# TAX INFORMATION BULLETIN

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Te Tari Taake

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## GET YOUR TIB SOONER ON THE INTERNET

This *Tax Information Bulletin* is also available on the internet in PDF. Our website is at **www.ird.govt.nz**

The website 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 **tibdatabase@ird.govt.nz** with your name, details and the number recorded at the bottom of the mailing label.

## 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.

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The following draft items are available for review/comment this month, having a deadline of 30 November 2007:

| **Ref.** | **Draft type** | **Description** |
|---|---|---|
| DDP0006 | General depreciation determination | LED screens |
| DDG0131 | General depreciation determination | Speed humps |

Please see page 21 for details on how to obtain a copy.

The following draft item is available for review/comment this month, having a deadline of 28 December 2007:

| **Ref.** | **Draft type** | **Description** |
|---|---|---|
| IG03162 | Interpretation guideline | Allowances and payments to employees |

Please see page 21 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 DOLLARS

This article provides the exchange rates acceptable to us for converting foreign currency amounts to New Zealand dollars under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the six months ending September 2007.

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 New Zealand'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 2007. Branch equivalent income for the period 1 October 2006 to 30 September 2007 is 200,000 Hong Kong dollars (HKD).

HKD 200,000 ÷ 5.4513 = $36,688.49

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 2007. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

PHP 350,000 ÷ 32.7471 = $10687.96

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 2007 and has a March balance date. During the period 1 May 2007 to 30 September 2007, branch equivalent income of 500,000 Singaporean dollars was derived.

(i) Calculating the average monthly exchange rate for the complete months May-September 2007.

1.1153 + 1.1549 + 1.1896 + 1.1093 + 1.0766 ÷ 5 = 1.1291

(ii) Conversion to New Zealand currency:

SGD 500,000 ÷ 1.1291 = $442,830.57

## Table B

Table B lists the end-of-month exchange rates acceptable to us for the six month period ending 30th September 2007. 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 2007 held an interest in a FIF resident in Thailand. The market value of the FIF interest at 30 September 2007 (item "a" of the comparative value formula) was 500,000 Thai baht (THB).

