amendments to definitions in the Inland Revenue Acts relating to hospitals and healthcare.

#### *Child Support Act 1991 and Goods and Services Tax Act 1985*

An amendment to section 73(3) of the Child Support Act 1991 reads:

**Hospital patient** means a person who is –

- (a) a patient in a **hospital care institution** within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001; or
- (b) *repealed*
- (c) a resident in an institution certified under the Alcoholism and Drug Addiction Act 1966.

An amendment to section 2(1) of the Goods and Services Tax Act 1985 reads:

**Hospital** –

- (a) means an institution –
  - (i) that is a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001; or
  - (ii) whose principal purpose is to receive and treat people needing medical treatment or suffering from a disease; and
- (b) includes all clinics, dispensaries, offices, outpatient departments, services, and undertakings, maintained in connection with, or incidental to, such an institution.

In section 58(4) of the Health and Disability Services (Safety) Act 2001:

**Hospital care institution** –

- (a) means premises used to provide hospital care, in accordance with section 9; but where only parts of any premises are used for that purpose, means only those parts and any other parts used for ancillary purposes; and
- (b) at a time before 1 October 2004, includes a licensed hospital (within the meaning of section 118 of the Hospitals Act 1957).

Section 9 of the Health and Disability Services (Safety) Act 2001 provides:

A person providing health care services of any kind must do so –

- (a) while certified by the Director-General to provide health care services of that kind; and
- (b) while meeting all the relevant service standards; and
- (c) in compliance with any conditions subject to which the person was certified by the Director-General to provide health care services of that kind; and
- (d) in compliance with this Act; and
- (e) if the services are rest home care, or geriatric services that are hospital care, in compliance with any applicable regulations under section 53(1)(a).

In section 118 of the Hospitals Act 1957:

**Licensed hospital** means a **hospital** in respect of which a licence is in force, or is deemed to be in force, under this Act.

**Hospital** means any premises in which two or more patients are maintained at the same time, other than –

- (a) an institution that, immediately before the commencement of the Mental Health (Compulsory Assessment and Treatment) Act 1992, was a licensed institution under section 9 of the Mental Health Act 1969;
- (b) an institution in which habitual inebriates or any other persons are detained under the authority of any Act, unless any individual (other than a person so detained) is maintained therein.

#### *Income Tax Act 1994*

The definition of **principal caregiver** is amended. It now reads:

In paragraph (a) of the definition of qualifying person and in Part KD, in relation to a dependent child, means the person (whether or not he or she is the parent of the child) who, in the opinion of the Commissioner, has the primary responsibility for the day-to-day care of the child, other than on a temporary basis; but does not include –

- (a) any body of persons (whether incorporated or unincorporated); or
- (b) any person who is the proprietor of, or employed in –
  - (i) a residence established under the Children, Young Persons and Their Families Act 1989; or
  - (ii) any **residential disability care institution** (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001); or
  - (iii) any other institution in which the child is being cared for.

In section 58(4) of the Health and Disability Services (Safety) Act 2001:

**Residential disability care institution –**

- (a) means premises used to provide residential disability care, in accordance with section 9; but where only parts of any premises are used for that purpose, means only those parts and any other parts used for ancillary purposes; and
- (b) at a time before 1 October 2004, includes a home registered under Part II of the Disabled Persons Community Welfare Act 1975.

Section 9 of the Health and Disability Services (Safety) Act 2001 is described above.

***Application date***

These amendments come into force on 1 October 2002.

## LEGISLATION AND DETERMINATIONS

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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.

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### 2002 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR13

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#### 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 that applies for the income year ended 31 March 2002. This exemption may be cited as “International Tax Disclosure Exemption ITR13”. The full text appears at the end of this item.

#### Scope of exemption

The scope of the 2002 disclosure exemption is the same as the 2001 exemption.

#### Interests held by residents

Disclosure is required by residents for:

- an interest held in an 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:

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 an FIF. However, only the FIF interests should be disclosed on an IR 478, IR 439, IR 440, IR 441, IR 442 or IR 443 form (see “Overlap of interests” on the following page).

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#### 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 2002 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 477 or IR 479) 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 (ie, 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.
- 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.

## 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 (eg, 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 which is specifically excluded as an interest in an 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 (ie, 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 2002 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

A resident who holds an interest in an FIF at any time during the 2002 income year must disclose the interest and calculate FIF income or loss on the form *Interest in foreign investment fund disclosure schedule* (IR 439, IR 440, IR 441 or IR 443). 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). Therefore, the Commissioner has prescribed four forms to disclose and calculate FIF income or loss from an interest in an FIF using one of the methods. The respective forms to use for whichever FIF income calculation method you choose to apply is as follows:

- IR 439 for the accounting profits method
- IR 440 for the branch equivalent method
- IR 441 for the comparative value method
- IR 443 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 an 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 an FIF.

However, to meet the disclosure obligations only one disclosure return (either the IR 477 or IR 479, or the IR 439, IR 440, IR 441 or IR 443) 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 439, IR 440, IR 441, IR 442 or IR 443 form to disclose all FIF interests, and in particular:
  - an interest in a foreign company which 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 which 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 447 or IR 479 forms 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 an IR 439, IR 440, IR 441, IR 442 or IR 443 form.

Disclosure is not required on any of the forms for an income interest of less than 10% in a foreign company (whether a CFC or not) which 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 2002 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 2002 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” (ie, 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 2002 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 ITR13”

### **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 that are interests in FIFs, 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 an FIF), in the income year ending 31 March 2002, 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 an FIF in the income year ending 31 March 2002, 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 FIF income or loss arises in respect of that interest in that FIF 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 22nd day of March 2002.

Max Carr  
National Manager, Corporates

## FOREIGN CURRENCY AMOUNTS – CONVERSION TO NZ CURRENCY

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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 2002.

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

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

### Table A

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

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

### Key

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X  
Y

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“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.

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### Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 2001. Branch equivalent income for the period 1 October 2000 to 30 September 2001 is 200,000 Hong Kong dollars (HKD).

$$\text{HKD}200,000 \div 3.2712 = \text{NZ}\$61,139.64$$

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

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### Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is an FIF) for 350,000 pesos (PHP) on 7 September 2001. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP}350,000 \div 20.8480 = \text{NZ}\$16,788.18$$

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.

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### Example 3

A CFC resident in Singapore was formed on 21 April 2001 and has a balance date of 30 September 2001. During this period, branch equivalent income of 500,000 Singapore dollars (SGD) was derived.

