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This TIB has no appendix

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This *Tax Information Bulletin (TIB)* is also available on the internet in PDF. 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.

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THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

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

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

The following draft item is available for review/comment this month, having a deadline of 30 June 2004.

Ref.	Draft type	Description
IG0010	Interpretation guideline	Work of a minor nature

Please see page 34 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).

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LAND SALES – WHETHER INCOME TAX EXEMPTIONS FOR FARM LAND APPLY TO NON-NATURAL PERSONS

PUBLIC RULING – BR PUB 04/04

Note (not part of ruling): This ruling is essentially the same as Public ruling BR Pub 99/4, published in *Tax Information Bulletin* Vol 11, No 7 (August 1999), but this Ruling is to apply for an indefinite period from 1 June 2004. BR Pub 99/4 expires on 31 May 2004.

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

Taxation Laws

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

This Ruling applies in respect of section CD 1(4)(a)(i) and section CD 1(7)(a).

The Arrangement to which this Ruling applies

The Arrangement is the sale or other disposition of land by a non-natural person where the land had been acquired or used for the purposes of a farming or agricultural business carried on by that person and where the sale or disposition would otherwise be subject to section CD 1(2)(e), or section CD 1(2)(f) and (g).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The words "the taxpayer's spouse" in section CD 1(4)(a)(i) and section CD 1(7)(a) do not restrict the meaning of "taxpayer" to natural persons. "Taxpayer" in section CD 1(4)(a)(i) and section CD 1(7)(a) includes non-natural persons such as companies and trusts. Accordingly, the exemptions provided by section CD 1(4)(a)(i) and section CD 1(7)(a) apply to a taxpayer who is a non-natural person if the other requirements of the exemptions are met.

The period for which this Ruling applies

This Ruling will apply from 1 June 2004 for an indefinite period.

This Ruling is signed by me on the 10th day of May 2004.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING – BR PUB 04/04

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public ruling BR Pub 04/04 ("the Ruling").

Background

Amounts derived from certain sales or other dispositions of land that would otherwise be gross income under section CD 1(2), are subject to a number of exemptions.

This Ruling considers whether the exemptions contained in section CD 1(4)(a)(i) and section CD 1(7)(a), that are available in respect of sales of farm or agricultural land in certain circumstances, apply where the taxpayer disposing of the land is not a natural person.

Legislation

Section CD 1(4) states:

Subsection (2)(e) shall not apply to any amount derived from the sale or other disposition of any land in any case where—

(a) The land was acquired by the taxpayer, and used or intended to be used—

(i) By the taxpayer, or by the taxpayer's spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer's spouse, or both of them; or

….

Section CD 1(7) states:

Subsection (2)(f) and (g) shall not apply to any amount derived from the sale or other disposition of any land in any case where—

(a) That land is a lot resulting from the division into 2 or more lots of a larger area of land which, immediately before that division, was occupied or used by the taxpayer, or by the taxpayer's spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer's spouse, or both of them; and.

….

Application of the Legislation

The meaning of the words "by the taxpayer, or by the taxpayer's spouse, or by both of them" in section CD 1(4)(a)(i) and section CD 1(7)(a) does not require the taxpayer to be a natural person. On a literal interpretation, by considering each alternative in section CD 1(4)(a) separately, a non-natural person taxpayer, eg a company, could clearly come within the words: "The land was acquired by the *taxpayer*, and used ... by the *taxpayer*... principally for the purposes of a farming or agricultural business carried on by the *taxpayer"*.

Alternatively however, it is possible for the reference to the "taxpayer's spouse" to be interpreted as colouring the word "taxpayer" and limiting its meaning to natural persons.

It is the Commissioner's view that "taxpayer" as used in the exemptions is not restricted to natural persons. This interpretation is supported by the ordinary meaning of the words, and the legislative history of the exemptions. Prior to 1983, the exemptions only referred to "taxpayer", and it was clear that a company or other non-natural persons could come within the exemptions. In 1983, the exemptions were amended to include taxpayers' spouses. The intention at that stage was to extend the exemptions, rather than to narrow them to natural persons.

PRODUCT RULING – BR PRD 04/04

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 McBreen Jenkins Construction Limited ("McBreen").

Taxation Laws

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

This Ruling applies in respect of sections BG 1, CD 5, CH 2, CH 3, EB 1 and GB 1.

This Ruling does not consider the tax implications (if any) arising in respect of contributions made by McBreen to employees of associated companies of McBreen, or any tax implications (if any) arising in respect of any benefits derived by those employees of associated companies of McBreen.

This Ruling does not consider the application of section DF 7 or the implications of this provision (if any) on interest-free loans made by McBreen to the Trust under the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is the establishment and operation of the McBreen Jenkins Construction Limited Employee Option Plan ("EOP") for the benefit of the employees of McBreen in New Zealand. The EOP will be implemented through the establishment of a trust ("the Trust"). The Trustee of the EOP will be TMG Trustees (NZ) Limited, a New Zealand registered company ("the Trustee").

The Trust Deed ("the Trust Deed"), the Plan Rules and the Employee Share Option Contract ("Contract") provided to the Commissioner of Inland Revenue on 1 March 2002 together form the Arrangement subject to this Ruling. Further details of the Arrangement are set out in the paragraphs below.

McBreen

1. McBreen is incorporated in New Zealand. It is one of New Zealand's leading civil engineering organisations. At the time of issuing this Ruling it employs a workforce of around 500 employees and is noted for successful completion of the more difficult and complex construction projects.

Establishment of the EOP

2. McBreen will select certain employees and direct the Trustee to invite those employees to enter into a Contract. The Contract is a contract between the Trustee and the employee under which the employee can acquire options to purchase shares from the Trustee ("Options"). The shares will generally be McBreen shares, purchased directly from the company (ie as fresh share issues) or from existing shareholders. However, where McBreen shares are unavailable or are inappropriate given the purpose of the EOP, other shares may be purchased on the New Zealand Stock Exchange or other shares approved by McBreen ("the Shares").

3. In terms of the source of shares to be acquired by the Trust, it is necessary to undertake a threefold process, being:

   (a) valuation of shares

   (b) creating a warehouse for shares (ie The EOP), and

   (c) creating a market for shares (ie The EOP).

Source of shares

4. Firstly, it is anticipated that there will be two sources of shares for the EOP, that is:

   - Plan A ESOT shares, which will be shares in McBreen, and
   - Plan B ESOT shares will be in an associated investment/finance company of the McBreen Jenkins Group.

5. To commence the plan, all shares will be sourced from fresh issues – ie. it is not envisaged that initial acquisitions of shares by the Trustee would be acquired from existing shareholders. However, there have been situations in past employee share plans where founding directors have wished to sell shares and the employee share plan acquired those shares at an arm's length market value. Also, over time as employees acquire shares and sell those shares the EOP trust, as the prime market for EOP shares, will issue options, acquire shares, issue shares to employees under the terms of the EOP and purchase shares from employees.

6. It is proposed to earmark around 35% of McBreen's issued capital for utilisation by the Plan A ESOT. However, given McBreen's circumstances as an unlisted company, with limitations as to its issued capital, it is necessary to establish a subsidiary or associated company to provide further equity under the Plan B ESOT.

7. The shares issued under Plan A ESOT will involve the more key and skilled employees of McBreen's operation, while the Plan B ESOT will provide equity to the remaining employees as a general employee share plan.

8. If an employee takes up the invitation to join the EOP they will become a participating employee ("Participant"). The Participant will then enter into an agreement with their employer, McBreen, that as a consequence of entering into the Contract with the Trustee they will agree to sacrifice a part of their salary (ie a reduction of up to 25% of their pre-tax total fixed remuneration). This agreement may also include giving up the right to any future and contingent bonuses and any future contingent incentive payments. This can either be a percentage reduction or a specific figure.

9. McBreen will execute an addendum to their employment contract making provision for Salary Sacrifice, and amending the contract of employment, in the following terms:

> I,……. have accepted an offer by the Trustee of the McBreen Jenkins Employee Option Plan, to participate in the Plan and to acquire the right to purchase shares from the Trustee, on the terms and conditions referred to in the Trust Deed and the Share Option Contract.
>
> I authorise and accept a reduction in my pre-taxation monetary remuneration of an amount equal to the Employee Election (as defined in the Employee Share Option Contract) and I authorise and accept a reduction in any future and contingent bonuses or other future and contingent incentive payments of not more than the Employee Remuneration Election (as defined in the Employee Share Option Contract).

10. The remuneration package of McBreen employees is set each year in advance. Participants will be offered the choice of taking part of the total value of their remuneration package in cash salary, or benefits in kind, which may include Options under the EOP. The Options issued to Participants may replace some of the current incentives or performance-based reward programmes of McBreen.

11. McBreen may also make additional payments to the Trustee to enable it to acquire further shares. These payments may arise from bonus offers.

Bonus offers

12. This will involve McBreen paying an amount, which would otherwise be paid as a salary bonus, to the Trust. The amount paid to the Trust will be determined as follows. McBreen sets a minimum operating turnover, less wages, operating costs and overheads. Once the minimum operating turnover is achieved McBreen will set a "bonus pool" equivalent to 5% of the annual operating turnover and 30% of the "Participating Contribution". The "Participating Contribution" is defined as operating turnover, less direct wages and direct operating costs and overheads (plant-operating costs and other variable costs and indirect operating wages and salaries, but not shareholder salaries). 100% of the "bonus pool" will be paid to the Trust. For example, if a bonus pool of $90,000 were established, McBreen or an associated company of McBreen (being a company that is related to McBreen by virtue of section 2(3) of the Companies Act 1993) would make a contribution to the Trustee who would then acquire shares. The Trustee would then issue Options to the Participants.

