

# TAX INFORMATION BULLETIN

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## 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.

### 2006 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR17

#### Introduction

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

Under section 61(1) of the TAA, a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 61(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined by section OB 1) contained in the Income Tax Act 2004 (ITA).

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 2006. This exemption may be cited as “International Tax Disclosure Exemption ITR17”, and the full text appears at the end of this item.

#### Scope of exemption

The scope of the 2006 disclosure exemption is the same as the 2005 exemption.

#### Interests held by residents

Disclosure is required by residents for these interests:

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

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

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

#### Example

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

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

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in an FIF. However, only the FIF interests should be disclosed on an IR 439, IR 440, IR 441, IR 442 or IR 443 form (see “Overlap of interests” below).

#### Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless of the company’s country of residence. The 2006 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an “income interest of 10% or greater” must be disclosed. Disclosure is to be made on an IR 477 or IR 479 *Interest in a foreign company disclosure schedule*.

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

- attributed (non-dividend) repatriation rules apply to an “income interest of 10% or greater” in a controlled foreign company (CFC) regardless of the CFC’s country of residence.
- to identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company which is resident in a Schedule 3, Part A of the ITA jurisdiction (ie, Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).

- the requirement for a CFC which is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

## Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an “interest in a foreign investment fund” specified within sections CQ 5(1) and DN 6(1) of the ITA. These types of interest must be disclosed:

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

However, any interest that does not fall within the above types or which is specifically excluded as an interest in an FIF under sections CQ 5(1) and DN 6 does not have to be disclosed. The following are listed in sections CQ 5(1), DN 6, EX 32-35, EX 36(1) and EX 37(1) as exclusions from what constitutes an interest in an FIF:

- an “income interest of 10% or greater” in a CFC (separate disclosure is required of this as an interest in a foreign company)
- an interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (ie, Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America)
- an interest in an employment-related foreign superannuation scheme
- a qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person’s 2004 tax return. See Inland Revenue’s booklet *Overseas private pensions (IR 257)* for more information
- interests in foreign entities held by a natural person other than in that person’s capacity as a trustee, if the aggregate cost or expenditure incurred in acquiring the interests remains under \$50,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency

- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

A resident who holds an interest in an FIF at any time during the 2006 income year must disclose the interest and calculate FIF income or loss on the form *Interest in Foreign Investment Fund Disclosure Schedule (IR 439, IR 440, IR 441, IR 442, IR 443)*. The FIF rules allow a person four options to calculate FIF income or loss (accounting profits, branch equivalent, comparative value and deemed rate of return method), so the Commissioner has prescribed five forms to disclose and calculate FIF income or loss from an interest in a FIF using one of these methods. The respective forms to use for whichever FIF income calculation method you choose to apply is as follows:

- IR 439 form for the accounting profits method
- IR 440 form for the branch equivalent method
- IR 441 form for the comparative value method
- IR 442 form for the comparative value method and multiple interests
- IR 443 form for the deemed rate of return method.

## Overlap of interests

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

However, to meet the disclosure obligations only one disclosure return (either the IR 477 or IR 479 form or the IR 439, IR 440, IR 441 or IR 443 form) is required for each interest a person holds in a foreign entity.

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

1. Use the appropriate IR 439, IR 440, IR 441, IR 442 or IR 443 form to disclose all FIF interests, and in particular:
  - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
  - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
  - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.

2. Use the IR 477 or IR 479 forms to disclose:
  - an “income interest of 10% or greater” in a foreign company (regardless of the country of residence) that is not being disclosed on the IR 439, IR 440, IR 441, IR 442 or IR 443 forms.

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

## Interests held by non-residents

The 2006 disclosure exemption removes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

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

The purpose of the international tax rules is to make sure that New Zealand residents are taxed on their share of the income of any overseas interests they hold. However, under the international tax rules non-residents are not required to calculate or attribute income under the CFC regime (sections CQ 2(1) and DN 2 of the ITA 2004). In addition, under sections CQ 5(1)(e) and DN 6(1)(e) of the ITA 2004 a non-resident is not to be treated as deriving or incurring any FIF income or loss. The disclosure of non-residents’ holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules.

## Summary

The 2006 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an “income interest of 10% or greater” (ie, it is less than 10%). The disclosure exemption is not affected by the foreign company’s country of residence. Further, an interest in an FIF must be disclosed.

The 2006 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

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

This exemption may be cited as “International Tax Disclosure Exemption ITR17”.

### 1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign

companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 2006. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, unless that interest is held by a non-resident of New Zealand.

### 2. Interpretation

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section OB 1 of the Income Tax Act 2004.

### 3. Exemption

- (i) Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 2006, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, unless the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an “income interest of 10% or greater”, as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.
- (ii) Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 2006, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:
  - No attributed CFC income or loss arises in respect of that interest in that foreign company by virtue of sections CQ 2(1) and DN 2 of the Income Tax Act 2004, and/or
  - No foreign investment fund income or loss arises in respect of that interest in that foreign investment fund by virtue of sections CQ 5(1)(e) and DN 6(1)(e) of the Income Tax Act 2004.

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

This exemption is signed on the 9<sup>th</sup> day of March 2006.

**Martin Scott**  
Acting Group Manager, Corporates

## FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND DOLLARS

This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the twelve months ending March 2006.

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown. Round the exchange rate calculations to four decimal places wherever possible.

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 NZ's major trading banks.

### Note

An overseas currency converter is available in the "Work it out" section of our website.

This calculator can only be used where your calculation would be done using Table A.