(i) Calculating the average monthly exchange rate for the complete months May to September 2001:  
 $(0.7621 + 0.7570 + 0.7460 + 0.7545 + 0.7329) \div 5 = 0.7505$

(ii) Conversion to New Zealand currency:  
 $\text{SGD}500,000 \div 0.7505 = \text{NZ}\$666,222.52$

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## Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 12 month period ending 31 March 2002. 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.

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### Example 4

A New Zealand resident with a balance date of 30 September 2001 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 2001 (item “a” of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB}500,000 \div 17.7151 = \text{NZ}\$28,224.51$$

**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.

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

Country	Foreign currency to NZ\$	Currencies	17-Apr-01	15-May-01	15-Jun-01	16-Jul-01	15-Aug-01	17-Sep-01	15-Oct-01	15-Nov-01	17-Dec-01	15-Jan-02	15-Feb-02	15-Mar-02
			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	0.4107	0.4199	0.4177	0.4068	0.4305	0.4231	0.4154	0.4201	0.4186	0.4222	0.4221	0.4308
			0.4337	0.4286	0.4223	0.4195	0.4177	0.4181	0.4195	0.4215	0.4212	0.4191	0.4185	0.4198
United Kingdom	Pound	GBP	0.2860	0.2953	0.2980	0.2895	0.3011	0.2877	0.2860	0.2910	0.2879	0.2911	0.2950	0.3032
			0.2954	0.2936	0.2915	0.2907	0.2905	0.2900	0.2910	0.2924	0.2922	0.2912	0.2913	0.2927
Australia	Dollar	AUD	0.8033	0.8065	0.7929	0.7982	0.8234	0.8211	0.8203	0.8087	0.8060	0.8163	0.8152	0.8231
			0.7905	0.7889	0.7893	0.7902	0.7956	0.7990	0.8046	0.8098	0.8106	0.8119	0.8124	0.8112
Austria	Schilling	ATS	6.3682	6.5974	6.6677	6.5435	6.5591	6.3183	6.2699	6.5349	6.3411			
			6.5864	6.5362	6.5161	6.5096	6.4771	6.4567	6.4464	6.4594	6.4528			
Bahrain	Dollar	BHD	0.1546	0.1580	0.1579	0.1532	0.1622	0.1550	0.1570	0.1583	0.1577	0.1590	0.1592	0.1624
			0.1633	0.1614	0.1591	0.1580	0.1573	0.1571	0.1577	0.1585	0.1583	0.1575	0.1573	0.1579
Belgium	Franc	BEF	18.6580	19.3302	19.5357	19.1768	19.2181	18.5124	18.3725	19.1647	18.5801			
			19.2980	19.1514	19.0926	19.0739	18.9786	18.9185	18.8890	18.9281	18.9088			
Canada	Dollar	CAD	0.6410	0.6503	0.6348	0.6247	0.6613	0.6619	0.6490	0.6684	0.6535	0.6739	0.6718	0.6860
			0.6539	0.6485	0.6417	0.6387	0.6387	0.6413	0.6454	0.6506	0.6512	0.6515	0.6528	0.6564
China	Yuan	CNY	3.4035	3.4727	3.4550	3.3690	3.5663	3.5085	3.4372	3.4824	3.4655	3.4986	3.4916	3.5705
			3.5910	3.5483	3.4954	3.4724	3.4573	3.4610	3.4727	3.4894	3.4873	3.4708	3.4652	3.4767
Denmark	Krone	DKK	3.4496	3.5753	3.6101	3.5402	3.5469	3.4184	3.3955	3.5340	3.4502	3.5085	3.5865	3.6255
			3.5706	3.5415	3.5300	3.5260	3.5073	3.4956	3.4917	3.4978	3.4919	3.4924	3.5008	3.5201
European Community	Euro	EUR	0.4629	0.4795	0.4846	0.4758	0.4767	0.4588	0.4557	0.4754	0.4620	0.4723	0.4829	0.4879
			0.4788	0.4751	0.4737	0.4732	0.4708	0.4693	0.4685	0.4695	0.4686	0.4689	0.4702	0.4729
Fiji	Dollar	FJD	0.9482	0.9514	0.9489	0.9434	0.9758	0.9566	0.9494	0.9499	0.9485	0.9587	0.9716	0.9776
			0.9499	0.9445	0.9406	0.9397	0.9418	0.9438	0.9483	0.9531	0.9532	0.9525	0.9541	0.9567
Finland	Markka	FIM	2.7519	2.8507	2.8815	2.8284	2.8341	2.7301	2.7097	2.8266	2.7403			
			2.8465	2.8248	2.8161	2.8133	2.7992	2.7903	2.7858	2.7917	2.7888			
France	Franc	FRF	3.0364	3.1453	3.1794	3.1207	3.1270	3.0116	2.9897	3.1188	3.0235			
			3.1426	3.1186	3.1091	3.1060	3.0905	3.0805	3.0756	3.0811	3.0770			
French Polynesia	Franc	XPF	55.1992	57.1604	57.7369	56.7809	56.8592	54.7544	54.3419	56.6526	54.8485	56.2995	57.5880	54.4535
			57.0047	56.5841	56.4271	56.3856	56.1241	55.9509	55.8715	55.9742	55.8501	55.8763	56.0430	56.0562
Germany	Deutsche mark	DEM	0.9055	0.9380	0.9481	0.9307	0.9325	0.8983	0.8916	0.9300	0.9016			
			0.9364	0.9293	0.9265	0.9256	0.9210	0.9181	0.9166	0.9185	0.9176			
Greece	Drachma	GRD	157.7170	163.3811	165.1719	162.1237	162.4279	156.4763	155.3103	161.9891	157.0643			
			162.2371	161.1412	160.9472	160.9072	160.3126	159.8472	159.6414	160.0003	159.8399			
Hong Kong	Dollar	HKD	3.2021	3.2706	3.2564	3.1718	3.3572	3.3028	3.2396	3.2767	3.2642	3.2914	3.2915	3.3598
			3.3804	3.3408	3.2919	3.2703	3.2563	3.2597	3.2712	3.2866	3.2843	3.2679	3.2631	3.2737
India	Rupee	INR	19.1913	19.5951	19.5175	19.0615	20.1591	20.0927	19.8445	20.0792	19.9198	20.2629	20.4019	20.8615
			19.8189	19.6970	19.5258	19.4504	19.4354	19.5045	19.6293	19.7676	19.7827	19.7421	19.7814	19.9156
Indonesia	Rupiah	IDR	4,443,080	4,783,020	4,685,405	4,611,955	3,655,935	3,861,845	4,140,655	4,479,000	4,268,735	4,398,260	4,315,625	4,302,825
			3,999,947	4,061,108	4,104,452	4,136,503	4,157,265	4,154,794	4,204,642	4,284,167	4,296,473	4,305,738	4,321,425	4,328,861
Ireland	Pound	IEP	0.3644	0.3775	0.3815	0.3745	0.3753	0.3615	0.3588	0.3743	0.3628			
			0.3769	0.3741	0.3730	0.3726	0.3707	0.3696	0.3690	0.3697	0.3693			
Italy	Lira	ITL	896.1792	928.4040	938.3783	921.1974	922.9090	889.1167	882.3324	920.4047	892.3644			
			926.6862	919.6184	916.7794	915.9008	911.2976	908.4173	907.2422	909.1274	908.1857			
Japan	Yen	JPY	51.1341	51.6886	50.6580	50.7506	52.4140	49.6419	50.3282	51.0721	53.2880	55.7029	55.8234	55.5169
			48.6742	48.6386	48.6081	48.7495	49.1792	49.3819	50.0018	50.8387	51.1755	51.4084	51.8894	52.3349
Korea	Won	KOR	546.4550	544.1300	538.8400	528.3250	548.8800	549.3500	535.2950	536.0100	534.1900	550.4550	550.9950	565.2550
			511.6304	512.3263	513.2556	514.5704	520.5995	525.1079	532.2446	540.8733	541.6600	539.8854	541.0046	544.0150
Kuwait	Dollar	KWD	0.1261	0.1290	0.1288	0.1251	0.1316	0.1287	0.1270	0.1285	0.1280	0.1295	0.1298	0.1323
			0.1328	0.1313	0.1294	0.1287	0.1279	0.1278	0.1284	0.1291	0.1290	0.1284	0.1283	0.1287