13. The extent to which the Participants will receive the Options will be determined in accordance with the proportion of points allocated to each Participant. The points will be calculated as follows:

    - one point for every $5,000 of gross taxable earnings, and
    - one point for each year of service to a maximum of 25 years of service.

14. McBreen may also use bonus offers to operate as long-term incentives to the Participants. Long-term incentives are used as a means of attracting key employees with particular expertise necessary for the ongoing performance and profitability of the organisation. They are usually structured so that key employees may be retained and "locked-in" by way of "golden handcuffs" (minimum non-exercise periods of say 3 to 5 years, which are set as a term of offer for particular option allocations).

15. Payments will be made from the "bonus pool" only if the company is left in a position of profit and its net assets backing is sufficient to meet its banking covenant. In some years no "bonus pool" would be generated, while in others bonus pools of varying amounts would be produced.

Operation of the Trust

16. The payments from McBreen to the Trust, arising from Salary Sacrifice and Bonus Offers will not exceed the following percentages, expressed as a percentage of a Participant's total wages, salary or other remuneration in any one year:

    - in respect of Salary Sacrifice, up to 25%.
    - in respect of Bonus Offers, up to 30%.

17. These amounts received by the Trustee from the Salary Sacrifice and Bonus Offers will then be used to purchase the Shares.

18. Shares acquired by the Trustee will be purchased at their prevailing market values. The value of the shares will be reflected (ie indeed, costed to the Participants' remuneration in lieu of bonuses and salary) on the basis of the cost price of shares acquired by the Trustee. It is this cost price which will be reflected and deducted from their remuneration entitlements. This may require Salary Sacrifice or debiting against annual remuneration or other performance remuneration (eg bonuses, incentives, profit share etc).

19. The valuation of shares is set on the basis of net asset values on a times profitability (eg earnings, before tax), while also applying general principles "of true and fair value", and maintaining "transparency", and "integrity" in the calculation of the share value. McBreen has used quite simple valuation formula in the past. These have usually been provided by the company's management. For example, there may be a "times earnings" ratio – eg 2, 3 or 4 x EBIT (earnings before interest and tax). Alternatively, some companies may use net asset values.

20. However, as net asset values invariably equate to a net accumulated profit figure, companies have tended to use a "times" earnings basis.

21. The Options will be provided from the Trust to the Participants for nil consideration. The shares will be held in the Trust for the benefit of the Participants. Participants will, therefore, have a general beneficial interest in the shares held as the corpus of the Trust. These beneficial interests in the corpus of the Trust and the capacity to enforce due administration of that Trust will be complemented by the Contract.

22. Under the terms of the Trust Deed and Plan Rules of the EOP, the Participants will not have specific shares allocated to them or held on their behalf or for their benefit prior to exercise of the Options. Nothing in the EOP confers upon any Participants any rights in respect of the shares, including any right to instruct the Trustee how to vote or otherwise to deal with the shares. Prior to the Participant exercising their option to acquire shares and pay the stipulated consideration, the Trustee does not hold any of the shares for the benefit of any particular Participant.

23. In each of the ways Options may be acquired, payments made by McBreen and associated companies are for the purpose of remunerating the Participants for their services to McBreen or the associated companies. McBreen considers that the contributions are made in respect of the provision of services by Participants as part of their employment duties.

24. The Trustee may accumulate or decide to accumulate all or part of the income (including any dividends in respect of EOP shares) arising from the Trust in an income year. The accumulated income shall be added to the capital of the Trust so that it becomes part of the Trust and is held on the same trusts and with the same powers, but the Trustee may still resort to the accumulated income at any time and pay, apply, or appropriate all or part of it as if it were income of the Trust.

25. The Trustee may, and shall at the direction of the Participant, pay, apply or appropriate all or part of the income arising from the trust fund in an income year:

    - in meeting EOP expenses
    - to one or more of the Participants, and/or
    - for any other purposes relevant to the EOP.

    Any dividend income distributed as cash to the Participants will be on a pro-rata basis.

26. In some cases the payments made by McBreen will be in respect of employees who are employed by an associated company for reasons of administrative convenience, but will be reimbursed by those associated companies.

Administrative Contributions

27. McBreen will also provide the Trustee with sufficient funds ("Administrative Contributions") to enable the Trustee to perform its obligations under the EOP. These Administrative Contributions will be made to the Trustee only for accounting fees, audit fees, investment management fees and trustee fees. These funds will be provided by way of grant. For financial reporting purposes, these payments made by McBreen to the Trustee for accounting fees, audit fees, investment management fees and trustee fees will be expensed in the year in which they are paid.

Loans

28. In some cases loans will be provided to the Trustee in lieu of contributions so as to reduce the effect of contributions on the profitability of the company. McBreen considers this also has the effect of deferring the time of tax deductibility on the contributions. For example, McBreen may not wish to have the contribution reflected in the profit and loss account, due to adverse perceptions of financiers or investment analysts. This is the usual means of spreading the costs of contributions over a number of years, rather than in any one particular year.

Participants exercising their Options under the EOP

29. The Contract is a contract between the Trustee and the Participant which governs the Participant's right to exercise their Option and acquire the Shares. The Contract can only be exercised in respect of an "Unrestricted Share Option". In some cases the Participants may be required to have achieved certain time or performance-based contingencies before their Options become "Unrestricted Share Options" under the Contract. In particular there may be a set minimum vesting or non-exercise periods (eg three years of continuous service and/or certain other performance criteria). Under the first proposed allocation, the non-exercise period will be for a period of one year from the date of entering into the Contract. Once this vesting or minimum vesting non-exercise condition is achieved, the Option becomes an "Unrestricted Share Option", which may be exercised at the discretion of the Participant.

30. In order to exercise their Option under the Contract the Participant must give the Trustee an "Exercise Notice". The Exercise Notice must specify the number of shares the Participant wishes to purchase and whether the Participant wishes to either:

    - purchase the relevant shares from the Trustee, or
    - at the Participant's election, request the Trustee to sell the relevant shares on behalf of the Participant and distribute the proceeds of the sale of the shares to the Participant.

31. In both cases, it will first be necessary for the Participant to exercise their Option under the Contract and pay the stipulated consideration of $1 in total. The right to acquire shares, which are the subject of an Unrestricted Share Option, is the subject of rules dealing with forfeiture.

32. The right to exercise the Options will be subject to the ongoing restrictions consisting of:

    (a) The Plan Rules—the conditions applicable to the acquisition of the Shares by the Trustee and provision of Options under the terms of the trust are to be set out in the governing Plan Rules. The Plan Rules will govern the respective relationships between McBreen, participating employees and the Trustee.

    (b) Paying for Shares—on vesting the Shares will be issued to the Participants for consideration.

33. Additionally, the Participant is also deemed to have given an Exercise Notice in the following circumstances:

    - ten years from date the Participant entered into the Contract
    - termination of employment, or
    - termination of Trust.

    If this situation occurs, the Participant will be required to pay the consideration of $1.

34. Upon the receipt of a valid Exercise Notice, and receipt of a consideration of $1, the Trustee shall either transfer the Shares in specie to the Participant or pay cash distributions to the Participant funded from the sale of the relevant Shares or from additional contributions from McBreen. The Shares or cash will be distributed to the Participant at a point in time contemporaneous with the exercise of the Option.

35. The number of shares which the Participant will be entitled to purchase will be calculated by dividing the amount of the Salary Sacrifice by the average price paid by the Trustee to acquire the shares for the purpose of the EOP over a one-week period up to and including the day of the close of the offer to the Participant.

36. The number of shares to which the Participants are entitled will be adjusted under the terms of the Contract for any bonus offer or matching offer.

37. The Options will be operative for up to a maximum period of ten years from the date the Participant entered into the Contract or earlier on termination of employment. The ten-year limitation may be waived at the discretion of the Trustee (eg in cases of hardship).

Participants forfeiting their Options under the EOP

38. The Options will be subject to forfeiture and cancellation for nil consideration by the Trustee in situations of:

    - Theft, fraud or defalcation by the Participant in respect of McBreen or one of its associated companies, and
    - Summary dismissal from McBreen or one of its subsidiaries.

39. If Options are forfeited by one Participant, it is intended that further Options will be issued to present or future Participants. The options are forfeited if the person has not served their required vesting or non-exercise period. Forfeited options are usually cancelled and new options may be allocated in accordance with the remuneration purpose of each allocation.

40. Those allocations and the terms of those allocations (eg the non-exercise or vesting period and the performance hurdles) which may be set depend on the purpose of the allocation. For example, a short-term incentive may have a relatively short vesting

period (eg one year), while a long term incentive would typically have a vesting or non-exercise period ranging from two to five years.

41. The plans are usually implemented on an "enabling" basis. That means that the employee is in a position to set varying terms and conditions of the vesting or non-exercise period depending on the particular remuneration purpose of the particular allocation.