### 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 EX 21 (4) of the Income Tax Act 2004
- FIF income or loss calculated under the branch equivalent method pursuant to sections EX 38(1)(b) and EX 43 and CQ 2 (2) of the Income Tax Act 2004
- foreign tax credits calculated under the branch equivalent method for a CFC under section LC 4(1)(b) of the Income Tax Act 2004
- foreign tax credits calculated under the branch equivalent method for a FIF under sections EX 43(8) & (9) and LC 4(1)(b) of the Income Tax Act 2004
- FIF income or loss calculated under the accounting profits, comparative value (except if Table B applies, i.e. 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 EX 42(7), EX 44(7) and EX 45 (15) of the Income Tax Act 2004.

**The shaded box on Table A** 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. (Top row for each country)

**The non-shaded box** is the average of the mid-month exchange rates for that month and the previous 11 months. (Bottom row for each country)

### Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 2005. Branch equivalent income for the period 1 October 2004 to 30 September 2005 is 200,000 Hong Kong dollars (HKD).

$$\text{HKD } 200,000 \div 5.4909 = \$36,423.90$$

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

### Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is a FIF) for 350,000 pesos (PHP) on 7 September 2005. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP } 350,000 \div 39.3426 = \$8,896.21$$

Alternatively, the exchange rate can be calculated by averaging the exchange rates that apply to each complete month in the foreign company's accounting period. (Shaded box on Table A)

### Example 3

A CFC resident in Singapore was formed on 21 April 2005 and has a balance date of 31 March 2006. During the period from 1 May 2005 to 30 September 2005, branch equivalent income of 500,000 Singapore dollars was derived.

- (i) Calculating the average monthly exchange rate for the complete months May-September 2005.

$$1.1776 + 1.1851 + 1.1386 + 1.1652 + 1.1870 \\ = 5.8535 \div 5 = 1.1707$$

- (ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 1.1707 = \$427,094.90$$

### Table B

Table B lists the end-of-month exchange rates acceptable to Inland Revenue for the twelve month period ending March 2006. 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 EX 44(1) of the Income Tax Act 2004.
- 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 2004.

#### **Example 4**

A New Zealand resident with a balance date of 30 September 2005 held an interest in a FIF resident in Thailand. The market value of the FIF interest at 30 September 2005 (item “a” of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB } 500,000 \div 28.1793 = \$17,743.52$$



## Currency rates 2006 – mid month (Rates table type 'A')

Country	Currency	Code	15-Apr-05	15-May-05	15-Jun-05	15-Jul-05	15-Aug-05	15-Sep-05	15-Oct-05	15-Nov-05	15-Dec-05	15-Jan-06	15-Feb-06	15-Mar-06
			12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate
Australia	Dollar	AUD	0.9357	0.9349	0.9264	0.8985	0.9151	0.9181	0.9249	0.9359	0.9338	0.9257	0.9120	0.8688
			0.9189	0.9240	0.9255	0.9253	0.9242	0.9221	0.9215	0.9244	0.9240	0.9244	0.9248	0.9192
Bahrain	Dollar	BHD	0.2718	0.2682	0.2665	0.2544	0.2661	0.2667	0.2621	0.2563	0.2657	0.2632	0.2538	0.2408
			0.2561	0.2595	0.2621	0.2628	0.2642	0.2656	0.2661	0.2657	0.2656	0.2656	0.2643	0.2613
Canada	Dollar	CAD	0.8960	0.9009	0.8861	0.8181	0.8457	0.8359	0.8258	0.8118	0.8116	0.8122	0.7772	0.7392
			0.8633	0.8686	0.8710	0.8673	0.8653	0.8636	0.8612	0.8599	0.8545	0.8514	0.8425	0.8300
China	Yuan	CNY	5.9746	5.8960	5.8546	5.5881	5.7283	5.7214	5.6165	5.5079	5.7009	5.6398	5.4271	5.1556
			5.6317	5.7057	5.7633	5.7787	5.7980	5.8179	5.8161	5.7967	5.7832	5.7710	5.7297	5.6509
Denmark	Krone	DKK	4.1914	4.1761	4.3724	4.1621	4.2338	4.2933	4.3021	4.3356	4.3774	4.2997	4.2245	3.9681
			3.9899	4.0245	4.0700	4.0907	4.1106	4.1338	4.1515	4.1816	4.2165	4.2452	4.2554	4.2447
European Community	Euro	EUR	0.5628	0.5641	0.5881	0.5587	0.5681	0.5766	0.5766	0.5822	0.5876	0.5757	0.5666	0.5324
			0.5371	0.5419	0.5478	0.5505	0.5530	0.5560	0.5583	0.5622	0.5668	0.5703	0.5716	0.5700
Fiji	Dollar	FJD	1.1922	1.1835	1.1940	1.1564	1.1823	1.1885	1.1872	1.1857	1.2053	1.1950	1.1707	1.1249
			1.1618	1.1689	1.1753	1.1767	1.1780	1.1792	1.1801	1.1818	1.1840	1.1870	1.1863	1.1805
French Polynesia	Franc	XPF	66.9043	67.0321	69.9164	66.4206	67.5500	68.5558	68.5553	69.2208	69.8188	68.4584	67.3515	63.2928
			64.0496	64.6246	65.3292	65.6438	65.9453	66.0973	66.3696	66.8386	67.3793	67.8003	67.9500	67.7564
Hong Kong	Dollar	HKD	5.6275	5.5533	5.4995	5.2524	5.4915	5.4939	5.3989	5.2836	5.4713	5.4184	5.2316	4.9649
			5.3003	5.3713	5.4242	5.4377	5.4633	5.4909	5.4988	5.4897	5.4869	5.4847	5.4556	5.3906
India	Rupee	INR	31.2284	30.6240	30.5723	29.1225	30.4693	30.7526	30.9238	30.8015	31.9728	30.5361	29.5090	28.1354
			30.2099	30.4955	30.7093	30.6655	30.6658	30.7191	30.7201	30.7017	30.7876	30.8062	30.6877	30.3873
Indonesia	Rupiah	IDR	6,872.0800	6,749.2150	6,798.0650	6,616.8700	6,928.9550	7,093.5550	7,041.2650	6,795.8800	6,915.6600	6,538.1650	6,224.6500	5,873.2850
			6,265.6413	6,372.4988	6,451.3242	6,515.3158	6,580.7138	6,668.7421	6,738.7638	6,785.4671	6,812.0704	6,823.1254	6,790.4642	6,703.9704
Japan	Yen	JPY	77.9960	76.3937	77.4008	75.8054	77.3514	78.0938	79.3512	80.8011	82.5141	79.7991	79.1752	75.1423
			73.3149	73.9484	74.6216	75.0051	75.3281	75.7873	76.1836	76.8107	77.4603	78.1751	78.5100	78.3187
Korea	Won	KOR	735.5600	715.9100	717.9550	698.1000	717.2500	726.2350	727.1600	706.8100	711.6400	689.9700	652.7650	625.6600
			745.6921	745.5533	744.9175	740.4133	736.2700	733.5763	729.2325	724.5583	721.4142	718.1488	711.4179	702.0846
Kuwait	Dollar	KWD	0.2105	0.2077	0.2067	0.1971	0.2060	0.2066	0.2030	0.1987	0.2058	0.2039	0.1967	0.1865
			0.1996	0.2021	0.2040	0.2044	0.2053	0.2062	0.2064	0.2060	0.2058	0.2058	0.2048	0.2024
Malaysia	Ringgit	MYR	2.7430	2.7069	2.6879	2.5656	2.6531	2.6696	2.6275	2.5754	2.6679	2.6137	2.5096	2.3795
			2.5855	2.6195	2.6460	2.6530	2.6639	2.6766	2.6798	2.6748	2.6728	2.6693	2.6518	2.6166
Norway	Krone	NOK	4.6330	4.5391	4.6109	4.4119	4.4787	4.4927	4.5059	4.5141	4.6731	4.5611	4.6024	4.2447
			4.4348	4.4665	4.4950	4.4901	4.4929	4.4899	4.4899	4.5035	4.5284	4.5458	4.5436	4.5223
Pakistan	Rupee	PKR	42.4440	42.0584	41.9497	40.0037	41.8995	42.0226	41.4056	40.5117	41.9715	41.5638	40.1177	38.1294
			39.8087	40.4322	40.9456	41.1368	41.4031	41.6662	41.7632	41.7221	41.7361	41.7719	41.6060	41.1731
Papua New Guinea	Kina	PGK	2.2242	2.1950	2.1801	2.0862	2.1616	2.1421	2.1123	2.0617	2.1485	2.1166	2.0513	1.9341
			2.0825	2.1085	2.1290	2.1349	2.1456	2.1581	2.1595	2.3512	2.1549	2.1533	2.1419	2.1178
Philippines	Peso	PHP	38.9542	38.2742	38.7445	37.4844	39.1217	39.3426	38.5871	36.8819	37.4485	36.2618	34.3814	32.5850
			37.5208	37.9213	38.2705	38.3783	38.5733	38.7700	38.8129	38.6631	38.4952	38.2905	37.9247	37.3389