THB 500,000 ÷ 23.5973 = $21,188.86

## Currency rates 2008 – mid month (Rates table type 'A')

| Country | Currency | Code | 15 - Apr-07<br>12 month rate | 15 - May-07<br>12 month rate | 15 - Jun-07<br>12 month rate | 15 - Jul-07<br>12 month rate | 15 - Aug-07<br>12 month rate | 15 - Sep-07<br>12 month rate |
|---|---|---|---|---|---|---|---|---|
| Australia | Dollar | AUD | 0.8857 | 0.8860 | 0.8975 | 0.9029 | 0.8712 | 0.8466 |
| | | | 0.8609 | 0.8671 | 0.8716 | 0.8782 | 0.8819 | 0.8795 |
| Bahrain | Dollar | BHD | 0.2783 | 0.2778 | 0.2826 | 0.2963 | 0.2740 | 0.2689 |
| | | | 0.2503 | 0.2537 | 0.2578 | 0.2631 | 0.2662 | 0.2679 |
| Canada | Dollar | CAD | 0.8390 | 0.8158 | 0.8012 | 0.8243 | 0.7759 | 0.7344 |
| | | | 0.7588 | 0.7687 | 0.7778 | 0.7883 | 0.7940 | 0.7937 |
| China | Yuan | CNY | 5.7093 | 5.6669 | 5.7232 | 5.9609 | 5.5061 | 5.3610 |
| | | | 5.2380 | 5.2907 | 5.3528 | 5.4365 | 5.4776 | 5.4864 |
| Denmark | Krone | DKK | 4.0688 | 4.0519 | 4.1927 | 4.2383 | 3.9908 | 3.9985 |
| | | | 3.8336 | 3.8691 | 3.9127 | 3.9619 | 3.9879 | 3.9986 |
| European Community | Euro | EUR | 0.5444 | 0.5444 | 0.5636 | 0.5702 | 0.5368 | 0.5133 |
| | | | 0.5145 | 0.5194 | 0.5252 | 0.5320 | 0.5356 | 0.5351 |
| Fiji | Dollar | FJD | 1.1999 | 1.1933 | 1.2126 | 1.2438 | 1.1773 | 1.1536 |
| | | | 1.1282 | 1.1380 | 1.1487 | 1.1628 | 1.1707 | 1.1721 |
| French Polynesia | Franc | XPF | 65.2299 | 65.0562 | 67.4086 | 68.1513 | 64.2149 | 61.3356 |
| | | | 61.3767 | 61.9762 | 62.7074 | 63.5366 | 63.9959 | 63.9462 |
| Hong Kong | Dollar | HKD | 5.7646 | 5.7605 | 5.8642 | 6.1496 | 5.6880 | 5.4513 |
| | | | 5.1753 | 5.2493 | 5.3360 | 5.4471 | 5.5141 | 5.5401 |
| India | Rupee | INR | 31.1412 | 29.6418 | 30.2524 | 31.5188 | 29.3598 | 28.5024 |
| | | | 29.6142 | 29.7538 | 29.9227 | 30.1877 | 30.2208 | 30.0683 |
| Indonesia | Rupiah | IDR | 6724.8150 | 6492.6250 | 6807.4400 | 7103.5900 | 6799.1150 | 6690.6650 |
| | | | 6073.3929 | 6155.0896 | 6231.0692 | 6349.2354 | 6440.1238 | 6494.4700 |
| Japan | Yen | JPY | 88.1194 | 88.7226 | 92.2068 | 95.8622 | 85.5847 | 82.1812 |
| | | | 77.9984 | 79.6473 | 81.3760 | 83.3751 | 84.4033 | 84.7833 |
| Korea | Won | KOR | 686.7800 | 681.4550 | 697.6600 | 721.7300 | 677.3250 | 661.9650 |
| | | | 628.1113 | 636.0438 | 644.3133 | 655.2167 | 661.1375 | 663.5425 |
| Kuwait | Dollar | KWD | 0.2132 | 0.2130 | 0.2166 | 0.2272 | 0.2050 | 0.2003 |
| | | | 0.1920 | 0.1945 | 0.1976 | 0.2017 | 0.2036 | 0.2044 |
| Malaysia | Ringgit | MYR | 2.5473 | 2.5124 | 2.6038 | 2.7157 | 2.5308 | 2.4866 |
| | | | 2.3892 | 2.4110 | 2.4375 | 2.4743 | 2.4925 | 2.4971 |
| Norway | Krone | NOK | 4.4254 | 4.4548 | 4.5650 | 4.5102 | 4.2837 | 4.0120 |
| | | | 4.0978 | 4.1549 | 4.2136 | 4.2675 | 4.3679 | 4.3438 |
| Pakistan | Rupee | PKR | 44.5202 | 44.4288 | 45.2343 | 47.3828 | 43.7453 | 42.9748 |
| | | | 40.0053 | 40.5828 | 41.2566 | 42.1094 | 42.6183 | 42.8924 |
| Papua New Guinea | Kina | PGK | 2.1691 | 2.1728 | 2.2148 | 2.3561 | 2.1294 | 2.0582 |
| | | | 1.9766 | 1.9989 | 2.0261 | 2.0669 | 2.0874 | 2.0951 |
| Philippines | Peso | PHP | 35.0597 | 34.3998 | 34.6833 | 35.8652 | 33.1356 | 32.7471 |
| | | | 33.1649 | 33.3526 | 33.5109 | 33.8216 | 33.9226 | 33.9007 |
| Singapore | Dollar | SGD | 1.1162 | 1.1153 | 1.1549 | 1.1896 | 1.1093 | 1.0766 |
| | | | 1.0339 | 1.0451 | 1.0589 | 1.0763 | 1.0861 | 1.0891 |