42. The Options cannot be transferred or disposed of for cash.

Winding up of the Trust

43. In the event that the Trust is wound up, each Participant will be deemed to have exercised their Option under the Contract to purchase from the Trustee for a consideration not exceeding $1 in total, and (at the Participant's election) to receive the proceeds from the sale (by the Trustee) of shares subject to the Contract (for which the Participant has an Option).

44. If any shares or other assets remain, such shares and other assets, or the proceeds of their sale, will first be applied to meeting the costs and liabilities of winding up, and thereafter will be applied by the Trustee at the direction of McBreen to or for the benefit of any other employee incentive plan or scheme for the benefit of the employees. Pursuant to clause 8 of the Trust Deed the Trustee is prevented from applying the above winding up options in any way for the benefit of McBreen. It states:

> **8. Application of Plan Shares**
>
> 8.1 Shares are to be held by the Trustee for the purposes of this Plan until sold by the Trustee to a Participating in accordance with the Participant's right under a Share Option Contract.
>
> 8.2 Notwithstanding Rule 8.1, the Participating Employer may in its absolute discretion from time to time by notice in writing direct the Trustee to apply any Plan Shares in any one or more of the following ways:
>
> (a) to be transferred to any other incentive plan or scheme for the benefit of Employees in which the participating Employer or any Associated Company is not beneficially interested:
>
> (b) to be transferred to any superannuation or similar fund for the benefit of Employees in which the Participating Employer or any Associated Company is not beneficially interested.

Reasons for the EOP

45. The EOP will be a key part of McBreen's remuneration performance pay regime for its key executives and other deserving employees. The purpose is to attract, retain, and motivate such employees (quality years of service), and to act as a deterrent to theft or misbehaviour, and to give them a clear identity as shareholders in McBreen.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following condition:

(a) The final documents will not differ in any material way from the documents provided to the Commissioner on 1 March 2002.

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:

- When the Participants acquire the shares or the proceeds from the sale of the shares as a result of exercising their Options, the taxable value of the benefit will be gross income under sections CH 2 and CH 3.
- Under section CH 2(6), the Participants derive the gross income in respect of the shares or proceeds acquired under the EOP, on the date on which the Participants exercise their Options to acquire the shares from the Trustee.
- The taxable value of the benefit received by the Participants under section CH 2 is the difference between the amount paid for the shares, being $1, and the market value of the shares on the day the Options are exercised by the Participants.
- The amount of the Salary Sacrifice agreed to by the Participants to satisfy the requirements of the EOP does not constitute gross income of the Participants under sections CD 5, CH 3, or EB 1.
- The amount of any contributions made by McBreen to the Trustee of the EOP does not constitute gross income of the Participants under sections CD 5, CH 3, or EB 1.
- Sections BG 1 and GB 1 will not apply to negate or vary the conclusions above.

This Ruling does not consider or rule on any aspect of the tax consequences (if any) that may arise from any payment, application or appropriation of all or part of the income arising from the Trust Fund to the Participants.

The period or income year for which this Ruling applies

This Ruling will apply for the period 15 March 2004 to 14 March 2009.

This Ruling is signed by me on the 15th day of March 2004.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 04/05

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 Brooklyn Park Olive Groves Limited ("BPOGL").

Taxation Laws

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

This Ruling applies in respect of sections EP 1, BD 2(1)(b)(i) and BD 2(2)(e).

This Ruling does not consider or rule on the potential application (if any) of sections EF 1 and BG 1, or Determination E10.

This Ruling considers expense deductibility in relation to section BD 2(1)(b)(i) (incurred by the taxpayer in deriving the taxpayer's gross income). Accordingly it has not been necessary for the purposes of this Ruling to consider or rule on whether investors are carrying on a business for the purposes of the Act.

This Ruling does not consider or rule on the taxation implications of financing arrangements (if any) entered into by Growers in order to invest in this Arrangement.

The Arrangement to which this Ruling applies

The Arrangement (also referred to as "the Project") is the purchase of 1,000 "A" shares (one interest) in BPOGL, and the opportunity to carry on the business of commercially growing olives for domestic and international sale on certain land situated at Brooklyn Park in Australia. Shareholders will own the capital asset, land, water, infrastructure and olive trees, by virtue of their shareholding in BPOGL. There is no minimum subscription for the Arrangement, however, there is a maximum subscription of 750 interests.

All amounts quoted in this Ruling are inclusive of Australian GST (if any).

Further details of the Arrangement are set out in the paragraphs below.

1. The Arrangement is governed by the terms of the Prospectus and Product Disclosure Statement for "Brooklyn Park Olive Groves Limited Stage 3" ("Stage 3") as provided to the Inland Revenue Department on 9 February 2004 ("the Prospectus"). Stage 3 is in no way dependent on Stages 1 and 2 of Brooklyn Park Olive Groves which are already established on Brooklyn Park.

2. Key aspects of the prospectus are as follows:

   (i) BPOGL owns the Brooklyn Park property ("the Property") which is leased to Huntley's Custodians Limited ("the Custodian"). The Custodian holds this interest as Head Lessee for the security of the Growers (also referred to as "members" or "investors"). The Property is sub-leased back to BPOGL for administration of the Project.

   (ii) Growers will enter a Licence to Occupy Agreement with BPOGL in its capacity as lessee of the Property. A Grower acquiring a single interest in the Project will hold a licence over a separate and distinct area (called an "Allotment") of 0.2 hectares on which the Grower can plant and maintain 80 olive trees. Each Allotment will be separately identifiable on a plan prepared by BPOGL for that purpose.

   (iii) Growers may acquire more than one interest in the Project. However, for each interest acquired the Grower must first apply for and be allotted a parcel of 1,000 $1 shares in BPOGL.

   (iv) Growers will also have the option to enter into a Management Agreement with Australian Green & Gold Limited ("the Manager") whereby the Manager will establish and maintain each Allotment during the term of the Project.

   (v) Unless a Grower elects otherwise, the Manager will harvest the olives on their behalf and use its best endeavours to sell the produce at the best available price. The Manager holds a contract with Inglewood Olive Processors, to buy and market the produce.

Scheme Constitution

3. Upon entering into a Management Agreement, Growers will be bound by the provisions of the Brooklyn Park Olive Groves Scheme Constitution ("the Scheme Constitution") which sets out the rights, powers, duties and obligations of the Manager. The Manager is responsible for the Project and will have the primary responsibility for managing the Project, ensuring compliance with the Australian Corporations Law, the Scheme Constitution and the Management Agreement.

Compliance Plan

4. The Compliance Plan for the Brooklyn Park Olive Groves Managed Investment Scheme describes how the Responsible Entity (the Manager) will ensure its compliance with the Australian Corporations Law and the Scheme Constitution. The compliance plan is designed to protect the rights of Growers.

Licence to Occupy Agreement

5. Growers enter into a Licence to Occupy Agreement ("the Agreement") with the following rights:

   - The Agreement is entered into until 30 June 2020. Under the Agreement BPOGL grants the Grower a Licence to Occupy an Allotment on the Project land for the purpose of conducting the "Business" ("Business" is defined as planting, growing, cultivating, harvesting and marketing olives for domestic and overseas sale).
   - Each Allotment is 0.2 hectare in size and will have 80 olive trees planted on it. Each Grower's allotment will be a distinct area of the Project Land and will be identified on an Allotment Plan to be maintained by BPOGL. Each Allotment will be numbered and shown in relation to the boundaries of the Project Land. Growers will be able to identify their individual Allotment and tree holding and Growers will be advised by BPOGL of the location of their individual Allotment.
   - The Grower must maintain and use the Allotment in a certain manner under the Agreement. Growers will be permitted to use dams, irrigation systems, roads and other infrastructure which is located on the Project Land.
   - The Grower is required to pay an annual Licence Fee for each year of the Agreement. The Fee is $22 per year for the first 3 years. From the fourth year onwards, the annual Fee will equal the Fee of the preceding year indexed by the All Groups Consumer Price Index for Brisbane ("CPI") in accordance with the formula set out in the Agreement.
   - The Grower will pay all telephone, garbage, waste, electric light and power charges levied against the Land or the Allotment in respect of the Grower's use of the Allotment to conduct the Business. BPOGL will pay all charges and assessments levied on the Allotment including water and municipal rates.
   - The Grower may delegate the conduct of all or part of the Business to the Manager or an approved contractor as defined in the Agreement. Delegates of the Grower will be entitled to enter the Allotment for the purpose of conducting the Grower's business.
   - The Grower may terminate the Agreement prior to 30 June 2020, where either party defaults or does not fulfil its obligations under the Agreement. Growers are not entitled to assign the Licence except as set out in the Scheme Constitution.

- Upon termination of the Agreement, Growers are not required to remove the trees or restore the Allotment to its original condition. However, the Grower must remove any item brought onto the Allotment or any improvement constructed on the Allotment.
- BPOGL will be legally entitled to any trees growing on the Allotment and things brought on to the Allotment by the Grower that are not removed within 14 days following the termination of the Agreement.
- The rights attaching to shares expire on 30 June 2020 when the Licence to Occupy terminates. At that time, each Grower will remain as a shareholder in BPOGL. As shareholders of BPOGL, the Growers maintain their involvement in the Property and the Olive Grove. A shareholder may, at their option:
  - elect to continue operating Brooklyn Park under management of their choice, or
  - sell the Property.