Country	Currency	Code	15-Apr-05	15-May-05	15-Jun-05	15-Jul-05	15-Aug-05	15-Sep-05	15-Oct-05	15-Nov-05	15-Dec-05	15-Jan-06	15-Feb-06	15-Mar-06
			12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate
Singapore	Dollar	SGD	1.1921	1.1776	1.1851	1.1386	1.1652	1.1870	1.1723	1.1598	1.1759	1.1370	1.0952	1.0363
			1.1351	1.1467	1.1563	1.1587	1.1611	1.1669	1.1694	1.1708	1.1716	1.1712	1.1649	1.1518
Solomon Islands	Dollar	SBD	5.3568	5.2872	5.2669	5.0282	5.2621	5.3051	5.1959	5.1095	5.3128	5.2768	5.1043	4.9218
			5.0608	5.1215	5.1684	5.1854	5.2087	5.2353	5.2445	5.2447	5.2532	5.2635	5.2470	5.2023
South Africa	Rand	ZAR	4.4951	4.4369	4.8377	4.4682	4.4787	4.4890	4.5401	4.6036	4.4719	4.1975	4.1345	3.9844
			4.2397	4.2708	4.3324	4.3754	4.3892	4.4048	4.4126	4.4427	4.4770	4.4762	4.4605	4.4281
Sri Lanka	Rupee	LKR	71.4567	70.8246	70.5695	67.4819	70.9653	71.4654	70.3597	69.0798	71.7240	71.0578	68.5508	65.4411
			68.6710	69.6368	70.3428	70.4240	70.7645	70.9508	70.9520	70.6986	70.4864	70.7021	70.5192	69.9147
Sweden	Krona	SEK	5.1485	5.1513	5.4374	5.2283	5.2736	5.3665	5.4447	5.5663	5.5518	5.3675	5.2836	4.9996
			4.8827	4.9259	4.9863	5.0186	5.0451	5.0831	5.1206	5.1837	5.2489	5.2951	5.3186	5.3183
Switzerland	Franc	CHF	0.8751	0.8714	0.9035	0.8712	0.8817	0.8908	0.8940	0.8965	0.9039	0.8918	0.8824	0.8327
			0.8260	0.8338	0.8438	0.8496	0.8544	0.8592	0.8629	0.8698	0.8770	0.8825	0.8847	0.8829
Taiwan	Dollar	TAI	22.8950	22.3050	22.2550	21.5700	22.5600	23.2150	23.2900	22.7600	23.5500	22.3550	21.7650	20.7750
			22.2983	22.4667	22.5800	22.5454	22.5421	22.6067	22.6246	22.6150	22.6588	22.6629	22.5958	22.4413
Thailand	Baht	THB	28.3346	27.9180	28.6290	27.9672	28.5920	28.6956	28.1983	27.8034	28.7260	27.4081	26.2331	24.8056
			27.0009	27.2946	27.5796	27.7156	27.8179	27.9443	27.9699	27.9722	28.0555	28.1148	28.0365	27.7759
Tonga	Pa'anga	TOP	1.3650	1.3482	1.3414	1.3180	1.3577	1.3730	1.3686	1.3507	1.4198	1.4152	1.3843	1.3140
			1.3202	1.3319	1.3409	1.3446	1.3494	1.3543	1.3562	1.3555	1.3594	1.3656	1.3682	1.3630
United Kingdom	Pound	GBP	0.3836	0.3851	0.3919	0.3847	0.3896	0.3884	0.3935	0.3918	0.3981	0.3934	0.3889	0.3664
			0.3674	0.3710	0.3750	0.3777	0.3802	0.3818	0.3831	0.3846	0.3871	0.3887	0.3895	0.3880
United States	Dollar	USD	0.7222	0.7128	0.7081	0.6760	0.7074	0.7086	0.6966	0.6818	0.7061	0.6993	0.6740	0.6415
			0.6807	0.6898	0.6968	0.6987	0.7022	0.7060	0.7073	0.7063	0.7060	0.7060	0.7025	0.6945
Vanuatu	Vatu	VUV	77.3106	77.2822	77.5410	74.1430	76.8099	77.1804	77.0822	76.3359	77.7679	76.9332	75.3601	71.9013
			74.6138	75.2903	75.7972	75.8692	76.0146	76.1393	76.2448	76.3626	76.5181	76.7596	76.6784	76.3040
Western Samoa	Tala	WST	1.9042	1.8781	1.8793	1.8240	1.8764	1.9161	1.8915	1.9014	1.9154	1.9074	1.8914	1.8796
			1.8561	1.8684	1.8781	1.8782	1.8784	1.8820	1.8827	1.8855	1.8894	1.8920	1.8917	1.8887