*Inland Revenue Department Tax Information Bulletin: Vol 14, No 4 (April 2002)*

Country	Foreign currency to NZ\$	Currencies	17-Apr-01	15-May-01	15-Jun-01	16-Jul-01	15-Aug-01	17-Sep-01	15-Oct-01	15-Nov-01	17-Dec-01	15-Jan-02	15-Feb-02	15-Mar-02
			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
Malaysia	Ringgit	MYR	1.5624	1.5942	1.5860	1.5467	1.6371	1.6107	1.5780	1.5988	1.5909	1.6061	1.6029	1.6390
			1.6484	1.6288	1.6045	1.5940	1.5871	1.5888	1.5942	1.6019	1.6009	1.5933	1.5908	1.5961
Netherlands	Guilder	NLG	1.0201	1.0567	1.0682	1.0485	1.0505	1.0120	1.0044	1.0478	1.0158			
			1.0550	1.0470	1.0438	1.0428	1.0377	1.0344	1.0327	1.0348	1.0338			
Norway	Krone	NOK	3.7535	3.8371	3.8667	3.7835	3.8518	3.6808	3.6241	3.7332	3.7136	3.7535	3.7582	3.7825
			3.8956	3.8563	3.8329	3.8225	3.8047	3.7911	3.7817	3.7811	3.7720	3.7635	3.7567	3.7615
Pakistan	Rupee	PKR	24.8417	25.5500	26.0813	25.8209	27.2181	27.0267	25.6473	25.5318	25.3525	25.1827	25.1945	25.6853
			24.1275	24.1904	24.3418	24.4833	24.8573	25.1223	25.3269	25.6721	25.7040	25.6348	25.6559	25.7611
Papua New Guinea	Kina	PGK	1.2380	1.1948	1.2552	1.2726	1.3601	1.3580	1.3667	1.4223	1.4570	1.4437	1.4430	1.4684
Philippines	Peso	PHP	20.4113	21.0142	21.2604	21.3730	21.9487	21.6038	21.3800	21.7342	21.6471	21.5764	21.5387	21.8346
			20.1537	20.2553	20.3765	20.4638	20.7002	20.8480	21.0502	21.2401	21.2829	21.1943	21.2805	21.4435
Portugal	Escudo	PTE	92.7940	96.1279	97.1626	95.3806	95.5668	92.0605	91.3682	95.3140	92.4083			
			95.9891	95.2525	94.9556	94.8631	94.3875	94.0877	93.9380	94.1342	94.0390			
Singapore	Dollar	SGD	0.7427	0.7621	0.7570	0.7460	0.7545	0.7329	0.7535	0.7666	0.7675	0.7741	0.7666	0.7833
			0.7553	0.7498	0.7424	0.7404	0.7394	0.7393	0.7438	0.7511	0.7531	0.7531	0.7546	0.7589
Solomon Islands	Dollar	SBD	2.0991	2.1564	2.1665	2.1131	2.2355	2.2072	2.1915	2.2328	2.2473	2.3117	2.3737	2.4858
South Africa	Rand	ZAR	3.2961	3.3399	3.3571	3.3598	3.5592	3.6450	3.7806	4.0538	5.1000	4.8313	4.8608	5.0060
			3.2161	3.2146	3.2236	3.2375	3.2875	3.3293	3.3963	3.4923	3.6354	3.7468	3.8703	4.0158
Spain	Peseta	ESP	77.0074	79.7714	80.6350	79.1556	79.3059	76.4012	75.8273	79.0968	76.5821			
			79.6565	79.0487	78.8058	78.7281	78.3326	78.0830	77.9578	78.1201	78.0302			
Sri Lanka	Rupee	LKR	35.6660	37.3878	37.3512	36.4930	38.4914	38.0008	37.2125	38.5176	38.7460	39.2045	39.2509	40.4836
			34.7462	34.9103	35.0477	35.1299	35.5274	35.8467	36.3292	37.0064	37.2489	37.3995	37.5995	38.0671
Sweden	Krona	SEK	4.1872	4.3157	4.4711	4.3865	4.4015	4.4298	4.3360	4.4414	4.4123	4.3509	4.4457	4.4532
			4.1197	4.1187	4.1581	4.1801	4.2071	4.2312	4.2630	4.3114	4.3292	4.3452	4.3630	4.3859
Switzerland	Franc	CHF	0.7051	0.7344	0.7404	0.7196	0.7227	0.6870	0.6758	0.6981	0.6820	0.6990	0.7165	0.7132
			0.7359	0.7293	0.7251	0.7233	0.7179	0.7143	0.7120	0.7115	0.7089	0.7068	0.7068	0.7078
Taiwan	Dollar	TAI	13.5100	13.7750	14.3300	14.2150	14.8850	14.6250	14.3200	14.4650	14.4250	14.7650	14.7550	15.0450
			13.7567	13.6750	13.6338	13.6604	13.7666	13.8683	14.0163	14.1702	14.2013	14.2183	14.2933	14.4263
Thailand	Baht	THB	18.5590	18.9854	18.8476	18.4454	19.1992	18.6230	18.4757	18.5855	18.2236	18.3930	18.3037	18.5017
			18.1138	18.1559	18.1939	18.2120	18.3329	18.3921	18.5004	18.6309	18.6090	18.5387	18.5534	18.5952
Tonga	Pa'anga	TOP	0.8512	0.8736	0.8818	0.8756	0.9260	0.9217	0.9133	0.9119	0.9121	0.9188	0.9265	0.9354
			0.8091	0.8143	0.8232	0.8292	0.8458	0.8557	0.8690	0.8832	0.8877	0.8908	0.8964	0.9040
Vanuatu	Vatu	VUV	61.1474	61.0632	59.8072	59.7148	62.0429	60.4971	60.5695	60.4447	60.3661	60.5724	61.3395	61.8369
			60.9640	60.5952	60.1356	60.0139	60.0861	60.1834	60.5219	60.8389	60.8122	60.6303	60.6569	60.7835
Western Samoa	Tala	WST	1.3828	1.3844	1.3779	1.3663	1.4966	1.4694	1.4513	1.4749	1.4737	1.4803	1.4959	1.5111
			1.4008	1.3921	1.3821	1.3781	1.3846	1.3927	1.4036	1.4178	1.4238	1.4276	1.4356	1.4470