  In the event of sale of the Property each shareholder will be entitled to share in the capital proceeds of the sale of their capital asset, land, water, infrastructure and olive trees.

Management Agreement

6. Growers may elect to use the services of the Manager by entering into a Management Agreement. Growers that do not execute a Management Agreement with the Manager will be outside the scope of this Product Ruling and the taxation consequences of their participation in the Project are not dealt with in this Ruling. The Management Agreement provides for the following:
   - The parties to the Management Agreement are the Grower, the Manager and BPOGL. The Management Agreement will terminate on 30 June 2020, subject to the valid terminations as set out in clause 16 of the Management Agreement.
   - The Manager undertakes to establish the "Business" of the Grower, including the planting of trees as soon as is reasonably practicable. These services will begin to be performed and carried out by the Manager on behalf of the Grower immediately after the Grower enters into the relevant agreements. It is anticipated that planting will commence soon after the acceptance of the Grower into the Project. The olive trees are expected to be ready for the first commercial harvesting in Grower years 3 to 4 after acceptance into the Project.
   - The Manager must carry out their duties under the Management Agreement in a manner consistent with the best agricultural practice. Under clause 4.2 of the Management Agreement the Manager will carry out the following duties:
     - properly prepare the Allotment, including the performance of soil conservation, irrigation and drainage work on the Land to the benefit of the Allotment
     - cause at least 80 trees to be planted on the Allotment, and
     - identify the Grower's trees with appropriate markings.

7. The Manager must also provide additional services to the Grower as provided for under clause 5.2 and 5.3 of the Management Agreement as follows:

   5.2 Subject to the terms and conditions of this Agreement and subject to such instructions as it may from time to time receive from the Grower, the Manager shall provide the following services to the Grower in respect of the Grower's Business:

   (a) procure, plant and tend to the Trees in the Allotment in a proper and workmanlike manner;

   (b) use its best endeavours to minimise soil erosion and maintain soil quality on the Olive Grove;

   (c) use its best endeavours to keep the Olive Grove free from vermin and vegetation;

   (d) use its best endeavours to keep the Trees free from insects and diseases, which might damage or inhibit the growth of the Trees;

   (e) use its best endeavours to destroy, abandon or leave to rot any Trees which a reasonable agriculturalist would destroy, abandon or leave to rot;

   (f) maintenance and cultivation of the Trees including growing, watering, weeding, selecting, procuring and applying appropriate fertilisers, nutrients and herbicides and doing all other things reasonably necessary for the purpose of maintaining and cultivating the Trees in accordance with good and proper agricultural practices;

   (g) procuring the use of all necessary plant, equipment, machinery goods and materials for the purposes of performing the Management Services and procuring the use at the Allotment of suitable irrigation, fencing, drainage and shelter for the Trees and any other necessary fixtures or improvements required for the purposes of performing such services;

   (h) subject to the Grower's rights pursuant to clause 6, harvest the Trees in the Allotment in such manner and at such time as will maximise the yield from the Trees;

(i) if the Grower directs pursuant to clause 6, make the Allotment available to the Grower to harvest on his/her own behalf for the period ending at the commencement of Grower Year 4;

(j) subject to the Grower's rights pursuant to clause 6, market and sell the Olives (including the Olives harvested from the Allotment) in such manner so as to achieve the maximum price therefore, and account to the Grower pursuant to clause 7;

(k) if the Grower directs pursuant to clause 6, make the Olives harvested from the Allotment available to the Grower for his/her own benefit;

(l) obtaining professional services and advice which the Manager may consider necessary or desirable in connection with the maintenance and cultivation of the Trees or the harvesting and marketing of the Olives;

(m) the Manager shall diligently carry out quality control and other best practice procedures to ensure the production of high quality Olives and thereafter will use its best endeavours to market the Olives effectively and manage the Business efficiently to increase revenues and returns to the Grower; and

(n) do all other acts or things which the Growers may reasonably instruct the Manager to do or which are or may be necessary or desirable, to cultivate, maintain and manage the Trees, the Olives and the Olive Grove in a condition consistent with best agricultural practice.

5.3 The Manager must also:

(a) use its best endeavours to maintain any windbreaks, access roads or tracks on the Land in good repair; and

(b) prepare accurate records of all fertilisers, nutrients and other chemicals applied to the Land, the Olives or the Trees and make those records available to the Grower.

8. Further features of the Management Agreement are as follows:

- The Manager guarantees survival of the Grower's trees to the commencement of the fourth year of the term of the Agreement. Thereafter, the Manager does not guarantee survival of the Grower's trees or that they will produce olives as outlined in clause 4.4.
- Growers may elect not to use all the services provided by the Manager. Growers may elect to have the Manager harvest the trees on their Allotment separately or they may elect to harvest the trees on their Allotment themselves. Growers may also elect to retain the olives harvested from their Allotment and market, sell or otherwise deal with as they see fit under clauses 6.1 to 6.3. This Ruling does not apply to any Grower who makes an election under clauses 6.1 to 6.3.
- The Manager is entitled to delegate all or any of the functions to be performed by it under the Management Agreement under clause 20.
- The Manager will pool the olives produced by the Grower's trees with those of each other Grower, and market and sell all such olives under clause 7.1. The proceeds of the sale of all olives will be paid to the Custodian, to be divided and credited among all Growers with the intent that the Grower shall be entitled to receive the Grower's proceeds without reference to the quality, volume, prices or any other factor in relation to the Grower's olives or those of any other Grower under clause 7.3.
- The Custodian will establish an account for each Grower, to which the Grower's share of sale proceeds will be credited under clause 7.3. The Manager will account for the gross sale proceeds received and Management Fees payable and must provide each Grower with certain financial information in respect of the Grower's olives under clause 7.5. The Manager is also required to provide the Grower with various reports, including half yearly reports on the Management Services provided and the progress and condition of the Allotment under clause 14.
- Growers are not entitled to assign their rights or obligations under the Management Agreement, except in certain limited circumstances.

Grower fees

9. For a Grower accepted into the Project the table below sets out the amounts payable, per interest, upon application.

Amount payable	**Amount of fee**
Part payment of shares	$200
Licence fee	$22
Management fee (part Management Fee for month 1)	$1,118.50
Landcare operations	$2,049.50
Total payable on application	**$3,390.00**

10. Other than the amount payable upon application, during the first 36 months of the Project, Management Fees for each year are payable by 30 June of that year.

11. These Management Fees accrue on a monthly basis (referred to as a "Grower Month") and relate wholly to services provided by the Manager and completed during the month. For each interest held in the Project, Growers incur the amounts set out in the table below. The amount payable for Management Fees on 30 June of a particular year will vary according to the month that a Grower is accepted to participate in the Project.

Amount payable	Grower Month	Amount of fee
Supply and plant olive trees	1	$412.50
Irrigation establishment costs	1	$1,464.00
Management Fee (balance of initial Management Fee – see note below).	1	$5,575.50
Management Fee	2 to 12	$308.00
Management Fee	13 to 36	$80.00

Note: total Management Fee for month 1 is $6,694, being $1,118.50 payable on application plus $5,575.50 payable by 30 June.

12. In the event that an applicant is accepted as a Grower after the 1st of the month (referred to as a "Part-Grower Month"), the Management Fees payable shall be calculated according to the following formula:

$$A = \frac{(B \times C)}{D} - E$$

Where:

A = the amount payable for Management Fees for the Part Grower Month

B = number of days of the Part Grower Month up to 30 June

C = Management Fee payable for month 1

D = 30

E = If the Part Grower Month is June – $1,118.50, otherwise nil

13. It is the intention of the Manager that in all months, other than June, applications will be accepted and work will only be commenced on the 1st of the month following the application.

14. For year 4 and subsequent years, the annual Management Fee will be calculated using the percentages (set out in the table following) of "gross sale proceeds" of the "olives" harvested in the immediately preceding financial year:

Year	Percentage
4	88%
5	77%
6	66%
7	55%
8–termination	44%

Examples of fees payable by 30 June in year of application

Example 1: Grower joins the Project on 1 June 2003:

Shares	$200.00
Licence Fee	$22.00
Landcare operation	$2,049.50
Irrigation establishment	$1,464.00
Purchase and planting trees	$412.50
Management Fee	$6,694.00
Total amount payable for year ended 30 June 2003	**$10,842.00**

Example 2: Grower joins the Project on 15 June 2003

Shares	$200.00
Licence fee	$22.00
Landcare operation	$2,049.50
Irrigation establishment	$1,464.00
Purchase and planting trees	$412.50
Management Fee	$2,228.50
Total amount payable for year ended 30 June 2003	**$6,376.50**

Note: as the Grower has joined the Project part way through the month the Management Fee is calculated as follows:

$$A = \frac{(B \times C)}{D} - E$$

$$\frac{(15 \times 6{,}694)}{30} - 1{,}118.50$$

$$= \$2{,}228.50$$

Where:

A = the amount payable for Management Fees for the Part Grower Month

B = 15, that is the number of days of the Part Grower Month up to 30 June

C = $6,694, that is the total Management Fee payable for month 1

D = 30

E = $1,118.50 – as the Part Grower Month is June

Example 3: Grower joins the Project on 1 September 2004:

Shares	$200.00
Licence Fee	$22.00
Landcare operation	$2,049.50
Irrigation establishment	$1,464.00
Purchase and planting trees	$412.50
Management Fee	$9,466.00
Total amount payable for year ended 30 June 2004	**$13,614.00**

Note: the Management Fee consists of the following amounts:

On application
$1,118.50

By 30 June 2004
September (balance of month 1 fees)
$5,575.50

October to June (month 2 to month 9 @ $308)
$2,772.00

Total Management Fee
$9,466.00

Licence Fee

15. In addition to the Management fee a Grower is required to pay a $22 Licence Fee each year. From Year 4 onwards the Licence Fee will be increased annually by the amount of the Brisbane CPI for the year.