## Currency rates 2006 – end of month (Rates table type 'B')

Country	Currency	Code	30-Apr-05	31-May-05	30-Jun-05	31-Jul-05	31-Aug-05	30-Sep-05	31-Oct-05	30-Nov-05	31-Dec-05	31-Jan-06	28-Feb-06	31-Mar-06
Australia	Dollar	AUD	0.9348	0.9357	0.9176	0.8992	0.9211	0.9092	0.9380	0.9488	0.9210	0.9100	0.8937	0.8562
Bahrain	Dollar	BHD	0.2742	0.2678	0.2633	0.2573	0.2595	0.2603	0.2649	0.2640	0.2533	0.2561	0.2484	0.2306
Canada	Dollar	CAD	0.9116	0.8937	0.8596	0.8420*	0.8211	0.8097	0.8282	0.8189	0.7840	0.7808	0.7533	0.7106
China	Yuan	CNY	6.0301	5.8894	5.7888	5.5408	5.5820	5.5839	5.6872	5.6681	5.4409	5.4974	5.3083	4.9116
Denmark	Krone	DKK	4.2022	4.2360	4.3148	4.1942	4.1938	4.2782	4.3390	4.4251	4.2272	4.2011	4.1452	3.7535
European Community	Euro	EUR	0.5647	0.5708	0.5794	0.5630	0.5639	0.5740	0.5834	0.5949	0.5671	0.5638	0.5565	0.5036
Fiji	Dollar	FJD	1.2017	1.1958	1.1809	1.1642	1.1702	1.1764	1.1953	1.2084	1.1705	1.1673	1.1470	1.0985
French Polynesia	Franc	XPF	67.0375	67.8376	68.8834	66.9448	67.0359	68.0896	69.3807	70.7178	67.4305	67.0329	66.1777	59.8786
Hong Kong	Dollar	HKD	5.6767	5.5350	5.4326	5.3084	5.3533	5.3630	5.4525	5.4380	5.2183	5.2844	5.1198	4.7496
India	Rupee	INR	31.4844	30.6963	30.1556	29.3419	29.9596	30.1207	31.3925	31.8429	30.1129	29.7485	29.0122	26.9460
Indonesia	Rupiah	IDR	6.976.29	6.750.16	6.788.06	6.721.12	7.205.13	7137.5200	7062.025	7048.45	6629.5650	6401.2900	6096.8350	5575.6700
Japan	Yen	JPY	77.1744	76.8195	77.2009	76.5639	76.6334	78.0689	81.3028	83.7579	78.4863	80.0916	76.6334	71.8067
Korea	Won	KOR	730.0050	713.1800	721.0750	702.2750	712.8450	718.4750	733.1650	728.3050	683.7950	661.7250	639.3500	597.1750
Kuwait	Dollar	KWD	0.2124	0.2074	0.2039	0.1993	0.2010	0.2016	0.2051	0.2045	0.1962	0.1985	0.1925	0.1786
Malaysia	Ringgit	MYR	2.7685	2.7039	2.6577	2.5632	2.6002	2.6056	2.6549	2.6520	2.5459	2.5572	2.4512	2.2586
Norway	Krone	NOK	4.5877	4.5403	4.5808	4.4612	4.4673	4.4989	4.5455	4.7054	4.5636	4.5723	4.4725	4.0098
Pakistan	Rupee	PKR	42.8396	41.8187	41.4677	40.4481	40.8278	41.1693	41.7848	41.6693	40.0073	40.5294	39.2592	36.5321
Papua New Guinea	Kina	PGK	2.2278	2.1821	2.1524	2.1094	2.0998	2.0696	2.1275	2.1346	2.0602	2.0728	1.9999	1.8565
Philippines	Peso	PHP	39.3470	38.4305	38.7607	37.9515	38.3867	38.6207	38.4048	37.6090	35.7300	35.4399	33.8858	31.0682
Singapore	Dollar	SGD	1.1969	1.1798	1.1759	1.1342	1.1588	1.1668	1.1876	1.1852	1.1215	1.1078	1.0678	0.9889
Solomon Islands	Dollar	SBD	5.4040	5.3721	5.2050	5.0855	5.1191	5.1641	5.2698	5.2651	5.0720	5.2025	4.9871	4.6476
South Africa	Rand	ZAR	4.4451	4.7259	4.6720	4.5126	4.5050	4.3852	4.6981	4.5515	4.2868	4.1677	4.0762	3.7772
Sri Lanka	Rupee	LKR	72.2160	70.8415	69.6785	68.5122	69.3479	69.8853	71.3167	71.2656	68.4368	69.4766	67.2978	62.6463
Sweden	Krona	SEK	5.1596	5.2316	5.4685	5.2927	5.2661	5.3592	5.5446	5.6460	5.3554	5.1991	5.2321	4.7184
Switzerland	Franc	CHF	0.8685	0.8815	0.8969	0.8781	0.8743	0.8937	0.9008	0.9203	0.8825	0.8772	0.8715	0.7940
Taiwan	Dollar	TAI	22.8900	22.1650	22.1200	21.8000	22.5150	22.9600	23.6400	23.5200	22.4050	21.8100	21.4200	19.9100
Thailand	Baht	THB	28.5257	28.4346	28.6227	28.1784	28.2128	28.1793	28.4176	28.6563	27.3098	26.3652	25.6357	23.5399
Tonga	Pa'anga	TOP	1.3702	1.3491	1.3337	1.3356	1.3282	1.3528	1.3744	1.3931	1.3622	1.3858	1.3523	1.2560
United Kingdom	Pound	GBP	0.3820	0.3905	0.3871	0.3891	0.3859	0.3923	0.3966	0.4077	0.3873	0.3857	0.3795	0.3505
United States	Dollar	USD	0.7286	0.7122	0.6998	0.6837	0.6895	0.6917	0.7038	0.7017	0.6734	0.6816	0.6603	0.6124
Vanuatu	Vatu	VUV	77.9695	77.6653	76.7453	74.7999	75.0016	75.8434	77.0888	78.1005	74.5419	75.0761	73.8436	69.5318
Western Samoa	Tala	WST	1.9247	1.9124	1.8930	1.8381	1.8531	1.8579	1.9205	1.9205	1.8978	1.8952	1.8770	1.8866

