

TAX INFORMATION BULLETIN

Vol 16, No 9
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Inland Revenue
Te Tari Taake

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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.

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

THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

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

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

The following draft items are available for review/comment this month, having a deadline of 30 November 2004.

Ref.	Draft type	Description
IS2215	Interpretation statement	Patents—Income tax treatment
ED0040	Standard practice statement	Transfer of depreciable property between associated persons—Section EG 17(2), Income Tax Act 1994/ section EE 22, Income Tax Act 2004
ED0070	Determination	Standard-Cost Household Service for Boarding Service Providers

The following draft item is available for review/comment this month, having a deadline of 17 December 2004.

Ref.	Draft type	Description
INA0009	Issues paper	Interpretation of sections BG 1 and GB 1 of the Income Tax Act 2004

Please see page 14 for details on how to obtain a copy.

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.

FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the six months ending 30 September 2004.

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

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

Note

If you need an exchange rate for a country or a day not listed in the following Tables A and B, please contact one of New Zealand's major trading banks.

Round the exchange rate calculations to four decimal places wherever possible.

Table A

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

- branch equivalent income or loss under the CFC rules pursuant to section CG 11(3)(a) of the Income Tax Act 1994
- FIF income or loss calculated under the branch equivalent method pursuant to sections CG 11(3)(a), CG 16(1)(b) and CG 21 of the Income Tax Act 1994
- foreign tax credits calculated under the branch equivalent method for a CFC under section LC 4(1)(b) of the Income Tax Act 1994
- foreign tax credits calculated under the branch equivalent method for an FIF under sections CG 21(3) and LC 4(1)(b) of the Income Tax Act 1994

- FIF income or loss calculated under the accounting profits, comparative value (except if Table B applies, ie where the market value of the FIF interest as at the end of the income year or/and at the end of the preceding income year is not zero) or deemed rate of return methods under section CG 16(11) of the Income Tax Act 1994.

Key

$$\frac{\quad}{x}$$

$$y$$

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

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

Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 2004. Branch equivalent income for the period 1 October 2003 to 30 September 2004 is 200,000 Hong Kong dollars (HKD).

$$\text{HKD } 200,000 / 5.0203 = \text{NZ\$}39,838.26$$

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

Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is an FIF) for 350,000 pesos (PHP) on 7 September 2004. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP } 350,000 / 36.9816 = \text{NZ\$}9,464.16$$

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

Example 3

A CFC resident in Singapore was formed on 21 April 2004 and has a balance date of 30 September 2004. During the period from 1 May 2004 to 30 September 2004, branch equivalent income of 500,000 Singapore dollars was derived.

- (i) Calculating the average monthly exchange rate for the complete months May – September 2004.

$$(1.0388 + 1.0705 + 1.1093 + 1.1369 + 1.1164)/5 = 1.09438$$

- (ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000/1.09438 = \text{NZ\$}456,879.69$$

Table B

Table B lists the end-of-month exchange rates acceptable to Inland Revenue for the six-month period ending 30 September 2004. Use this table for converting foreign currency amounts to New Zealand dollars for:

- Items “a” (market value of the FIF interest on the last day of the income year) and “c” (market value of the FIF interest on the last day of the preceding income year) of the comparative value formula under section CG 18 of the Income Tax Act 1994
- Foreign tax credits paid on the last day of any month calculated under the branch equivalent method for a CFC or FIF under section LC 4(1) (a) of the Income Tax Act 1994.