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

Country	Currencies	Code	30-Apr-01	31-May-01	29-Jun-01	31-Jul-01	31-Aug-01	28-Sep-01	31-Oct-01	30-Nov-01	31-Dec-01	31-Jan-02	28-Feb-02	28-Mar-02
United States	Dollar	USD	0.4119	0.4167	0.4061	0.4120	0.4414	0.4015	0.4141	0.4123	0.4154	0.4158	0.4196	0.4356
United Kingdom	Pound	GBP	0.2868	0.2920	0.2883	0.2888	0.3028	0.2723	0.2849	0.2894	0.2863	0.2937	0.2962	0.3056
Australia	Dollar	AUD	0.8082	0.8119	0.8019	0.8147	0.8297	0.8236	0.8201	0.7962	0.8119	0.8207	0.8135	0.8252
Austria	Schilling	ATS	6.3521	6.6849	6.6124	6.4774	6.6233	6.0160	6.2898	6.3881	6.4519			
Bahrain	Dollar	BHD	0.1552	0.1569	0.1532	0.1552	0.1662	0.1514	0.1561	0.1555	0.1566	0.1566	0.1581	0.1641
Belgium	Franc	BEF	18.6190	19.5876	19.3754	18.9834	19.4068	17.6239	18.4332	18.7179	18.9061			
Canada	Dollar	CAD	0.6311	0.6436	0.6179	0.6301	0.6818	0.6332	0.6536	0.6525	0.6600	0.6608	0.6742	0.6940
China	Yuan	CNY	3.4119	3.4510	3.3621	3.4129	3.6575	3.3244	3.4291	3.4152	3.4381	3.4430	3.4766	3.6068
Denmark	Krone	DKK	3.4462	3.6233	3.5750	3.5034	3.5822	3.2505	3.4008	3.4548	3.4896	3.5741	3.6078	3.7058
European Community	Euro	EUR	0.4618	0.4860	0.4806	0.4709	0.4814	0.4373	0.4573	0.4643	0.4690	0.4815	0.4854	0.4988
Fiji	Dollar	FJD	0.9427	0.9520	0.9310	0.9483	0.9809	0.9253	0.9491	0.9338	0.9562	0.9601	0.9655	0.9830
Finland	Markka	FIM	2.7456	2.8891	2.8578	2.7996	2.8622	2.5998	2.7192	2.7481	2.7882			
France	Franc	FRF	3.0293	3.1878	3.1532	3.0858	3.1582	2.8686	3.0001	3.0459	3.0763			
French Polynesia	Franc	XPF	55.1019	57.9708	57.3530	56.1334	57.4598	52.1875	54.4962	55.3550	55.9035	57.3880	57.8727	59.4372
Germany	Deutsche-mark	DEM	0.9034	0.9507	0.9402	0.9212	0.9418	0.8554	0.8957	0.9084	0.9176			
Greece	Drachma	GRD	157.3611	165.6059	163.7821	160.4554	164.0478	148.9991	155.8209	158.2346	159.8296			
Hong Kong	Dollar	HKD	3.2120	3.2495	3.1664	3.2129	3.4428	3.1307	3.2293	3.2151	3.2384	3.2422	3.2719	3.3965
India	Rupee	INR	19.1977	19.4625	18.9826	19.2983	20.7171	19.0632	19.7610	19.6619	19.9172	20.0098	20.3241	21.0907
Indonesia	Rupiah	IDR	4,885.0600	4,750.7150	4,650.0100	4,000.0750	3,941.9400	3,885.1350	4,308.8700	4,296.0700	4,351.4700	4,295.2800	4,277.2200	4,209.5700
Ireland	Pound	IEP	0.3635	0.3826	0.3782	0.3707	0.3786	0.3443	0.3601	0.3655	0.3692			
Italy	Lira	ITL	894.16	940.88	930.57	911.78	932.17	846.64	885.63	898.85	908.19			
Japan	Yen	JPY	51.1185	50.1231	50.6204	51.5257	52.7076	48.0006	50.5169	51.0076	54.4386	55.1385	56.3737	57.7640
Korea	Won	KOR	547.1650	536.9400	528.8450	533.9650	562.9350	520.9100	533.5950	519.4400	545.3950	541.1900	553.3050	573.8600
Kuwait	Dollar	KWD	0.1265	0.1281	0.1252	0.1264	0.1344	0.1224	0.1264	0.1264	0.1275	0.1279	0.1291	0.1338
Malaysia	Ringgit	MYR	1.5663	1.5841	1.5434	1.5668	1.6791	1.5262	1.5742	1.5678	1.5784	1.5807	1.5961	1.6557
Netherlands	Guilder	NLG	1.0177	1.0710	1.0592	1.0378	1.0610	0.9637	1.0079	1.0233	1.0335			
Norway	Krone	NOK	3.7455	3.8460	3.7762	3.7618	3.8812	3.5399	3.6485	3.6932	3.7292	3.7708	3.7419	3.8389
Pakistan	Rupee	PKR	25.0610	26.0517	25.6196	26.1490	28.0386	25.5752	25.2617	24.9366	24.9413	24.8357	25.0467	25.9994
Papua New Guinea	Kina	PGK	1.1724	1.3083	1.2965	1.2980	1.4009	1.3099	1.3777	1.4410	1.4546	1.4061	1.4121	1.4890
Philippines	Peso	PHP	20.8870	20.9624	21.1077	21.7442	22.4999	20.4810	21.3843	21.2935	21.3321	21.1948	21.4235	22.0803
Portugal	Escudo	PTE	92.5842	97.4138	96.4590	94.4026	96.5129	87.6637	91.6815	93.0871	94.0196			
Singapore	Dollar	SGD	0.7481	0.7525	0.7387	0.7425	0.7703	0.7071	0.7538	0.7542	0.7680	0.7619	0.7693	0.8016
Solomon Islands	Dollar	SBD	2.1111	2.1578	2.1089	2.1535	2.2940	2.1009	2.1948	2.1991	2.2391	2.3196	2.3782	2.6909
South Africa	Rand	ZAR	3.2822	3.3301	3.2663	3.3860	3.6995	3.5750	3.8924	4.2425	4.9724	4.7450	4.7774	4.9734
Spain	Peseta	ESP	76.8339	80.7437	79.9471	78.4992	80.0940	72.7487	76.0872	77.2475	78.0251			
Sri Lanka	Rupee	LKR	36.5377	37.7253	36.5383	36.9136	39.4642	35.9434	37.6264	38.1723	38.4407	38.6869	39.0764	41.2883
Sweden	Krona	SEK	4.1976	4.4122	4.4171	4.3580	4.5755	4.2973	4.3946	4.3978	4.3586	4.4356	4.4075	4.5031
Switzerland	Franc	CHF	0.7109	0.7408	0.7312	0.7110	0.7295	0.6473	0.6718	0.6826	0.6947	0.7092	0.7164	0.7306
Taiwan	Dollar	TAI	13.5500	14.1400	13.9800	14.3000	15.2450	13.8350	14.2700	14.1700	14.5300	14.5150	14.7050	15.2150
Thailand	Baht	THB	18.6527	18.8205	18.3044	18.7221	19.4637	17.7151	18.3786	18.0810	18.2023	18.1469	18.2599	18.7443
Tonga	Pa'anga	TOP	0.8574	0.8758	0.8659	0.8874	0.9498	0.8896	0.9070	0.8997	0.9123	0.9092	0.9196	0.9445
Vanuatu	Vatu	VUV	60.4615	60.1835	59.0366	60.1286	62.2376	58.9223	60.3240	59.4230	60.6777	60.3005	60.7850	62.4995
Western Samoa	Tala	WST	1.3792	1.3761	1.3510	1.3783	1.5053	1.4139	1.4698	1.4575	1.4738	1.4659	1.4886	1.5177