## LEGAL DECISIONS – CASE NOTES

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This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, 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.

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### APPEAL FILED OUT OF TIME DEEMED ABANDONED

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<b>Case:</b>	J G Russell v The Commissioner of Inland Revenue
<b>Decision date:</b>	28 February 2006
<b>Act:</b>	Court of Appeal Rules
<b>Keywords:</b>	Late Appeal, Deemed Abandoned, Dismissed

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#### Summary

The Court of Appeal accepted that an appeal deemed abandoned by the Court of Appeal Rules was not dismissed. It declined to use its resources accepting an appeal by the taxpayer where that appeal was filed out of time and the substantive dispute was not a real controversy

#### Facts

This decision was an appeal by the taxpayer against the Commissioner's partial success in an application to strike out a Judicial Review that the taxpayer had commenced in the High Court. That appeal was filed out of time and thus deemed abandoned. This application was to get the Court of Appeal to use its discretion to accept the late appeal.

In the TRA (Case W8) the Commissioner successfully argued there was no valid case before the TRA, as the assessments to which the taxpayer sought to object (made in 1996) were superseded by later assessments in 2002. Further the taxpayer had, in an NOR to the later proposed adjustments accepted, in part, the changes to the 1996 assessment.

The taxpayer appealed this (which is not procedurally possible: *M & J Wetherill Co Ltd* (2002) 20 NZTC 17,624 at p 17,634.) and sought Judicial Review. In the Judicial Review the Commissioner successfully stayed one cause of action before the High Court and the taxpayer sought to appeal this decision but the appeal was filed out of time.

#### Decision

Neither the 1997 nor the Court of Appeal (Civil) Rules 2005 Rules provide that an appeal which has been abandoned is deemed to be dismissed. The taxpayer's lawyer argued there can be no objection in principle to an appellant whose appeal has been subject to a deemed abandonment under r 43 seeking and obtaining leave to appeal against the original decision out of time.

The Court accepted that there was jurisdiction to grant leave to appeal notwithstanding the deemed abandonment of the first appeal.

It would appear that the non-compliance to r 43 was due to an oversight on the part of the taxpayer's lawyer; he had been endeavouring to have his appeal determined but it got overlooked.

The taxpayer's lawyer was asked to identify the substantive point of the proposed appeal.

His response was that he wanted to argue that the January 2003 assessments were arrived at by the Commissioner in breach of the "BASF principle" (*BASF New Zealand Ltd v Commissioner of Inland Revenue* (1995) 17 NZTC 12,136 (HC)). While explaining that this particular argument would work in the circumstances of this case he finally accepted that the taxpayer could not prosecute the challenge proceedings and his reliance on the BASF principle would not be advanced by establishing in the High Court that the 1996 assessments were invalid, but he did submit that the taxpayer's entitlement to challenge the 1996 assessments was justified by access to justice considerations.

The Court took a different view and said that the resources of the legal system should be addressed to the determination of real controversies; the taxpayer's issue of the validity of the 1996 assessment did not give rise to such controversy.