Shares in BPOGL

16. For each Interest acquired in the Project a Grower must first apply for and be allotted shares in BPOGL, the landowning company. The minimum subscription for an investor is 1,000 shares of $1 each, with further applications to be made in parcels of 1,000 shares. For each Interest a part payment of $200 is payable on application. A further $400 will be payable on or before 30 June in the financial year following the Application. The remaining $400 is payable on or before 30 June in the next financial year.

Water and Services Agreement

17. Upon application, the Grower becomes a party to a Water and Services Agreement. The other parties to the Agreement are the owner of the property adjoining the Project Land ("the Supplier"), and the Manager. The effect of this Agreement will be to supplement the water supply and infrastructure available for the Project. Infrastructure refers to accommodation and the administration buildings, machinery service sheds and storage sheds located on the adjoining property. Under this Agreement all fees are the responsibility of the Manager. No fees are payable by the Grower. The term of the Agreement is 20 years.

18. The projected cashflows for Growers holding one interest in BPOGL, are as follows:

Year	Net Project income
2003 – 2004	–10,842.00
2004 – 2005	–3,868.00
2005 – 2006	–1,360.00
2006 – 2007	–427.68
2007 – 2008	394.37
2008 – 2009	947.29
2009 – 2010	1,567.91
2010 – 2011	2,262.93
2011 – 2012	2,263.97
2012 – 2013	2,265.02
2013 – 2014	2,266.10
2014 – 2015	2,267.21
2015 – 2016	2,268.35
2016 – 2017	2,269.50
2017 – 2018	2,270.69
2018 – 2019	2,271.91
2019 – 2020	2,273.16
2020 – 2021	2,274.46
Total	**11,365.19**

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

(a) Any foreign source income and foreign expenditure that arises in respect of any Grower's investment in BPOGL has been included in the Grower's annual returns of income in Australia.

(b) No foreign source income, nor foreign expenditure arising from the investment in BPOGL, has been included in the Grower's income tax return for the base year.

(c) Any dividends received from BPOGL are to be returned when derived and not in accordance with section EP 1.

(d) The total net foreign source income (derived from all foreign activities) of the Grower is less than $100,000.

(e) The income derived and expenditure incurred by the Grower from the sale of raw olives and processed olive products is not income derived or expenditure incurred under the "accrual rules".

(f) The shares in BPOGL do not give rise to any "attributed foreign income" as defined in section OB 1.

(g) The shares in BPOGL do not give rise to "foreign investment fund income" as defined in section CG 16.

(h) BPOGL is not a "controlled foreign company" as defined in section CG 4.

(i) The Licence Fees and Management Fees are all set at an arm's length basis.

(j) The "year one" Management Fees and Licence Fees are payable in respect of the year ended 30 June in the year the Grower is accepted into the Scheme.

(k) With the exception of any part of the Management Fees that relate to the following matters:

(a) Supply and plant olive trees

(b) Irrigation establishment cost

(c) Landcare operations

(d) Any fixtures that are owned by the Grower pursuant to clause 5.2(a) and (g) of the Management Agreement

the Management Fees are paid by the Growers in consideration for the provision of the services set out in clause 5.2 of the Management Agreement.

(l) The Ruling applies only to Growers who enter into the Management Agreement.

(m) The Grower treats all revenue expenditures in their financial statements as expensed in the year paid.

(n) Growers will participate in the Project until 2020 and have an intention to make a profit from investing in the Arrangement.

(o) The balance date of any Grower for the purposes of Australian income tax is 30 June.

(p) This ruling applies only to New Zealand resident taxpayers.

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:

- Growers may make an election under section EP 1 to use a foreign tax balance date.
- The cost of acquiring shares in BPOGL is a capital expense and not deductible by virtue of section BD 2(2)(e).
- The Management Fees paid by the Grower for services provided by the Manager pursuant to clause 5.2 of the Management Agreement are deductible under section BD 2(l)(b)(i) with the exception of any part of the fees that relate to the following matters:

  (a) Supply and plant olive trees

  (b) Irrigation establishment cost

  (c) Landcare operations

  (d) Any fixtures that are owned by the Grower pursuant to clause 5.2(a) and (g) of the Management Agreement.
- Section DB 1 does not preclude Growers who are not registered or liable to be registered for Australian GST from claiming a deduction in New Zealand for the GST-inclusive amount.
- The Licence Fees payable are deductible under section BD 2(1)(b)(i).

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 July 2003 until 30 June 2006.

This Ruling is signed by me on the 25th day of March 2004.

Martin Smith
General Manager (Adjudication & Rulings)

LEGISLATION AND DETERMINATIONS

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

DETERMINATION DET 001

STANDARD-COST HOUSEHOLD SERVICE FOR CHILDCARE PROVIDERS

This Determination may be cited as "Determination DET 001: Standard-Cost Household Service for Childcare Providers."

1. Explanation (which does not form part of the Determination)

(a) This Determination sets out the standard-cost household service that has been provided as childcare services by taxpayers, who are natural persons, in their own domestic accommodation.

(b) It also sets out the components of expenditure that are generally incurred in the provision of the standard-cost household service by these taxpayers.

(c) This Determination determines a figure for a cost or costs that for the purpose of the Tax Administration Act 1994 may be treated as being incurred by a taxpayer in deriving:

  (i) exempt income, and

  (ii) gross income.

(d) This Determination also prescribes a method of calculating such a figure, as set out in paragraph (c).

2. Reference

This Determination is made pursuant to section 91AA of the Tax Administration Act 1994.

3. Scope of Determination

Except where its application is specifically excluded in another Determination or a fresh Determination pursuant to section 91AA(5) of the Tax Administration Act 1994, this Determination shall apply to all natural persons who are not registered for goods and services tax purposes and who have provided childcare services in their own domestic accommodation in accordance with the Education (Home-Based Care) Order 1992.

Subject to an adjustment based on the annual movement of the consumers price index as at 31 March, this Determination, unless specifically withdrawn, shall apply from the 2004 to the 2008 income years (inclusive).

4. Interpretation

In this Determination, unless the context otherwise requires:

Expressions used have the same meanings as those in sections CB 9, ID 1 and OB 1 of the Income Tax Act 1994 and section 91AA of the Tax Administration Act 1994.

"**Childcare provider**" means a natural person who carries on an activity of providing a standard-cost household service in their own domestic accommodation.

"**Childcare service**" means a service that is provided by a childcare provider.

"Consumers Price Index" means the application of the annual movement of the All Groups Consumers Price Index to the variable standard-cost component and the administration and record keeping fixed standard-cost component, but not the domestic accommodation fixed standard-cost component, of the standard-cost household service for childcare providers.

"**Standard-cost household service for childcare providers**", in relation to any childcare service, means the standard-cost that has been determined by the Commissioner of Inland Revenue for the purpose of the Income Tax Act 1994 and the Tax Administration Act 1994.

"**Order**" means the Education (Home-Based Care) Order 1992.

5. Determination

Provision of childcare service

A childcare service shall be a standard-cost household service where:

(a) the childcare provider is a natural person, and

(b) the childcare service requires the use of the childcare provider's domestic accommodation, and

(c) the childcare service involves activities that commonly occur in a family household, and

(d) the childcare service provided is a kind specified in the Order.

Standard-cost for childcare providers

Where applicable, the standard-cost for childcare providers shall be inclusive of goods and services tax.

A childcare provider who in an income year derives gross income from providing a childcare service may elect to deduct the expenditure as set out in this Determination.

Where a childcare provider makes such an election, they shall not deduct any additional cost of providing the childcare service, if the additional cost relates to a type of expenditure that is covered in this Determination.

(a) Variable standard-cost

Variable standard-cost shall be $2.67 per hour per child. This shall cover expenditure on items such as electricity/fuel, food, wear and tear, outings and associated transport costs, laundry, educational resources, modification costs, equipment and first aid.

(b) Fixed standard-cost

Fixed standard-cost shall be calculated on an annual basis and shall not vary in relation to the number of children under care. Fixed standard-cost shall comprise two categories, namely administration and record keeping, and domestic accommodation.

Administration and record keeping fixed standard-cost shall be $260 per annum and shall include such items as the use of telephone, postage and stationery, computers and other incidental administration costs.

The Determination of domestic accommodation fixed standard-cost shall depend on whether the childcare provider owns or rents their domestic accommodation. Additionally, where the childcare provider is entitled to an accommodation supplement, the annual deduction calculated shall be reduced by the amount of the accommodation supplement received.