## STANDARD PRACTICE STATEMENT

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### IR-SPS INV-251 VOLUNTARY DISCLOSURES

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This statement also appears in *Tax Information Bulletin*, Vol 14, No 4.

#### Introduction

This Standard Practice Statement (SPS) applies to voluntary disclosures under section 141G of the Tax Administration Act 1994. It establishes guidelines for making a voluntary disclosure, the timing of notification and what constitutes a voluntary disclosure.

#### Application

This SPS replaces SPS INV-250 and will apply from 1 May 2002.

The major change from SPS INV-250 is in respect of the Commissioner's practice regarding prosecution in the event of a voluntary disclosure. The new practice is that prosecution may be undertaken in cases of evasion and fraud when a post-notification disclosure is made. Pre-notification disclosures will still have full immunity from prosecution.

#### Summary

A taxpayer may make a voluntary disclosure either before being notified of a pending tax audit or investigation ("pre-notification disclosure") or after the first notification but before the audit or investigation starts ("post-notification disclosure").

The disclosure must be full and complete. The minimum details required are:

- taxpayer's details (name, trade name, IRD number, address, date of birth or incorporation, contact telephone number and contact times)
- the nature of the errors or omissions
- an explanation as to why the errors or omissions occurred
- adequate information to enable an assessment of the tax shortfall to be made
- a declaration signed by the taxpayer, if possible
- further information as is necessary to make an assessment.

A full and complete disclosure will result in a reduction in the applicable rate of shortfall penalty.

Where a pre-notification disclosure is made, Inland Revenue will not consider prosecution. For a post-notification disclosure, prosecution may be considered in cases of evasion or a similar offence (those offences listed in section 143B of the Tax Administration Act 1994).

All legislative references in this SPS are to the Tax Administration Act 1994 unless otherwise specified.

#### Background

The New Zealand tax system is based on voluntary compliance. It relies on taxpayers meeting their obligations under the tax laws, for example, filing tax returns and returning all income. The voluntary disclosure system provides an incentive to taxpayers to determine their correct tax liability. It also reflects the savings to Inland Revenue from voluntary admissions of irregularities and other benefits of cooperation by taxpayers. By making a full and complete voluntary disclosure, a taxpayer will get the advantage of reduced levels in any shortfall penalty imposed.

If a taxpayer makes a pre-notification disclosure, the level of any shortfall penalty will be reduced by 75%. If a post-notification disclosure is made, the reduction in shortfall penalty will be 40%.

#### Legislation

##### Section 141G of the Tax Administration Act 1994 provides as follows

##### 141G Reduction in penalty for voluntary disclosure—

- (1) A shortfall penalty payable by a taxpayer under any of sections 141A to 141E may be reduced if, in the Commissioner's opinion, the taxpayer makes a full voluntary disclosure to the Commissioner of all the details of the tax shortfall, either
  - (a) Before the taxpayer is first notified of a pending tax audit or investigation (referred to in this section as "pre-notification disclosure"); or
  - (b) After the taxpayer is notified of a pending tax audit or investigation, but before the Commissioner starts the audit or investigation (referred to in this section as "post-notification disclosure").