The Commissioner and the taxpayer had, in January 2001 reached a limited consensus that the 1996 assessment should be reversed, which raises the issue that there is no point in the claim for the declaration that the 1996 assessments are invalid and the provision of section 27 of the Income Tax Act mean that the prosecution of that

claim is an abuse of process. The Court said that there was no practical point to be served by allowing it to be argued and therefore refused the leave for appeal on that basis.

The application for leave to appeal out of time made necessary by the deemed abandonment under r 43 of the Court of Appeal (Civil) Rules 2005 of a timely appeal was dismissed.

The taxpayer was ordered to pay the Commissioner costs of \$3,000 together with the usual disbursements.

## ORDER FOR FURTHER AND BETTER DISCOVERY

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**Case:** Prophet Investments Limited

**Decision date:** 24 February 2006

**Act:** High Court Rules 1986

**Keywords:** Further and better discovery

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### Summary

The Commissioner considered the list of documents prepared by the plaintiff was deficient and made an application for further and better discovery, which was granted.

### Facts

In September 2004, the Commissioner learned that the plaintiff was in the process of selling a commercial building. He considered the profit to be assessable income, on the grounds that the plaintiff was associated with particular persons who, at the relevant time, were in the business of dealing in or developing land.

The husband of the sole director and shareholder of the plaintiff ran an unsuccessful property development and dealing business through a string of companies which failed, leaving the department millions of dollars out of pocket. The Commissioner believed the plaintiff was also about to discontinue business, and would strip itself of its assets and then leave behind yet another large tax debt. He consequently issued a special assessment against the plaintiff under section 44 of the Tax Administration Act 1994, and issued notices under section 157 to collect the tax. The plaintiff responded with a challenge proceeding. Lists of documents were exchanged. The Commissioner disclosed an extensive list and considered documents to be missing from the plaintiff's list. Consequently, the Commissioner made an application for further and better discovery under r 300 of the High Court Rules 1986.

During the hearing of the application, the plaintiff withdrew its challenge to the validity of the special assessment and conceded that the husband was associated to the plaintiff. This meant it was no longer necessary to obtain an order for discovery of documents relevant to those issues.

### Decision

The Court found that all requirements were made out and granted the order sought.

## DISPUTING DEFAULT ASSESSMENTS

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**Case:** Donald Eugene Allen v The Commissioner of Inland Revenue

**Decision date:** 30 March 2006

**Act:** Tax Administration Act 1994

**Keywords:** Default Assessment, Disputes Resolution Process, Challenge

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### Summary

To dispute and then challenge a "default" assessment a taxpayer must file the outstanding return and a NOPA within the response time.

### Facts

The taxpayer failed to furnish returns for income for the years 2000 and 2001. The Commissioner made assessments under section 106 and notified the taxpayer on 8 April 2002. On 15 July 2002 the taxpayer filed a notice of claim in the Taxation Review Authority (TRA) challenging the default assessments. On 31 July he furnished income tax returns for the two years showing his income as nil. On that same date he issued a notice of proposed adjustment (NOPA) in respect of each assessment.

The Commissioner applied to the TRA to strike out the notice of claim on the grounds the TRA had no jurisdiction to hear the claim. When the TRA declined to strike it out, the Commissioner brought proceedings in the High Court for judicial review of that decision under the Judicature Amendment Act 1972.

The High Court found for the Commissioner, set aside a decision of the TRA and struck out the proceedings in that Tribunal. The taxpayer then appealed unsuccessfully to the Court of Appeal before appealing to the Supreme Court.

### Decision

The method by which the purpose of Part 4A (disputes procedures) of the TAA is advanced involves the issuing of a NOPA which may be disputed, within an appropriate response period, by a Notice of Response (NOR). This process may lead to the Commissioner and the taxpayer accepting the other's position, either affirmatively or by omitting to respond within an applicable response period. If the dispute is not resolved by the Part 4A procedure, the challenge procedure under Part 8A may be invoked by a "disputant".

Unlike the disputes procedure, which is in the nature of a negotiation process, the challenge procedure envisages litigation before a hearing authority, which may be either the TRA or the High Court. The litigation is initiated by the filing of proceedings in accordance with the Taxation Review Authority Regulations 1994 (or regulations made in substitution for those regulations) or in accordance with the High Court Rules, within the response period following the issue of the relevant notice of disputable decision – sections 138B, 138C. The terms of those sections make it plain that there cannot be recourse to litigation unless the disputes procedure under Part 4A has been followed to the extent as set out in the applicable subsection.

At issue is whether the taxpayer complied with the requirements of section 138B(3) of the TAA.

In the present proceedings the taxpayer initially contended that, at least in the case of a taxpayer wishing to contest a default assessment, section 138B(3) does not require compliance with the disputes procedures. However, as the Court of Appeal held, that contention is untenable because the term “adjustment proposed” in section 138B(3) clearly refers to a NOPA. The NOPA is an element of the disputes procedures as set out in Part 4A of the Act. And the reference to the “applicable response period” in section 138B makes sense only if read in light of the provisions of Part 4A. Indeed, if section 138B(3) was not read in light of the provisions of Part 4A there would be no apparent time limits on the steps that must be taken by the Commissioner and the taxpayer respectively, nor would there be any prescribed form for the dialogue to take.

The taxpayer’s primary submission before the Supreme Court was that he had complied with the disputes procedure. The taxpayer’s argument is that since the defaulting taxpayer “may dispute the assessment made by the Commissioner only by furnishing a return of income for the assessment period”, the taxpayer disputes the default assessment by virtue of filing a return (section 89D(2)). The Commissioner must then either accept the return as filed and issue an assessment or issue a NOPA. In either case the taxpayer may then issue a NOR and subsequently challenge before a Hearing Authority the assessment made by the Commissioner.