Example 4

A New Zealand resident with a balance date of 30 September 2004 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 2004 (item “a” of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB } 500,000/27.5882 = \text{NZ\$}18,123.69$$

Note

An overseas currency converter is available on our website:

www.ird.govt.nz/cgi-bin/form.cgi?form=currency

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

Country	Foreign currency to NZ \$		15-Apr-04 12-month rate	15-May-04 12-month rate	15-Jun-04 12-month rate	15-Jul-04 12-month rate	15-Aug-04 12-month rate	15-Sep-04 12-month rate
Australia	Dollar	AUD	0.8651	0.8737	0.9083	0.9011	0.9284	0.9432
			0.8787	0.8775	0.8809	0.8815	0.8844	0.8898
Bahrain	Dollar	BHD	0.2392	0.2277	0.2349	0.2458	0.2499	0.2492
			0.2339	0.2348	0.2361	0.2381	0.2405	0.2430
Canada	Dollar	CAD	0.8535	0.8382	0.8573	0.8623	0.8699	0.8563
			0.8307	0.8347	0.8416	0.8459	0.8503	0.8554
China	Yuan	CNY	5.2574	5.0083	5.1639	5.4028	5.4964	5.4831
			5.1410	5.1618	5.1912	5.2352	5.2886	5.3429
Denmark	Krone	DKK	3.9460	3.7607	3.8268	3.9131	3.9949	4.0146
			3.8814	3.8855	3.9020	3.9048	3.9148	3.9297
European Community	Euro	EUR	0.5304	0.5059	0.5172	0.5270	0.5378	0.5404
			0.5225	0.5229	0.5253	0.5257	0.5271	0.5291
Fiji	Dollar	FJD	1.0944	1.0985	1.1178	1.1391	1.1662	1.1748
			1.1086	1.1097	1.1127	1.1158	1.1213	1.1281
French Polynesia	Franc	XPF	63.0798	60.1325	61.4617	62.6444	63.9330	66.7307
			62.1083	62.1666	62.4430	62.4916	62.6501	63.0960
Hong Kong	Dollar	HKD	4.9487	4.7019	4.8641	5.0906	5.1847	5.1627
			4.8411	4.8488	4.8769	4.9184	4.9691	5.0203
India	Rupee	INR	27.4679	27.1976	28.0057	29.6489	30.4655	30.1132
			28.0894	28.1110	28.1971	28.4102	28.7187	29.0241
Indonesia	Rupiah	IDR	5,464.8100	5,466.9250	5,852.1600	5,848.9700	6,144.1800	6,037.2150
			5,243.6963	5,294.3567	5,384.1675	5,467.8129	5,561.8875	5,653.7879
Japan	Yen	JPY	68.9880	68.7925	69.3215	71.2041	73.4750	72.5832
			69.3342	69.5008	69.6026	69.7652	70.0695	70.4178
Korea	Won	KOR	734.8550	717.5750	725.5850	752.1500	766.9700	758.5600
			730.3079	732.8467	735.5904	740.5438	746.8792	753.1779
Kuwait	Dollar	KWD	0.1868	0.1780	0.1837	0.1922	0.1954	0.1948
			0.1837	0.1843	0.1851	0.1864	0.1880	0.1898
Malaysia	Ringgit	MYR	2.4136	2.2992	2.3708	2.4804	2.5234	2.5173
			2.3602	2.3697	2.3832	2.4034	2.4279	2.4528
Norway	Krone	NOK	4.3966	4.1587	4.2681	4.4714	4.4448	4.5290
			4.3748	4.3625	4.3842	4.3941	4.4038	4.4249
Pakistan	Rupee	PKR	36.1978	34.5770	35.7888	37.7090	38.7041	38.8654
			35.0810	35.2177	35.4267	35.7567	36.1762	36.6275
Papua New Guinea	Kina	PGK	1.9740	1.8831	1.9337	2.0156	2.0323	1.9925
			2.0381	2.0246	2.0168	2.0164	2.0213	2.0251
Philippines	Peso	PHP	35.2365	33.4681	34.5541	36.1904	36.7816	36.9816
			33.8283	34.1441	34.4615	34.8761	35.2810	35.7134
Singapore	Dollar	SGD	1.0648	1.0388	1.0705	1.1093	1.1369	1.1164
			1.0649	1.0689	1.0746	1.0811	1.0905	1.0985
Solomon Islands	Dollar	SBD	4.7022	4.5580	4.7045	4.8246	4.9821	4.9860
			4.6974	4.7177	4.7422	4.7715	4.8148	4.8608
South Africa	Rand	ZAR	4.1919	4.0632	4.0987	3.9525	4.3125	4.3022
			4.3672	4.3403	4.3057	4.2625	4.2640	4.2656
Sri Lanka	Rupee	LKR	61.7017	59.2343	62.0972	66.5073	68.2051	67.9049
			59.7955	60.1025	60.5962	61.3920	62.3599	63.3966
Sweden	Krona	SEK	4.8698	4.6327	4.7128	4.8410	4.9549	4.9106
			4.7588	4.7630	4.7860	4.7919	4.8044	4.8212