- (2) The Commissioner may from time to time—
  - (a) Specify the information required for a full voluntary disclosure; and
  - (b) The form in which it must be provided.
- (3) The level by which the shortfall penalty is reduced—
  - (a) For pre-notification disclosure is 75%
  - (b) For post-notification disclosure is 40%.
- (4) The taxpayer is deemed to have been notified of a pending tax audit or investigation, or that the tax audit or investigation has started, if—
  - (a) The taxpayer; or
  - (b) An officer of the taxpayer; or
  - (c) A shareholder of the taxpayer, if the taxpayer is a close company; or
  - (d) A tax advisor acting for the taxpayer; or
  - (e) A partner in partnership with the taxpayer; or
  - (f) A person acting for or on behalf of or as a fiduciary of the taxpayer,—is notified of the pending tax audit or investigation, or that the tax audit or investigation has started.
- (5) An audit or investigation starts at the earlier of—
  - (a) The end of the first interview an officer of the Department has with the taxpayer or the taxpayer's representative after the taxpayer receives the notice referred to in subsection (4); and
  - (b) The time when—
    - (i) An officer of the Department inspects information (including books or records) of the taxpayer after the taxpayer receives the notice referred to in subsection (4); and
    - (ii) The taxpayer is notified of the inspection.

## Standard Practice

### Voluntary disclosure methods

Taxpayers can make a voluntary disclosure in any one of the following ways:

- by visiting an Inland Revenue office
- by telephone call
- by letter, fax or email
- during an interview.

### Visits and telephone calls

If a taxpayer makes a voluntary disclosure by visiting or telephoning Inland Revenue, as much information as possible will need to be provided by the taxpayer.

Any Inland Revenue officer is able to record a voluntary disclosure when a taxpayer comes into or contacts Inland Revenue. Inland Revenue will request taxpayers making a voluntary disclosure to sign a form reflecting their disclosure.

### Written disclosure

If a voluntary disclosure is received in writing between the time of first notification of the audit and the first interview, it will be referred to the auditor who is conducting the audit or investigation. The auditor will incorporate this as correspondence relating to the audit or investigation.

An acknowledgment will be made that the disclosure has been received.

### During the first interview

For disclosures made during the first interview, the Inland Revenue auditor will consider whether the disclosure is complete and reveals all the relevant information necessary to ascertain the correct tax position.

### Notification

Subsection 141G(4) provides that a taxpayer has been notified of a pending audit or investigation, or that the tax audit or investigation has started, if any of the following persons have received notification:

- the taxpayer
- an officer of the taxpayer
- a shareholder of the taxpayer (for close companies)
- a tax advisor acting for the taxpayer
- a partner in a partnership
- a person acting for, or on behalf of, or as a fiduciary of the taxpayer.

An officer includes a director, secretary, receiver or liquidator. It does not include an employee.

### Time of notification

Notification will occur at the earlier of the date of receipt by the taxpayer or agent of the written advice or the time of a telephone call advising the commencement of the audit or investigation.

If the exact time of receipt of the written notice becomes crucial, it will be ascertained from the expected time for the mail to reach its destination as prescribed by section 14(2) of the Tax Administration Act 1994. Any telephone call advising of an audit or investigation will be followed up by written advice as soon as possible.

### **Unannounced visits**

In the case of unannounced visits, the time of the notification will be the date of first contact with the taxpayer.

### **Date an audit or investigation starts**

Section 141G(5) states that a tax audit or investigation starts at the earlier of:

- the end of the first interview an Inland Revenue officer has with the taxpayer or the taxpayer's representative, after the taxpayer receives the notice, and
- the time when:
  - an officer of Inland Revenue inspects information (including books or records) of the taxpayer after the taxpayer receives notice, and
  - the time the taxpayer is notified of the inspection.

### **Taxpayer's authorised representative present at interview**

If the taxpayer does not attend the first interview but instead sends a representative, the taxpayer cannot claim the benefit of a post-notification disclosure for any additional tax shortfall revealed after the interview. This is the case even if the representative was not given any information by the taxpayer from which to make a disclosure.

### **Disclosure by a subsidiary of a company**

An audit of a parent company, or a subsidiary of that company, may necessitate the audit of other subsidiaries within the group. In such cases, disclosure would depend upon which entity had been notified. If the parent company had received notification that the audit was restricted to that entity, then any disclosure made by the subsidiary is voluntary disclosure prior to notification of an audit.

However, if another company in the group has been notified that the audit is being extended, any disclosure made by that other company would be considered a disclosure after notification of an audit.

When a company has a branch or branches, they are considered to have been notified at the same time as the company, as they are part of the company and not separate entities.

### **Full disclosure**

Any voluntary disclosure will initially be considered, subject to the applicable time bar, as a request for an amendment of an assessment under section 113 of the Tax Administration Act 1994 or section 27(2) of the Goods and Services Tax Act 1985.

The disclosure must be full and complete. It is not up to the Commissioner to elicit the required information from the taxpayer. This does not necessarily mean disclosing the discrepancies to the last dollar, but does require providing enough information to enable the auditor, investigator or officer to make an assessment. Each case will have to be considered on its own merits.

If a taxpayer is not able to provide full details at the first point of contact with Inland Revenue, the Commissioner will allow the taxpayer reasonable time to obtain more information. The time period for obtaining this information will be negotiated between the taxpayer and the Inland Revenue officer. Once this information is provided and the disclosure is considered full and complete, the date of the voluntary disclosure will be the date of the first point of contact.

### **Minimum details required**

To satisfy full and complete disclosure, the following minimum details must be provided:

- taxpayers details (name, trade name, IRD number, address, date of birth or incorporation, contact telephone number and contact times)
- the nature of the errors or omissions
- an explanation as to why the errors or omissions occurred
- adequate information to enable an assessment of the tax shortfall to be made
- a declaration signed by the taxpayer, if possible
- further information as is necessary to make an assessment.

Where this information is not provided, the Commissioner will consider on a case-by-case basis whether the information provided is sufficient to satisfy the full and complete disclosure requirements. In doing so, the Commissioner will have regard to the taxpayer's reasons for not making the specified information available.

### **More than one tax shortfall**

Each tax shortfall is considered separately. If there is more than one tax shortfall, one being the subject of voluntary disclosure and the other being detected by an audit, the shortfall detected by the audit will not come within the voluntary disclosure regime.

If the items are identical or similar, they will be treated as one tax shortfall. Therefore, for a full and complete voluntary disclosure, both items will need to be disclosed prior to the end of the first interview. If one of the items is not disclosed until after the first interview, this will result in the taxpayer not satisfying the requirements of a full and complete disclosure.

### ***Disclosure of another tax type***

If an audit is being carried out on one tax type and the taxpayer makes a voluntary disclosure regarding another tax type, and they have not been notified that the other tax type is being audited, the taxpayer will qualify for voluntary disclosure prior to notification of an audit as long as the disclosure meets all other requirements.