(*i) Childcare provider who owns their domestic property*

Where the childcare provider owns their domestic property, the domestic accommodation fixed standard-cost shall be determined in accordance with the following formula:

$$[(a \times 5\%) - b] \times 50\% \times 33.33\%$$

where:

a	is the purchase price of the domestic property, and
b	is the annualised amount of accommodation supplement received by the childcare provider (ie weekly amount received x 52 weeks), and
5%	represents the expenditure normally incurred in owning a domestic property, including depreciation of the building and outgoings such as rates, insurance, mortgage interest cost, and
50%	represents the usage factor that is based on usage by area such as bedrooms, kitchen, laundry, toilet/bathroom, other living areas and the use of outdoor areas pursuant to the Order, and
33.33%	represents the availability factor that is based on a 7.30 am/5.30 pm drop off/pick up for Mondays to Fridays and a 7.30 am/12.30 pm for Saturdays/Sundays, totalling 55 hours per week.

(ii) Childcare provider who rents their domestic property

Where the childcare provider rents their domestic property, the domestic accommodation fixed standard-cost shall be determined in accordance with the following formula:

$$(a - b) \times 50\% \times 33.33\%$$

where:

a	is the annualised rental payment (ie weekly rent paid x 52 weeks), and
b	is the annualised amount of accommodation supplement received by the childcare provider (ie weekly amount received x 52 weeks), and
50%	represents the usage factor that is based on usage by area such as bedrooms, kitchen, laundry, toilet/bathroom, other living areas and the use of outdoor areas pursuant to the Order, and
33.33%	represents the availability factor that is based on a 7.30 am/5.30 pm drop off/pick up for Mondays to Fridays and a 7.30 am/12.30 pm for Saturdays/Sundays, totalling 55 hours per week.

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

This Determination is signed on the 10th day of May 2004.

Margaret Cotton
National Manager
Technical Standards

COMMENTARY ON DETERMINATION DET 001

This commentary and its appendices do not form part of the Determination. They are intended to provide assistance in the understanding and application of the Determination.

Standard-cost basis and actual-cost basis

(a) In accordance with section 91AA(3) of the Tax Administration Act 1994, a childcare provider who uses the standard-cost basis set by the Commissioner in determining their income tax liability has elected this basis to be appropriate for their circumstances.

(b) A childcare provider who elects to use the standard-cost basis determined by the Commissioner must use this basis to calculate their income tax liability for the elected income year.

(c) The childcare provider must adopt either the standard-cost basis or the actual-cost basis, but not both, for an income year with the exception of one-off costs actually incurred (refer to the commentary on additional costs).

(d) As the use of the standard-cost basis is optional, childcare providers will not be precluded from adopting the actual-cost basis or from opting in and out of the standard-cost basis for any subsequent income year.

(e) A childcare provider who does not elect to use the standard-cost basis set by the Commissioner in determining their income tax liability must use the actual-cost basis. In electing to use the actual-cost basis, the childcare provider must ensure that they have adhered to all the record keeping requirements for verifying the costs.

Income tax implications and filing of tax returns

The following income tax implications apply to a childcare provider who provides childcare service and elects to use the standard-cost basis set out in the Determination.

(a) Section ID 1(2) of the Income Tax Act 1994 prohibits any resultant losses from being utilised against other income for any income year or carried forward to future income years.

(b) In accordance with section 33B of the Tax Administration Act 1994, a childcare provider would not be required to file a tax return for that income year if:

(i) after deducting the amount of standard-cost under the Determination, the childcare provider has zero income tax liability, and

(ii) the childcare provider did not have any other income where tax has not been deducted at source.

Consumers price index

To assist childcare providers, Inland Revenue will publish the effect of the annual movement of the All Groups Consumers Price Index as at 31 March on the variable standard-cost component and the administration and record keeping fixed standard-cost component. The revised standard-cost components will be published in the *New Zealand Gazette* and in Inland Revenue's *Tax Information Bulletin* in May of each year.

The changes in the annual movement of the All Groups Consumers Price Index will not be applied to the domestic accommodation fixed standard-cost component. This is because the basis for this component is either historical (where a childcare provider owns their domestic accommodation) or market related (where a childcare provider rents their domestic accommodation).

The first such annual adjustment will be for the income year to 31 March 2005.

Goods and services tax (GST)

As the annual turnover from childcare services is expected to be well below the registration threshold for GST, it is presumed that few childcare providers will be registered for GST. Therefore, the standard-cost components determined by the Commissioner have been prepared on a GST inclusive basis and cannot be used by a childcare provider who is registered for GST.

Purchase price of domestic property

The purchase price of a domestic property will include any subsequent cost of improvement to the domestic property. Childcare providers will be required to provide verification of such additional costs incurred.

Receipt of accommodation supplement by a childcare provider

A childcare provider may be entitled to an accommodation supplement. The Ministry of Social Development assesses each applicant's entitlement based on a set of guidelines. The assessment of entitlement takes into account such factors as accommodation costs, income and assets, family status, employment status and residential location. Where a childcare provider is entitled to an accommodation supplement, the amount of annual domestic accommodation fixed standard-cost

calculated will be reduced by the annual amount of the accommodation supplement received. The examples in Appendix B illustrate how the receipt of an accommodation supplement affects the calculation of the annual domestic accommodation fixed standard-cost.

Additional costs

Where a childcare provider has incurred additional one-off costs, which have not been taken into account by the Commissioner in arriving at the standard-cost in the Determination, such costs will be allowed as an additional deduction. The childcare provider must however demonstrate to Inland Revenue that such costs have been incurred for the childcare service they provide. An example may be expenses incurred to comply with the training requirements of the Education (Home-Based Care) Order 1992.

Reimbursements

Where a parent or guardian reimburses a childcare provider for specific costs incurred, these costs are not allowed as deductions against their gross income. For example, the money received from the parents for the admission fee to the zoo is not regarded as gross income. The admission fee to the zoo will not be allowed as a deduction to the childcare provider.

Impact on previously accepted practice

Prior to the issue of Determination DET 001, childcare providers applied the practice as it related to persons providing boarding services in their own homes (boarders).

Determination DET 001 supersedes any previously accepted practice. Childcare providers, in determining their income tax liability, must now adopt either the standard-cost basis (as detailed in DET 001) or the actual-cost basis. In adopting the actual-cost basis, childcare providers must ensure that a full set of records are kept.

APPENDIX A

WEEKLY VARIABLE STANDARD-COST ITEMS

The basis of $2.67 per child per hour has been calculated in relation to their operation on a weekly basis.

Item of expenditure	Cost ($)
Electricity/fuel	10.00
Food	15.00
Wear and tear	10.00
Outings and associated transport costs	18.00
Laundry	8.00
Educational resources	7.00
Modification costs	5.00
Equipment	6.00
First aid	1.00
Total	80.00
Based on 30 hours per week (rounded to the nearest cent)	$2.67

Explanation of weekly variable standard-cost items

Electricity/fuel ($10) – This covers the use of all appliances including the cost of heating, lighting and hot water. It includes other heating fuels such as gas, wood and coal.

Food ($15) – This covers the cost of food that is supplied and includes basics such as bread, milk, fruit juice, biscuits and special dietary needs. The cost of baking involved/provided for children is also included in this figure. It also covers incidentals such as tea and coffee consumed by childcare providers and parents/guardian.

Wear and tear ($10) – These cover all related expenses and include such expenses as the cleaning of carpets, repairing/replacing furnishings (eg rugs, linen), repairs and maintenance of equipment and appliances.

Outings and associated transport costs ($18) – These cover the costs of actual outings such as swimming pool or other administration/user costs for a particular activity. In addition, motor vehicle costs in transporting the children to these locations and other travel costs associated with picking up from a play group/kindergarten are also included. Owning/hiring of car seats for small children under the age of five is also a statutory requirement and is therefore included in this component.

Laundry ($8) – This not only covers obvious cleaning and laundry products but also rubber gloves, wet wipes, toilet paper and other similar items.

Educational resources ($7) – These cover all related expenses and include items such as paper, paints, crayons, books, and other stationery items.

Modification costs ($5) – The Education (Home-Based Care) Order 1992 sets out the minimum requirements for caregivers to be eligible to provide childcare. These include fencing, fireguards, window locks, and other safety features and cover the initial cost plus ongoing costs necessary to comply with the required standard.

Equipment ($6) – This covers the cost of providing indoor and outdoor equipment such as video tapes, swings, puzzles and games.

First aid ($1) – This covers the requirement to have a first aid cabinet equipped to the standard set by the Ministry of Health/District Health Boards.

APPENDIX B

APPLICATION OF THE STANDARD-COST BASIS AS DETERMINED BY THE COMMISSIONER FOR CHILDCARE PROVIDERS

(**Note**: All the calculations are rounded to the nearest dollar.)

Example 1

A childcare provider owns a domestic property. The purchase price of the domestic property is $200,000. The childcare provider receives an accommodation supplement of $10 per week based on the location of the domestic property and their individual circumstances. Therefore, the domestic accommodation fixed standard-cost that the childcare provider may elect to deduct per annum is:

[($200,000 x 5%) – ($10 x 52)] x 50% x 33.33% = $1,580

Example 2

A childcare provider rents a domestic property. The rent is $200 per week. The childcare provider receives an accommodation supplement of $20 per week based on the location of the domestic accommodation and their individual circumstances. Therefore, the domestic accommodation fixed standard-cost that the childcare provider may elect to deduct per annum is:

[($200 x 52) – ($20 x 52)] x 50% x 33.33% = $1,560

Example 3

A childcare provider owns a domestic property, which costs $200,000. The childcare provider receives an accommodation supplement of $10 per week based on the location of the domestic property and their individual circumstances.