| Country | Currency | Code | 15 - Apr-07 12 month rate | 15 - May-07 12 month rate | 15 - Jun-07 12 month rate | 15 - Jul-07 12 month rate | 15 - Aug-07 12 month rate | 15 - Sep-07 12 month rate |
|---|---|---|---|---|---|---|---|---|
| Solomon Islands | Dollar | SBD | 5.3856 | 5.3618 | 5.4462 | 5.6742 | 5.2488 | 5.2421 |
| | | | 4.9025 | 4.9546 | 5.0160 | 5.0993 | 5.1457 | 5.1695 |
| South Africa | Rand | ZAR | 5.2945 | 5.1035 | 5.3825 | 5.4708 | 5.3287 | 5.0985 |
| | | | 4.7266 | 4.8268 | 4.9198 | 5.0039 | 5.0887 | 5.1054 |
| Sri Lanka | Rupee | LKR | 80.1327 | 81.4902 | 82.9234 | 87.5668 | 81.0439 | 80.2357 |
| | | | 70.3354 | 71.7654 | 73.3480 | 75.3014 | 76.6352 | 77.6766 |
| Sweden | Krona | SEK | 5.0716 | 5.0115 | 5.3079 | 5.2206 | 5.0065 | 4.7550 |
| | | | 4.7296 | 4.7682 | 4.8308 | 4.8924 | 4.9324 | 4.9289 |
| Switzerland | Franc | CHF | 0.8947 | 0.8987 | 0.9349 | 0.9450 | 0.8805 | 0.8514 |
| | | | 0.9024 | 0.9144 | 0.9286 | 0.9437 | 0.9520 | 0.9541 |
| Taiwan | Dollar | TAI | 24.4750 | 24.5700 | 24.8350 | 25.8200 | 23.9600 | 23.6000 |
| | | | 21.7808 | 22.1833 | 22.5633 | 23.0279 | 23.3113 | 23.4642 |
| Thailand | Baht | THB | 23.7157 | 24.3348 | 24.1085 | 23.8209 | 22.9442 | 22.6156 |
| | | | 23.6714 | 23.7407 | 23.7809 | 23.8253 | 23.7998 | 23.6495 |
| Tonga | Pa'anga | TOP | 1.4424 | 1.4397 | 1.4601 | 1.4907 | 1.4080 | 1.4223 |
| | | | 1.3313 | 1.3466 | 1.3634 | 1.3836 | 1.3961 | 1.4034 |
| United Kingdom | Pound | GBP | 0.3719 | 0.3728 | 0.3810 | 0.3868 | 0.3640 | 0.3553 |
| | | | 0.3482 | 0.3516 | 0.3553 | 0.3594 | 0.3620 | 0.3623 |
| United States | Dollar | USD | 0.7381 | 0.7377 | 0.7505 | 0.7867 | 0.7274 | 0.7131 |
| | | | 0.6649 | 0.6740 | 0.6847 | 0.6987 | 0.7069 | 0.7113 |
| Vanuatu | Vatu | VUV | 76.7021 | 74.8213 | 76.1899 | 77.9888 | 70.8117 | 70.1409 |
| | | | 71.8748 | 72.4049 | 72.9998 | 73.7890 | 73.9384 | 73.6857 |
| Western Samoa | Tala | WST | 1.9487 | 1.8840 | 1.9222 | 1.9877 | 1.8341 | 1.8653 |
| | | | 1.8208 | 1.8237 | 1.8396 | 1.8612 | 1.8697 | 1.8723 |