The taxpayer supported this argument by reference to the legislative history of section 89D. The Supreme Court found that Parliament could not have meant to give preferential treatment to a defaulting taxpayer. Indeed, quite the opposite is to be inferred, namely that a defaulter must both meet its obligations to furnish a return and be subject to the same time constraints as complying taxpayers. In such a case, of course, the taxpayer’s NOPA to the default assessment would be associated with the tax position indicated by the furnished return.

The taxpayer also sought to place reliance on information given to taxpayers in pamphlets and similar publications by the Inland Revenue Department. The Supreme Court

found, given the elucidation of the law in the course of this litigation, a taxpayer who relied on Departmental advice between 1996 and 2004, including the taxpayer in the present case, would have been misled by it. That is regrettable but the Court was not persuaded that the Departmental publications bear on the question of interpretation.

The Supreme Court also found that there was no general obligation on a taxpayer under section 89D to issue a NOPA because there is no general obligation to dispute an assessment. If however, a taxpayer wishes to dispute the assessment, the disputes procedure must be complied with and that involves the filing of returns and the issuing of a NOPA.

## QUESTIONS WE'VE BEEN ASKED

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This section of the *TIB* sets out answers to some enquiries we've received. We publish these as they may be of general interest to readers. A general similarity to items published here will not necessarily lead to the same tax result. Each case should be considered on its own facts.

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### EFFECT OF REPEAL OF INCOME TAX ACT 1994 ON DEPRECIATION DETERMINATIONS ISSUED BEFORE REPEAL

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#### Section YA 3(2) of the Income Tax Act 2004 and section 21 of the Interpretation Act 1999

##### Question

We have been asked to consider whether depreciation determinations made under sections EG 4, EG 10 or EG 11 of the Income Tax Act 1994 ("the 1994 Act") continue to apply even if they are not reissued under the Income Tax Act 2004 ("the 2004 Act") and the Tax Administration Act 1994 ("the TAA").

##### Answer

The Commissioner considers that depreciation determinations issued under the 1994 Act continue to apply following the repeal of that Act, without the need to reissue the determinations, as:

- the effect of section YA 3(2) of the 2004 Act is that depreciation determinations made under the 1994 Act are treated as if they were made under the equivalent provisions in the 2004 Act and the TAA; and
- the effect of section 21 of the Interpretation Act is that depreciation determinations made under the 1994 Act continue in force following the repeal of that Act.

##### Legislation

Section YA 3(2) of the 2004 Act provides:

A reference in an enactment or document to the Income Tax Act 1994 (or to the Income Tax Act 1976), or to a provision of that earlier Act, is to be interpreted as a reference to this Act, or to the corresponding provision in this Act, to the extent necessary to reflect sensibly the intent of the enactment or document.

Section 21 of the Interpretation Act 1999 ("the Interpretation Act") provides:

Anything done in the exercise of a power under a repealed enactment, and that is in effect immediately before that repeal,

continues to have effect as if it had been exercised under any other enactment—

- (a) That, with or without modification, replaces, or that corresponds to, the enactment repealed; and
- (b) Under which the power could be exercised.

##### Analysis

###### Effect of the repeal of legislation

The 1994 Act was repealed with respect to tax on income for the 2005/2006 and subsequent tax years when the 2004 Act came into force on 1 April 2005: section YA 1 of the 2004 Act. Unless an enactment is preserved by a savings provision at the time of the repeal, the effect of the repeal of an Act is that:

- for the future, the enactment is treated as if it had never existed; and
- subordinate or delegated legislation made under a repealed Act lapses.

See *Inspector of Awards and Agreements v Malcolm Forlong Ltd* [1974] 1 NZLR 36.

Therefore, unless depreciation determinations are preserved by a savings provision, determinations made under sections EG 4, EG 10 or EG 11 of the 1994 Act would lapse in respect of the 2005/2006 and subsequent income years following the repeal of the 1994 Act.

The 2004 Act contains a specific savings provision, section YA 3(2). There is also a general savings provision in the Interpretation Act 1999, section 21. A specific savings provision will override a savings provision in the Interpretation Act: *Vela Fishing Ltd v CIR* (2001) 20 NZTC 17,242 (CA); (2003) 21 NZTC 18,123 (PC) (CA); *Nelson Air Ltd v NZ Airline Pilots Assn IUOW* [1992] 1 ERNZ 632. However, there is no inconsistency between section YA 3(2) and section 21. These provisions complement each other and give rise to the same result.

###### Section YA 3(2)

For section YA 3(2) to apply in respect of depreciation determinations made under the 1994 Act, the following conditions must be satisfied:

- A depreciation determination is an enactment or document.
- A provision in the 2004 Act or the TAA is a "corresponding provision" to a provision in the 1994 Act. References in the 2004 Act to "this Act"

include a reference to the TAA “unless the context otherwise requires”: section AA 3(1). Therefore, a “corresponding provision” may be in the 2004 Act or the TAA.

- It is necessary to interpret references to the 1994 Act and to section EG 4, section EG 10 or section EG 11 in a determination as references to the 2004 Act and to a corresponding provision in that Act “to reflect sensibly the intent of” the depreciation determination.

Section YA 3(2) applies to depreciation determinations as:

- A depreciation determination is a document, being an official record of the Commissioner’s determination of the depreciation rates to be applied for the purposes of the Income Tax Act. The essential characteristic of a “document” is that it is a record of information in some form: see *R v Daye* [1908] 2 KB 3338; *Tucker (JH) & Co Ltd v Board of Trade* [1955] 2 All ER 522; and *Rollo v HM Advocate* (1996) SCCR 874.
- Section EE 25 of the 2004 Act and section 91AAF of the TAA are corresponding provisions to section EG 4 of the 1994 Act. Section EE 29 of the 2004 Act and sections 91AAG, 91AAH, 91AAI and 91AAJ of the TAA are corresponding provisions to section EG 10 of the 1994 Act. The corresponding provisions to section EG 11 of the 1994 Act are sections EE 21, EE 22, EE 23 and EE 24 and section 91AAL of the TAA.