### ***Disclosure of another period***

It is common for a notice of intention to carry out an audit to state that a particular year or period is to be audited, but previous years or periods may be looked at if necessary. The year or period referred to only is examined in the first instance. If the taxpayer has not been advised that an earlier year or period is being examined, the taxpayer is able to make a pre-notification disclosure for that year or period.

### ***Disclosure where Inland Revenue already knows of the shortfall***

In situations where the information provided is required by law or Inland Revenue knows there is a tax shortfall and has verification of that shortfall, the taxpayer cannot make a voluntary disclosure. An example of this is when an employer files their employer monthly schedule without an accompanying payment. The employer cannot voluntarily disclose the non-payment of the PAYE as Inland Revenue will know that payment has not been made. For further information on this refer to Standard Practice Statement INV-260, Notification of a Pending Audit or Investigation published in *Tax Information Bulletin* Vol 12, No 2.

### **Disclosure forms**

Where possible it is desirable for the protection of both the taxpayer and Inland Revenue that disclosures be in writing and signed by the taxpayer. *Voluntary disclosure* (IR 282A) form, which covers both pre-notification and post-notification disclosures, has been prepared for this purpose.

However, Inland Revenue will also accept other written and verbal disclosures without the need for the taxpayer to complete the form.

### **Prosecution and Publication of Name**

If a voluntary disclosure is full and complete:

- Inland Revenue will not consider prosecution action for pre-notification disclosures.
- In post-notification cases, prosecution may be considered in cases of evasion or similar offences (those offences listed in section 143B of the Tax Administration Act 1994).
- There will be no publication of the taxpayer's name in the *New Zealand Gazette*.

This Standard Practice Statement was signed by me on 11 April 2002.

Margaret Cotton  
National Manager  
Technical Standards

## **NOTICE OF CURRENT STATUS OF STANDARD PRACTICE STATEMENT**

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**STANDARD PRACTICE STATEMENT IR-SPS RDC 6.1 ARRANGEMENTS FOR PAYMENT OF TAX DEBT** – as published in *Tax Information Bulletin* Vol 13, No 4 (April 2001).

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Standard Practice Statement (IR-SPS) RDC 6.1 will now only apply to arrangements entered into before 1 April 2002.

With effect from 1 April 2002, the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 amended the Tax Administration Act 1994, as it applies to arrangements for payment of tax debt.

IR-SPS RDC 6.1 is currently being reviewed and will be updated to reflect these legislative changes and those proposed in the Taxation (Relief, Refunds and Miscellaneous Provisions) Bill 2001.

Margaret Cotton  
National Manager (Technical Standards)



## LEGAL DECISIONS – CASE NOTES

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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.

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### SETTING ASIDE OF BANKRUPTCY NOTICE

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Case:	Moti Singh v Commissioner of Inland Revenue
Decision date:	5 April 2002
Act:	Insolvency Act 1967
Keywords:	<i>Bankruptcy notice, application to set aside</i>

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#### Summary

The applicant was unsuccessful in his attempt to have a bankruptcy notice set aside.

#### Facts

A bankruptcy notice was issued on 16 November 2001 following the entry of a final judgment for \$84,473.94 in the District Court. The bankruptcy notice claimed an additional \$10,247.08 in costs, making a total of \$94,721.02. The debtor applied to have the notice set aside.

The grounds advanced by the debtor to set aside the notice were that:

1. He had a counterclaim, set-off or cross-demand against the Commissioner that equalled or exceeded the amount claimed, which he could not have set up in the action in which judgment was obtained.
2. The Commissioner had seized approximately \$87,000 from the debtor's bank accounts dating back to November 1992 on the pretext that the debtor owed some \$129,000 in outstanding taxes and various penalties.
3. He had persistently disputed the alleged tax liability and had requested the matter be determined by the TRA, which the Commissioner had been delaying.

4. The Commissioner had previously undertaken not to bankrupt him until his taxation appeal had been determined by the TRA.
5. The judgment upon which the Commissioner's claim is based was defective and the debtor would be seeking judicial review of that judgment.
6. Unless his tax liability is finalised conclusively he is in no position to satisfy the judgment debt.
7. The Commissioner's conduct in seeking the bankruptcy notice was an abuse of the process of the court and the Commissioner was motivated by vindictiveness and vendetta.

The debtor also put forward Bill of Rights and Human Rights arguments relating to the right not to be subjected to cruel, degrading, inhuman or disproportionately severe treatment or punishment.

#### Decision

Master Gendall dealt with the application under section 19(1)(d) and section 20 of the Insolvency Act 1967, and rule 41 of the Insolvency Rules 1970.

On the first ground of the debtor's application, the Master found that, while a credit of some \$35,000 had already been given, there would still be a substantial amount outstanding under the bankruptcy notice, even if a further contingent tax credit were granted. He also noted that the debtor had not appealed or reviewed the judgment upon which the Commissioner relied in this matter, nor had the debtor appealed a separate tax matter decided in the TRA.

Accordingly, the Master was not satisfied that the debtor had set up any matters that he could not have set up in the District Court proceedings, or similarly in any counterclaim, set-off or cross demand proceedings.

The second ground was dismissed as having no substance in it for setting aside a bankruptcy notice.

As to the third ground, Master Gendall noted that the debtor's tax position had been conclusively determined by the TRA, and the debtor had been unable to place before the Court in the current proceedings any other material to support this ground.

For his fourth ground, the debtor relied on an affidavit sworn by an officer of Inland Revenue. However, the affidavit pre-dated the entry of final judgment against the debtor. There was no stay of execution of the final judgment, and the debtor could not put forward any evidence to support his allegations in regard to this point. The ground was dismissed.

The fifth ground was also dismissed, as the debtor was unable to satisfy the Court that he would be seeking judicial review of the judgment and had any real prospects of success were he to do so.

In order to succeed on the sixth ground, the debtor had to satisfy the Court that either –

- a) the amount of the judgment debt has been paid, or
- b) that the debtor has a counterclaim, set-off or cross demand that equals or exceeds the amount of the judgment debt or sum ordered to be paid and that he could not set up in the action in which the judgment was obtained.

As previously noted by the Master, the debtor was unable to do this, and this ground, too, was dismissed.

Likewise, the seventh ground was also dismissed. Master Gendall found no evidence of abuse of process or that the Commissioner was motivated by vindictiveness and vendetta.

The Master then turned to the last of the grounds put forward by the debtor—the “novel” arguments raised under the Bill of Rights Act and the International Covenant on Civil and Political Rights. The debtor contended that the Commissioner's “overwhelming desire” to bankrupt him breached section 9 and Article 7. However, nothing was placed before the Court to substantiate the claims and they were dismissed. Master Gendall also questioned the relevance of the arguments to the matter at hand.