The childcare provider provided care for several children in the income year for a total of 1,250 hours. The childcare provider charged an hourly rate of $4 and elected to use the standard-cost basis in accordance with Determination DET 001: Standard-Cost Household Service for Childcare Providers.

The childcare provider's income tax liability is calculated as follows:

Income: 1,250 hours x $4.00		$5,000.00
Less Variable standard-cost: 1,250 hours x $2.67		$3,338.00
		$1,662.00
Less Fixed standard-cost:		
Domestic accommodation as per Example 1	$1,580.00	
Administration and record keeping	$260.00	
		$1,840.00
		($178.00)
Taxable income		**Nil**

Example 4

A childcare provider rents a domestic property for $200 per week. The childcare provider receives an accommodation supplement of $20 per week based on the location of the domestic accommodation and their individual circumstances.

The childcare provider provided care for several children in the income year for a total of 1,250 hours. The childcare provider charged an hourly rate of $4 and elected to use the standard-cost basis in accordance with Determination DET 001: Standard-Cost Household Service for Childcare Providers.

The childcare provider's income tax liability is calculated as follows:

Income: 1,250 hours x $4.00		$5,000.00
Less Variable standard-cost: 1,250 hours x $2.67		$3,338.00
		$1,662.00
Less Fixed standard-cost:		
Domestic accommodation as per Example 2	$1,560.00	
Administration and record keeping	$260.00	$1,820.00
		($158.00)
Taxable income		**Nil**

Example 5

A childcare provider owns a domestic property, which costs $250,000 and receives no accommodation supplement.

The childcare provider provided care for several children in the income year for a total of 3,120 hours. The childcare provider charged an hourly rate of $4 and elected to use the standard-cost basis in accordance with Determination DET 001: Standard-Cost Household Service for Childcare Providers.

The childcare provider's income tax liability is calculated as follows:

Income: 3,120 hours x $4.00		$12,480.00
Less Variable standard-cost: 3,120 hours x $2.67		$8,330.00
		$4,150.00
Less Fixed standard-cost:		
Domestic accommodation: [($250,000 x 5%) – $0] x 50% x 33.33%	$2,083.00	
Administration and record keeping	$260.00	$2,343.00
Taxable income		**$1,807.00**

Example 6

A childcare provider rents a domestic property for $210 per week and receives no accommodation supplement.

The childcare provider provided care for several children in the income year for a total of 3,120 hours. The childcare provider charged an hourly rate of $4 and elected to use the standard-cost basis in accordance with Determination DET 001: Standard-Cost Household Service for Childcare Providers.

The childcare provider's income tax liability is calculated as follows:

Income: 3,120 hours x $4.00		$12,480.00
Less Variable standard-cost: 3,120 hours x $2.67		$8,330.00
		$4,150.00
Less Fixed standard-cost:		
Domestic accommodation: [($210 x 52) – 0] x 50% x 33.33%	$1,820.00	
Administration and record keeping	$260.00	$2,080.00
Taxable income		**$2,070.00**

GENERAL DEPRECIATION DETERMINATION DEP51

This determination may be cited as "Determination DEP51: Tax Depreciation Rates General Determination Number 51"

1. Application

This determination applies to taxpayers who own the asset classes listed below.

This determination applies to "depreciable property" other than "excluded depreciable property", no matter when the property in question was acquired or used.

2. Determination

Pursuant to section EG 4 of the Income Tax Act 1994 I hereby amend Determination DEP1: Tax Depreciation Rates General Determination Number 1 (as previously amended) by inserting into the "Leisure" industry category and the "Transportation" asset category, in the appropriate alphabetical order, the general asset class, estimated useful life, diminishing value depreciation rate and straight-line depreciation rate listed below:

General asset class	Estimated useful life (years)	DV banded dep'n rate (%)	SL equiv banded dep'n rate (%)
Outboard motors	5	33	24

3. Interpretation

In this determination, unless the context otherwise requires, expressions have the same meaning as in the Income Tax Act 1994.

This determination was signed by me on the 16th day of April 2004.

Martin Smith
General Manager (Adjudication and Rulings)

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.

APPLICATIONS BY OBJECTORS TO CALL WITNESSES

Case: TRA decision 015/2004

Decision date: 1 April 2004

Act: Taxation Review Authorities Act 1994

Keywords: Witness summons

Summary

The Taxation Review Authority declined most of the objectors' applications to call further witnesses. The objectors were, however, permitted to give evidence of their knowledge at the time they entered into the transactions.

Facts

This interlocutory decision relates to certain participants of the JG Russell tax avoidance template. The template operated by grouping profitable companies with companies with tax losses so as to relieve the profitable companies of their income tax obligations. The scheme has been described by the Court of Appeal as a "blatant tax avoidance scheme" (*Miller v CIR; Managed Fashions Limited v CIR* (1998) 18 NZTC 13,961).

In this decision Judge Barber dealt with a number of applications by the objectors to call further witnesses, for various reasons.

Lawfulness of the exercise of delegated powers

The objectors sought to call a number of officers of Inland Revenue who had exercised various powers under the Income Tax Act 1976. The objectors argued that further evidence was required, while the Commissioner argued that the issues were essentially matters of legal submission.

The objectors also sought to call two former Commissioners of Inland Revenue and the person responsible for drafting the Commissioner's policy statement ("CPS") on the application of section 99 of the Income Tax Act 1976. The objectors wanted to show that if the persons who purported to invoke section 99 did not follow the CPS, the assessments would be invalid because a condition of the delegation would be to act in accordance with the CPS. They also sought to distinguish what the Privy Council had said in *Miller v CIR* [2001] 3 NZLR 316. The Commissioner argued that the status of the CPS was not a justiciable issue and was a matter that could be addressed in submissions.

The objectors also wished to call all officers of Inland Revenue who had formed opinions under section 25(2) of the Income Tax Act 1976. The objectors argued that the "opinion-formers" were required to give evidence as to whether or not they gave due consideration to the statutory criteria in section 25. The Commissioner also argued that this was not a justiciable issue.

Impact of the different tracks of assessment

The objectors wished to call an officer of Inland Revenue to give evidence as to what income from the template has been assessed to the objectors and other entities. The objectors submitted that if income was assessed under one track, then the effect of the assessment on the other tracks had to be considered, as the two different assessments could not co-exist. The Commissioner submitted that these issues should be addressed at another hearing, and were not relevant here.

The objectors also wanted to call witnesses to question them about the appropriate use of Track A and Track B. The Commissioner argued that the law was settled on this point and there was no need for further witnesses.

BNZ Investments issues

The objectors wished to call officers of Inland Revenue who had interviewed the objectors to see what they had found out about the objectors' knowledge of the Russell template. The Commissioner argued that these cases were very different from the factual scenario in *BNZ Investments* (*CIR v BNZ Investments Ltd* [2002] 1 NZLR 450) and the officers' interview notes were in the evidence before the Authority. If the objectors wanted further evidence about their knowledge they should call themselves to give evidence as to what they knew at the relevant times.

Parent companies

The objectors wanted to call officers of Inland Revenue to give evidence as to what assessments had been made in relation to the parent companies (the loss companies which purchased the profitable companies). It was submitted that if the parent companies' income was not adjusted then the assessments against the objectors could be invalid. The Commissioner argued that the assessments to the parent companies were not before the Authority and that it had no authority to deal with those adjustments. They were irrelevant to the issues before the Authority.

Other issues

The objectors also applied for further time to cross examine the Commissioner's witnesses (they had already had nine days). The Commissioner opposed this and submitted that the cross-examination had been sufficient, and that the objectors had wasted the time that they previously had.

Decision

Lawfulness of the exercise of delegated powers

Judge Barber refused to call any further witnesses in relation to this issue. The Authority had the relevant instruments of delegation before it, and whether the purported exercise of a power was lawful was therefore a matter of legal submission. No further evidence was required and leave was refused to call further witnesses.

Judge Barber agreed with the Commissioner that the CPS was no longer a legal issue and that in any event the evidence showed that the CPS had been followed. The Privy Council had firmly addressed the effect of the CPS and considered that it was not intended to lay down conditions. There was no merit in the argument that if an officer of Inland Revenue failed to follow the steps in the CPS that the resulting assessment would be invalid.

Judge Barber held, in relation to the section 25 point (at paragraph [50]:

> The income which has not been declared for income tax purposes by the individual objectors is their respective share of the net profits of the trading company. It is obvious that this was income in respect of which a return was required to be made. There is no reason to question the honesty or reasonableness, opinions or procedures of the respondent's application of s 25(2).

Impact of the different tracks of assessment

Judge Barber held that these issues were matters for submissions. His Honour was only concerned with the present objectors and their assessments were made pursuant to Track B. No further evidence was required. Judge Barber also refused to call any witnesses re the Track A/Track B distinction.

BNZ Investment issues

Judge Barber refused to call any of the officers of Inland Revenue to give evidence under this head. His Honour stated (at paragraph [73]):

> … I do not find it credible that any thinking objector could have regarded the elaborate documentation which that objector had entered into at Mr Russell's behest, to comply with taxation law.