## Currency rates 2008 – mid month (Rates table type 'B')

| Country | Currency | Code | 30-Apr-07 | 31-May-07 | 30-Jun-07 | 31-Jul-07 | 31-Aug-07 | 30-Sep-07 |
|---|---|---|---|---|---|---|---|---|
| Australia | Dollar | AUD | 0.8930 | 0.8870 | 0.9082 | 0.8959 | 0.8605 | 0.8519 |
| Bahrain | Dollar | BHD | 0.2789 | 0.2746 | 0.2895 | 3.1921 | 0.2637 | 0.2819 |
| Canada | Dollar | CAD | 0.8270 | 0.7825 | 0.8140 | 0.8171 | 0.7418 | 0.7504 |
| China | Yuan | CNY | 5.7258 | 5.5772 | 5.8543 | 5.7924 | 5.2908 | 5.6335 |
| Denmark | Krone | DKK | 4.0420 | 4.0412 | 4.2515 | 4.1515 | 3.8263 | 3.9457 |
| European Community | Euro | EUR | 0.5431 | 0.5430 | 0.5717 | 0.5585 | 0.5143 | 0.5298 |
| Fiji | Dollar | FJD | 1.1979 | 1.1932 | 1.2324 | 1.2222 | 1.2045 | 1.1891 |
| French Polynesia | Franc | XPF | 64.9091 | 64.9589 | 68.2149 | 66.8270 | 61.4948 | 63.2998 |
| Hong Kong | Dollar | HKD | 5.7981 | 5.6937 | 6.0049 | 5.9852 | 5.4673 | 5.8164 |
| India | Rupee | INR | 30.0006 | 29.3342 | 31.0016 | 30.5691 | 28.5046 | 29.3006 |
| Indonesia | Rupiah | IDR | 6731.3550 | 6448.2650 | 6978.4000 | 7050.2050 | 6606.1500 | 6852.1950 |
| Japan | Yen | JPY | 88.4460 | 88.6826 | 94.6144 | 90.9607 | 81.1774 | 86.6689 |
| Korea | Won | KOR | 688.7000 | 678.9200 | 712.2450 | 706.5850 | 659.2350 | 689.5250 |
| Kuwait | Dollar | KWD | 0.2139 | 0.2106 | 0.2219 | 0.2158 | 0.1970 | 0.2093 |
| Malaysia | Ringgit | MYR | 2.5392 | 2.4835 | 2.6679 | 2.6534 | 2.4595 | 2.5649 |
| Norway | Krone | NOK | 4.4100 | 4.4221 | 4.5395 | 4.4657 | 4.0829 | 4.0532 |
| Pakistan | Rupee | PKR | 44.7233 | 44.0537 | 46.2419 | 46.0166 | 42.3181 | 45.2101 |
| Papua New Guinea | Kina | PGK | 2.1949 | 2.1536 | 2.2735 | 2.2281 | 2.0268 | 2.1534 |
| Philippines | Peso | PHP | 34.8469 | 33.4272 | 35.3333 | 34.5263 | 32.5546 | 33.5485 |
| Singapore | Dollar | SGD | 1.1211 | 1.1132 | 1.1766 | 1.1568 | 1.0666 | 1.1157 |
| Solomon Islands | Dollar | SBD | 5.4512 | 5.3027 | 5.5199 | 5.6301 | 5.1606 | 5.4844 |
| South Africa | Rand | ZAR | 5.2175 | 5.2050 | 5.4273 | 5.4444 | 5.0163 | 5.1543 |
| Sri Lanka | Rupee | LKR | 81.2639 | 80.5530 | 85.0692 | 85.1875 | 78.7710 | 84.7504 |
| Sweden | Krona | SEK | 4.9559 | 5.0506 | 5.2782 | 5.1340 | 4.8256 | 4.8832 |
| Switzerland | Franc | CHF | 0.8928 | 0.8931 | 0.9466 | 0.9204 | 0.8438 | 0.8793 |
| Taiwan | Dollar | TAI | 24.6700 | 24.0600 | 25.2450 | 25.1300 | 23.1850 | 24.5650 |
| Thailand | Baht | THB | 23.9413 | 23.7116 | 24.1548 | 22.5483 | 22.6590 | 23.5973 |
| Tonga | Pa'anga | TOP | 1.4519 | 1.4349 | 1.4683 | 1.4249 | 1.4038 | 1.4730 |
| United Kingdom | Pound | GBP | 0.3712 | 0.3693 | 0.3839 | 0.3779 | 0.3484 | 0.3700 |
| United States | Dollar | USD | 0.7417 | 0.7297 | 0.7685 | 0.7653 | 0.7015 | 0.7499 |
| Vanuatu | Vatu | VUV | 75.4933 | 76.2846 | 77.4440 | 75.2090 | 70.5729 | 71.8682 |
| Western Samoa | Tala | WST | 1.9142 | 1.8750 | 1.9542 | 1.9080 | 1.8466 | 1.8968 |