Accordingly, the debtor failed to satisfy the requirements of the Insolvency Act and the application to set aside the bankruptcy notice was dismissed.

## **CHILD SUPPORT APPEAL UNSUCCESSFUL, JUDICIAL REVIEW PARTIALLY SUCCESSFUL**

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Case:	Philip Alan Johnson v CIR & Family Court at Waitakere & Tania Raewyn Hewitt  Philip Alan Johnson v Tania Raewyn Hewitt & CIR
Decision date:	20 March 2002
Act:	Child Support Act 1991
Keywords:	Departure orders, judicial review

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### **Summary**

The appellant (applicant) was unsuccessful in his appeal of the Family Court's decision upholding the Commissioner's determinations, but partially successful in his judicial review of the Commissioner's determinations.

### **Facts**

The Child Support Act 1991 provides a mechanism for determining the amount of child support a non-custodial parent is required to pay. This is known as the formula assessment and is based on the taxable income of that parent and other factors. However, either the liable parent or the custodial parent can apply for a departure from the formula assessment in certain cases.

Mr Johnson and Ms Hewitt were married in 1993. Their son, Samuel, was born at the end of 1995 and they separated in 1996.

Ms Hewitt, the custodial parent, applied to the Commissioner for departures from the formula assessment in November 1998 and again in February 2000. The November 1998 application resulted in a departure from the formula assessment, and Mr Johnson's income was set at \$38,000 for the purposes of determining his child support liability. The February 2000 application resulted in another departure order and Mr Johnson's income being set at \$36,000.

Mr Johnson made an application to the Family Court for a departure order from the Commissioner's determinations. The Family Court declined the application on 10 April 2001.

This case was a combination of two proceedings. Mr Johnson appealed against a decision of the Family Court and also sought to judicially review the Commissioner's determinations.



## **Decision**

### ***The Appeal***

O'Regan J analysed the Child Support Act and the different roles of the Commissioner and the Family Court in determining child support liability. O'Regan J noted that Part 6A of the Act (which established a new procedure whereby parents could apply for departures from the formula assessment) had been overlaid on top of the existing Act with little indication as to how the new and old Parts were to interact.

The two main issues focused on were whether the Family Court can make retrospective departure orders and whether the Family Court can make suspension orders that effectively terminate liability.

O'Regan J concluded that the Family Court did not exercise an appellate function over determinations of the Commissioner and that its jurisdiction to review determinations was not limited to the specific grounds relied on by the applicant before the Commissioner. However, section 104 made it clear that the great majority of cases before the Family Court should have been first heard by the Commissioner.

O'Regan J also noted various problems with the legislative framework. There were inconsistencies in the right to go to the Family Court once the Commissioner has heard an application. O'Regan J considered that section 104 "requires a comprehensive overhaul, a task which rightly belongs to Parliament." (paragraph [46])

O'Regan J set out a useful summary of the proper procedure most cases would follow at paragraph [48] of the judgment.

An application to the Family Court is not an appeal, but rather a second overlapping review process. After analysing the legislation O'Regan J concluded that neither the Commissioner nor the Family Court has the power to make retrospective departure orders from assessments relating to a previous year, except in limited circumstances.

O'Regan J also held that the power under section 117 to suspend or alter liability for payments was a temporary one. It could not be used to "effectively expunge a party's liability." (paragraph [72]) O'Regan J considered that, when the decision of the Family Court in this case was assessed against his analysis of the legislation, it was clear that Mr Johnson's appeal could not succeed. His Honour concluded: "Mr Johnson's appeal against the Family Court decision fails in all respects." (paragraph [78])

### ***The Judicial Review***

O'Regan J quickly disposed of the majority of Mr Johnson's grounds for judicial review. His Honour held that the review officer was entitled to find that Mr Johnson had the potential to earn more money as he had discretion to assess evidence and make conclusions. Similarly, the review officer could not be said to be wrong and unreasonable in concluding that Mr Johnson had failed to provide requisite information. It could not be said that the 1998 and 2000 determinations were without foundation.

However, Mr Johnson was successful in his argument that the Commissioner had made an error of law in the 2000 determination in determining what the statutory phrase "earning capacity" meant in section 105(2)(c)(i) of the Child Support Act.

O'Regan J considered that the Commissioner had interpreted the phrase "earning capacity" to mean "the potential to earn more money if steps are taken to improve one's marketability or employment prospects." (paragraph [91])

O'Regan J considered that "only the reasonable abilities of the liable parent and the opportunities reasonably available to him or her are to be assessed." (paragraph [95]) O'Regan J concluded that the Act does not impose an obligation on a parent to increase their skill base in order to earn more money (and therefore pay more child support) beyond the requirement that he or she utilised their existing skills and opportunities.

Therefore, O'Regan J ordered that the determination relating to the 2000 year be remitted back to the Commissioner for reconsideration in light of the correct understanding of the statutory language, as outlined in his judgment.





## **NON-STANDARD BALANCE DATE APPROVED FOR PIPFRUIT GROWERS**

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The Commissioner has approved a non-standard balance date for pipfruit growers of 31 December.

Currently, orchardists and pipfruit growers may apply for a non-standard balance date of 1 April to 30 June. With effect from the 2003 income year, pipfruit growers who meet the criteria for having a non-standard balance date, as set out in *Tax Information Bulletin* Vol 5, No 11 (April 1994), may apply to the Commissioner to have a balance date of 31 December approved.

For other orchardists, the Commissioner will continue to recognise that the period 1 April to 30 June may be appropriate.

## REGULAR FEATURES

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### DUE DATES REMINDER

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#### 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**

#### JUNE 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*
- 20 **Employer deductions**  
Large employers (\$100,000 or more PAYE and SSCWT deductions per annum)
- *Employer deductions (IR 345) or (IR 346) form and payment due*
- Employer deductions and employer monthly schedule**  
Small employers (less than \$100,000 PAYE and SSCWT deductions per annum)
- *Employer deductions (IR 345) or (IR 346) form and payment due*
  - *Employer monthly schedule (IR 348) due*
- 30 **GST return and payment due**



## 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:

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	<i>Draft interpretation statement</i>	<i>Comment deadline</i>
<input type="checkbox"/>	ED0027: Requests to amend assessments	31 May 2002
	<i>Draft standard practice statement</i>	<i>Comment deadline</i>
<input type="checkbox"/>	ED0029: Remission of penalties and interest	31 May 2002

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

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