Judge Barber refused to call any officers from Inland Revenue. His Honour said "… unless I have heard evidence from an objector, I could not possibly make findings of credibility with regard to that objector." Judge Barber granted leave to the objectors to give evidence under this head if they so wished.

Parent companies

Judge Barber agreed with the Commissioner's submissions on this issue and declined the objectors' application to call further evidence.

Other issues

Judge Barber agreed with the Commissioner's submission that the objectors had wasted their time and declined to allow any further cross-examination. His Honour also refused to use the Authority's power to call further witnesses.

APPLICATIONS BY OBJECTORS TO CALL WITNESSES

Case: TRA decision 016/2004

Decision date: 7 April 2004

Act: Taxation Review Authorities Act 1994

Keywords: Witness summons

Summary

The Taxation Review Authority declined most of the objectors' application to call further witnesses, apart from allowing one witness who previously worked for Inland Revenue. The objectors were also permitted to give evidence of their knowledge at the time they entered the transactions.

Facts

This interlocutory decision relates to certain participants of the JG Russell tax avoidance template. The template operated by grouping profitable companies with companies with tax losses so as to relieve the profitable companies of their income tax obligations. The scheme has been described by the Court of Appeal as a "blatant tax avoidance scheme" (*Miller v CIR; Managed Fashions Limited v CIR* (1998) 18 NZTC 13,961).

The decision related to two groups of objectors (different from the objectors in TRA decision 015/2004). The objectors sought leave to call witnesses to give evidence on a number of matters. The witnesses related to the same issues considered by Judge Barber in TRA decision 015/2004, dated 1 April 2004. This group of objectors were also represented by the same counsel as those in TRA decision 015/2004.

The objectors listed a number of topics and provided reasons why it was necessary to call witnesses for each one. The Commissioner generally opposed the calling of witnesses, on the grounds that their evidence was not necessary.

The objectors also referred to directions given by Judge Barber on 10 March 1997, claiming that they had not been followed by the Commissioner. The directions related to the Commissioner responding to each objector's grounds of objection, and preparing an agreed and disputed statement of facts for each objector. The objectors submitted that the Authority should make an "unless" order requiring the Commissioner to do what had been ordered within a stated time, and if the directions were not complied with then allowing the objections.

The Commissioner argued that the directions had been complied with as best as possible considering the circumstances, and the process had been refined following the "justiciable issues decision" (*Case U24* (1999) 19 NZTC 9,223).

The objectors also applied to call one particular Departmental witness, who had written a number of reports. The Commissioner argued that that witness had no connection to the assessment process regarding the present group of objectors and could give no relevant evidence.

Decision

Judge Barber indicated that the rulings that he had made in TRA decision 015/2004 were to apply to these groups of objectors *mutatis mutandis* (with the necessary changes having been carried out). His Honour therefore did not have to address any issues which were discussed in the earlier decision.

In relation to the "knowledge" issue (see *CIR v BNZ Investments Ltd* [2002] 1 NZLR 450) Judge Barber permitted the objectors to give evidence as to their state of mind at the relevant times (as ordered in TRA decision 015/2004).

In relation to the directions given on 10 March 1997 Judge Barber stated (at paragraph [26]):

> I am firmly of the view that subsequent events and rulings have rendered academic my said directions of 10 March 1997. Certainly, I would not contemplate allowing the objections at this stage on the basis of non-compliance with those directions.

Judge Barber permitted the objectors' calling of the Departmental witness but stated that his evidence and cross-examination would be confined to relevant issues.

AVAILABILITY OF INPUT TAX CREDIT

Case: Sea Hunter Fishing Limited v CIR

Decision date: 5 April 2004

Act: Goods and Services Tax Act 1985, Taxation (GST and Miscellaneous Provisions) Act 2000

Keywords: Payment, assessment, agreement in writing, aet off, deferrable tax.

Summary

The taxpayer claimed an input tax credit on a vessel due to a "change in use" under section 21(5). Due to an error an assessment and refund was issued before an investigation was completed. Summary judgment was granted to the taxpayer pursuant to section 46 of the GST Act. In the substantive proceedings the High Court found section 21E and F applied retrospectively to deny the taxpayers claim. The Court of Appeal found payment did not amount to an agreement in writing and that there were no grounds to recall the Summary Judgment in relation to setting off the deferrable tax.

Facts

1. The taxpayer, incorporated in Gibraltar, bought an offshore factory trawler in September 1996. Vela Fishing Ltd was a New Zealand company which owned a 21% share in the taxpayer.

2. Vela imported Sea Hunter I into New Zealand in April 1997 and paid $2,898,562 GST to customs. Vela claimed an input tax credit for this amount in its GST return for the period ended 31 May 1997 on the basis the vessel was to be used for making taxable supplies in New Zealand.

3. The taxpayer applied for GST registration in September 1997, requesting that it be backdated to April 1997. In January 1998 the taxpayer filed a GST return for the period ending 31 May 1997 claiming an input tax credit for $2,485,850 based on the value of Sea Hunter I. The claim was made on the basis there had been a change of use under section 21(5) of the GST Act ie: the vessel had been originally purchased for the purpose of fishing in the Atlantic, a purpose other than making taxable supplies in New Zealand but was now to be used in New Zealand.

4. An account halt was put in place while the claim was investigated. However, before the investigation was completed the account halt expired and a cheque issued for the refund claimed. Once the error was discovered payment on the cheque was stopped.

5. The taxpayer issued summary judgment proceedings for the amount of the cheque. In a judgment reported as *CIR v Sea Hunter Fishing Ltd* (2002) 20 NZTC 17,478 the Court of Appeal granted summary judgment. The decision was based on the CIR's failure to comply with section 46 of the GST Act as a request for further information dated 10 February 1998 had not been received by the taxpayer within the 15-day limit.

6. The decision however, did not prevent the CIR from continuing with his investigation which he did, issuing a NOPA in September 2000 disallowing the claim. The Court also noted that the CIR was entitled to offset his liability on the cheque against the amount due for non deferrable tax. This point was conceded by taxpayer's counsel.

7. The investigation continued culminating in a High Court hearing reported as *Sea Hunter Fishing Ltd v CIR* (2003) 21 NZTC 18,090. Randerson J agreed with the CIR's argument that section 21E and 21F applied retrospectively to deny the taxpayer's claim under section 21(5). Although the CIR had queried the claim he had not agreed to it in writing as required by section 100(3) of the Taxation (GST and Miscellaneous Provisions) Act 2000 which would then prevent section 21E and F from applying. The taxpayer appealed to the Court of Appeal.

Decision

8. The issuing of a letter dated 10 February 1998 requesting further information from the taxpayer and a NOPA disallowing the claim by the CIR qualified as queries in writing. The automatic issuing of an assessment and refund cheque could not be said to indicate satisfaction of the CIR's query of the claim.

9. The wording of section 100(3) clearly relates to agreement in writing, not payment. Section 100(3)(c) only applies where there is an agreement in writing, not whether there was an assessment.

10. If the saving provision did not apply the CIR would have been obliged to reassess and section 29 could have no application until that process had been completed.

11. On the basis of these findings the Court did not consider whether the computer-generated process that issued the cheque constituted an "assessment".

12. The Court found it was not possible to challenge the Summary Judgment finding in relation to the non-deferrable tax. There were no grounds for recall of that judgment and it was only possible to challenge that decision by way of appeal.

QUESTIONS WE'VE BEEN ASKED

AMP GROUP DEMERGER – CONFIRMATION OF TAX IMPLICATIONS FOR NEW ZEALAND SHAREHOLDERS

This statement confirms the Commissioner's position in "AMP group demerger — tax implications for New Zealand shareholders" *Tax Information Bulletin* Vol 15 No 11 (November 2003).

On the basis of the information provided by AMP Limited ("AMP"), including the Explanatory Memorandum, and certain specific conditions advised to AMP, the Commissioner now confirms the following about the AMP demerger ("the Demerger").

A majority of the Cancellation Entitlements arising out of the cancellation of AMP shares will be excluded from being dividends for New Zealand tax purposes, by virtue of section CF 3(1)(b), for those AMP shares that are cancelled in whole. AMP has indicated that the following condition was not satisfied:

> "All AMP shares cancelled as part of the Demerger will be ordinary listed shares issued by AMP, and will each be cancelled in whole, not in part."

Cancellation Entitlements, to the extent they are attributable to the partial cancellation of a share, will be dividends for New Zealand tax purposes. Some shareholders have had one share partially cancelled due to the formula used by AMP. It is estimated that each such New Zealand shareholder will on average have a tax liability between NZ$0.65 and NZ$1.31. Some AMP shareholders will have a figure much lower than this estimate.

The Commissioner will not seek to collect that tax liability from AMP's shareholders.

The Commissioner has also confirmed that the allotment of the HHG plc shares is not itself a dividend derived by AMP shareholders under section CF 2.

REGULAR FEATURES

DUE DATES REMINDER

June 2004

21 Employer deductions

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

July 2004

7 Provisional tax instalments due

For people and organisations with a March balance date

20 Employer deductions

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

These dates are taken from Inland Revenue's *Smart business tax due date calendar 2004–2005*
The calendar shows the due dates for small employers only—less than $100,000 PAYE and SSCWT deduction per annum.

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

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	Draft interpretation guideline	*Comment deadline*
☐	IG0010: Work of a minor nature	30 June 2004

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