Country	Foreign currency to NZ \$		15-Apr-04 12-month rate	15-May-04 12-month rate	15-Jun-04 12-month rate	15-Jul-04 12-month rate	15-Aug-04 12-month rate	15-Sep-04 12-month rate
Switzerland	Franc	CHF	0.8238	0.7782	0.7827	0.8019	0.8241	0.8334
			0.8109	0.8128	0.8153	0.8147	0.8162	0.8185
Taiwan	Dollar	TAI	20.8200	20.2850	20.8950	21.9850	22.6000	22.4400
			21.0363	21.0688	21.1321	21.2763	21.4817	21.6950
Thailand	Baht	THB	24.7299	24.3941	25.2081	26.3351	27.3648	27.1785
			24.7778	24.8111	24.9189	25.0900	25.3490	25.6497
Tonga	Pa'anga	TOP	1.2491	1.2082	1.2338	1.2729	1.3005	1.3142
			1.2756	1.2742	1.2738	1.2750	1.2787	1.2840
United Kingdom	Pound	GBP	0.3547	0.3421	0.3442	0.3519	0.3596	0.3688
			0.3629	0.3618	0.3616	0.3605	0.3599	0.3603
United States	Dollar	USD	0.6353	0.6035	0.6245	0.6533	0.6655	0.6626
			0.6211	0.6235	0.6271	0.6325	0.6391	0.6456
Vanuatu	Vatu	VUV	70.0274	69.1641	71.4584	73.2784	75.0653	75.6842
			71.1827	71.0506	71.2226	71.4607	71.8341	72.2901
Western Samoa	Tala	WST	1.7746	1.7311	1.7628	1.8230	1.8732	1.8737
			1.7851	1.7863	1.7881	1.7936	1.8034	1.8134