It is irrelevant that a provision in the repealed legislation has been replaced by more than one provision. As section 33 of the Interpretation Act provides that “words in the singular include the plural”, the reference to “corresponding provision” in section YA 3(2) includes corresponding provisions: *Seataste Products Ltd v Director-General of Agriculture and Fisheries* [1995] 2 NZLR 449. To be a “corresponding provision”, a provision must have a similar purpose, have the same character and function, prescribe the same thing to be done and be designed to produce the same results but need not be identical to the provision in the repealed legislation: *Vela Fishing Ltd v CIR* (2001) 20 NZTC 17,242 (CA); (2003) 21 NZTC 18,123 (PC). It is considered that the provisions relating to the making of depreciation determinations in the 2004 Act and the TAA are corresponding provisions to sections EG 4, EG 10 and EG 11. As with sections EG 4, EG 10 and EG 11 these provisions authorise the Commissioner to determine depreciation rates and set out the procedure for setting depreciation rates for the purpose of calculating the amount of depreciation on depreciable property.

- It is necessary to treat a reference to the 1994 Act in an existing depreciation determination as a reference to the 2004 Act or the TAA, and to the

corresponding provisions in the 2004 Act or the TAA, in order to reflect sensibly the intent of a depreciation determination. Generally there is no expiry date in a depreciation determination. As there are no policy changes in respect of the setting of depreciation rates under the new legislation, it is considered that the intent of existing depreciation determinations is that they will apply indefinitely to the relevant assets until they are revoked or that they will apply until their expiry date.

## Section 21 of the Interpretation Act

The effect of section 21 is that anything done in the exercise of a power under a repealed enactment (such as the making of a depreciation determination under the 1994 Act), that is in effect immediately before the repeal, shall continue to have effect as if the power had been exercised under any enactment (such as the 2004 Act) if:

- that enactment replaces or corresponds with the repealed enactment; and
- the power could be exercised under the new enactment.

The 2004 Act (which has the same purpose as the 1994 Act) replaces or corresponds to the 1994 Act (see section BA 1 of the 1994 Act and section BA 1 of the 2004 Act). Under both the 1994 Act and the 2004 Act the Commissioner has the power to make depreciation determinations. Therefore, the effect of section 21 is that depreciation determinations made under the 1994 Act continue to have effect following the repeal of the 1994 Act.

## Effect of sections YA 3(2) and 21

The effect of section YA 3(2) is that references in existing depreciation determinations to the 1994 Act would be interpreted as references to the 2004 Act so that a depreciation determination expressed to be made under the 1994 Act is treated as having been made under the 2004 Act. The effect of section 21 is that a depreciation determination made under the 1994 Act continues to have effect as though it was made under the 2004 Act (and the TAA). These provisions operate in a different but complementary manner. The effect of both section YA 3(2) and section 21 is that depreciation determinations made under the 1994 legislation continue to have effect following the repeal of the 1994 Act.



## Correction

### THRESHOLD TO ACCOUNT FOR GST ON A PAYMENTS BASIS

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We have been asked to clarify whether the taxable supplies threshold for accounting for GST on a payments basis, as advised in an earlier *Tax Information Bulletin* item, should read as a GST-inclusive or exclusive value.

## Background

*Tax Information Bulletin*, Vol 12 No 12 (December 2000) advised that the threshold under which a registered person can elect to account for GST on a payments basis has been increased to \$1.3 million “(including GST)”. However, the quoted words do not appear in the legislation.

## Clarification

The value of a supply of goods and services is an amount that, with the addition of the tax charged, is equal to the aggregate of the consideration for the supply. On this basis, the \$1.3 million threshold related to the value of taxable supplies is to be read as GST-exclusive. The equivalent GST-inclusive amount would, on current rates, be \$1,625,000.

## Correction

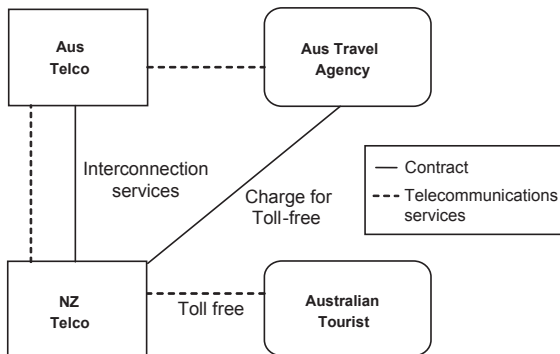
# OPERATIONAL STATEMENT

## OS 06/01 GST TREATMENT OF SUPPLIES OF TELECOMMUNICATIONS SERVICES

In the item published under the section “Operational Statement” in the *Tax Information Bulletin*, Vol 18, No 3 (April 2006), pp13–24, please note that the diagram (p20, paragraph 80) under “Example 6: toll-free calling service:” is incorrect.

Paragraph 80 of the Operational Statement and the correct diagram are:

80. An Australian travel agency (Aus Travel Agency) has entered into an agreement with a New Zealand resident telecommunications company (NZ Telco) for a toll-free calling service. The arrangement allows customers of Aus Travel Agency, Australians on holiday in New Zealand, to call the toll-free number and be put through to Aus Travel Agency. Aus Travel Agency pays all charges for this service which may include a charge for setting up the toll-free arrangement, a monthly fee and any additional usage charges.



## REGULAR FEATURES

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### DUE DATES REMINDER

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#### May 2006

##### 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*

##### 31 GST return and payment due

#### June 2006

##### 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 2006–2007*. This calendar reflects the due dates for small employers only—less than \$100,000 PAYE and SSCWT deductions per annum.