Table B: End-of-month exchange rates

Country	Currencies	Code	30-Apr-04	31-May-04	30-Jun-04	31-Jul-04	31-Aug-04	30-Sep-004
Australia	Dollar	AUD	0.8623	0.8846	0.9153	0.9076	0.9301	0.9349
Bahrain	Dollar	BHD	0.2343	0.2378	0.2378	0.2384	0.2449	0.2522
Canada	Dollar	CAD	0.8533	0.8600	0.8498	0.8400	0.8574	0.8510
China	Yuan	CNY	5.1550	5.2275	5.2298	5.2465	5.3804	5.5468
Denmark	Krone	DKK	3.8650	3.8376	3.8759	3.9106	4.0071	4.0404
European Community	Euro	EUR	0.5199	0.5165	0.5230	0.5264	0.5393	0.5434
Fiji	Dollar	FJD	1.1028	1.1135	1.1239	1.1324	1.1530	1.1705
French Polynesia	Franc	XPF	61.7979	61.3965	62.1196	62.5817	64.1622	64.5805
Hong Kong	Dollar	HKD	4.8552	4.9220	4.9258	4.9399	5.0692	5.2246
India	Rupee	INR	27.3076	28.3868	28.6486	29.0965	29.8207	30.5170
Indonesia	Rupiah	IDR	5,467.5150	5,857.9800	5,953.6450	5,822.3100	6,068.5700	6,156.3500
Japan	Yen	JPY	68.3594	69.5998	68.4199	71.0171	71.4240	74.2577
Korea	Won	KOR	728.6600	735.1150	727.8850	740.3250	748.8500	772.6750
Kuwait	Dollar	KWD	0.1832	0.1859	0.1860	0.1864	0.1915	0.1971
Malaysia	Ringgit	MYR	2.3666	2.3998	2.4010	2.4086	2.4701	2.5465
Norway	Krone	NOK	4.2515	4.2394	4.3308	4.4474	4.5173	4.5368
Pakistan	Rupee	PKR	35.4113	36.2031	36.3917	36.1834	37.8037	39.3807
Papua New Guinea	Kina	PGK	1.9340	1.9608	1.9545	1.9441	1.9672	1.9990
Philippines	Peso	PHP	34.6482	35.0066	35.0931	35.2138	36.1989	37.4399
Singapore	Dollar	SGD	1.0584	1.0718	1.0814	1.0898	1.1122	1.1306
Solomon Islands	Dollar	SBD	4.6873	4.7627	4.7559	4.7626	4.9109	5.0311
South Africa	Rand	ZAR	4.2796	4.1018	3.9867	3.9610	4.3511	4.2974
Sri Lanka	Rupee	LKR	60.8222	62.2056	63.7422	65.1895	66.6820	69.1126
Sweden	Krona	SEK	4.7427	4.6896	4.7484	4.8522	4.9128	4.9189
Switzerland	Franc	CHF	0.8030	0.7895	0.7995	0.8120	0.8312	0.8439
Taiwan	Dollar	TAI	20.6500	21.0450	21.2600	21.5800	22.0250	22.8000
Thailand	Baht	THB	24.6163	25.3855	25.4779	25.9705	26.8076	27.5882
Tonga	Pa'anga	TOP	1.2366	1.2392	1.2433	1.2611	1.2859	1.3278
United Kingdom	Pound	GBP	0.3510	0.3447	0.3497	0.3489	0.3626	0.3725
United States	Dollar	USD	0.6231	0.6322	0.6322	0.6339	0.6505	0.6705
Vanuatu	Vatu	VUV	70.1295	71.3994	71.9849	72.2587	74.7442	75.4080
Western Samoa	Tala	WST	1.7751	1.7886	1.7880	1.8142	1.8396	1.8635

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, Court of Appeal, Privy Council and the Supreme Court.

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.

TAXPAYER'S FAILED TO MAKE VALID OBJECTION

Case:	TRA Dec 24/2004 (TRA No 028/1)
Decision date:	17 September 2004
Act:	GST Act 1985
Keywords:	Objection, GST output and input

Summary

The taxpayer failed to make valid objections to its GST position and the Authority had no jurisdiction to allow the taxpayer's invalid objections.

Facts

This is a JG Russell-related matter.

The taxpayer was a company used as part of the Russell template. After the decision in *FB Duvall Ltd v CIR* (2000) 19 NZTC 15,658 where the Court of Appeal held the company did not have to account for output tax (but was not able to be compelled to refund any input tax it may have received), the taxpayer filed a further four GST amended returns seeking the refund of output tax credits (but not addressing input tax credits).

The Commissioner did not accept the amended returns as valid objections. The taxpayer sought an order of the TRA allowing the objections.

Decision

The TRA concluded there were no valid objections and that the case could not be before the Authority.

In one period the amended return was outside the period for an objection and had not been supported by any explanation for its lateness. For two other periods there was no compliance with the provisions of the Act in that there had not been any notice of assessment to which a notice of objection had been made (indeed, there was no

notice of objection). For the final period in issue the taxpayer had been deregistered prior to the relevant period.

The TRA expressed a clear view that the GST consequences of the Russell template are as "illegal and void" as the template itself. Even if there were services, these should be considered tax-exempt financial services. The TRA also expressed some dissatisfaction with the Commissioner's approach to the GST ramifications of the Russell template.

Implications

Yet another Russell-related matter of limited application outside its own facts. This decision can be contrasted with that in *Case W25* which the Authority itself recognised as being on identical facts (but which was determined in a differing matter).

INTEREST ON LATE ACC PAYMENT NOT INCOME

Case:	Decision No 023/2004 (TRA 091/03)
Decision date:	16 September 2004
Act:	Income Tax Act 1994 (ITA), Accident Insurance Act 1998 (AIA), Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI)
Keywords:	Taxable income, exempt income, compensation, fine, interest

Summary

Interest awarded as a result of late payment by ACC of earnings-related compensation is a fine imposed on ACC and therefore can not be re-characterised as income in the hands of the recipient.

Facts

The Disputant received earnings-related compensation from ACC. However, payment to the Disputant of that compensation was delayed due to a dispute between the Disputant and the Corporation.

As a result of the delay, the Disputant was awarded interest in relation to the compensation for late payment of that compensation (under section 72 ARCI). The interest totalled an amount of \$40,116.17.

The interest was paid to the Disputant in October 1999. The Disputant did not declare the interest for income tax purposes. In the Commissioner's opinion, the interest should have been returned in the 2000 income tax year.

The Commissioner assessed the Disputant for additional income in the income year ended March 2000, resulting in residual income tax to pay of \$13,922.93.

The matter proceeded through the Disputes Process to Adjudication, and then the Disputant filed a challenge in the TRA.

Decision

The TRA held the amount received by the Disputant was not taxable because it was not income under ordinary concepts.

The primary reason given for this finding was that the payment was a fine imposed on ACC, it is not "true" interest because it is not intended to reimburse a claimant, and because it is a fine imposed on ACC, it cannot be re-characterised as income in the hands of the recipient.

The TRA did find in the Commissioner's favour on a number of subsidiary arguments raised by the Disputant:

- (i) The amount paid to the Disputant is not exempt by reason of section CB 5(1)(h) of the ITA 94 as it was not paid under an accident insurance contract.

Section 13 AIA specifies the meaning of "accident insurance contract". Section CB 5(1)(h)(ii) of the ITA 94 states amounts derived from any payment by way of a benefit under an accident insurance contract within the meaning of section 13 AIA 98 are exempt income.

- (ii) The amount paid to the Disputant is not exempt by reason of section 76 ARCI.

Section 76 of the ARCI specifies the compensation payments that are gross income of the recipient, and does not include payments under section 72. The Authority held the term "compensation" in section 76 was used to mean compensation for losses flowing from a personal injury, ie within the meaning of the ACC legislation. Section 72 payments are not compensation for such losses.

REGULAR FEATURES

DUE DATES REMINDER

November 2004

8 Provisional tax instalments due

For people and organisations with a March balance date

22 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

December 2004

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*

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

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

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

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

By internet: Visit www.ird.govt.nz

On the homepage, click on "The Rulings Unit welcomes your comment on drafts of public rulings/interpretation statements before they are finalised." Below the heading "Think about the issues", click on the drafts that interest you. You can return your comments by internet.

Name _____

Address _____

Comment deadline

Draft interpretation statement

IS2215: Patents–Income tax treatment

30 November 2004

Draft standard practice statement

ED0040: Transfer of depreciable property between associated persons–Section EG 17(2), Income Tax Act 1994/section EE 22, Income Tax Act 2004

30 November 2004

Draft determination

ED0070: Standard-Cost Household Services for Boarding Service Providers

30 November 2004

Draft issues paper

INA0009: Interpretation of sections BG 1 and GB 1 of the Income Tax Act 2004

17 December 2004

Items are not generally available once the comment deadline has passed

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

The Manager (Field Liaison)
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