# ADJUDICATION UNIT – ITS ROLE IN THE DISPUTE RESOLUTION PROCESS

**The following item is a reproduction of an item published in the August 2007 edition of The Chartered Accountants Journal entitled "The Adjudication Unit and its role in the disputes resolution process"**.

## Introduction

It has been more than 10 years since the introduction of the tax dispute resolution process in New Zealand. Part IVA of the Tax Administration Act 1994 ("TAA") came into effect on 1 October 1996 and was intended to establish procedures to reduce the number of disputes by promoting full disclosure, encourage prompt and efficient resolution of tax disputes, promote early identification of the issues and improve the accuracy of decisions. As part of this process, the Adjudication Unit was formed to provide an impartial and objective review of unresolved disputes. As very little has been published about the Adjudication Unit since its inception, it is useful to explain the operation of the unit within the dispute resolution process and to make some observations regarding the preparation of dispute documents.

## The dispute resolution process

Part IVA of the TAA sets out the procedure to be followed in the event of a tax dispute concerning an assessment or other disputable decision. Inland Revenue may not amend a taxpayer's assessment before the dispute resolution process is complete, except in limited circumstances (section 89N of the TAA). The dispute resolution process requires that formal documents be issued by both Inland Revenue and the taxpayer covering details of the adjustment in dispute, the relevant facts and evidence involved and the particular propositions of law relied on by each party.

Briefly, a dispute is initiated by the issuing of a Notice of Proposed Adjustment ("NOPA") by one party to another that states and explains the proposed adjustment as compared to the taxpayer's prior tax position. If the recipient disagrees with the NOPA, the recipient (who may be either the Commissioner or the taxpayer) must reject the proposed adjustment by issuing a Notice of Response ("NOR"). Where the Commissioner has issued a NOR in response to a taxpayer initiated NOPA, the taxpayer must reject the Commissioner's NOR in writing to ensure the dispute process continues (section 89H(3)).

Following the rejection of the proposed adjustment, a conference between the parties is usually scheduled (it is not a legislative requirement) to discuss the issues in more depth and potentially resolve the dispute or at least some of the issues.

Pursuant to section 89M of the TAA, the Commissioner is required to issue a Disclosure Notice (except where the Commissioner has already issued a notice of disputable decision which includes or takes account of the adjustment(s) proposed in the NOPA) at the time or after either the Commissioner or the taxpayer issues the NOPA. Where both parties maintain their position they will be required to issue a Statement of Position ("SOP") setting out their final position on the issues.

In addition, if the initial adjustment has been proposed by the Commissioner, section 89M(8) of the TAA permits the Commissioner to provide additional information in response to any additional matters raised in the taxpayer's SOP. This will usually be called an Addendum to the Commissioner's Statement of Position. It is also noted that section 89M(13) provides that the parties may, at any time, agree to further information being added to either of their SOPs.

There are response periods set out in section 3 of the TAA. These generally require a response within two months of the formal stages during the dispute process discussed above (and four months in relation to a taxpayer wishing to propose an adjustment to any assessment it receives).

Agreement may be reached at any stage in the process, but, if the matter remains unresolved, the Commissioner's practice is that generally all matters will be referred to the Adjudication Unit for consideration. It is noted here that the adjudication process is not legislated for and is an administrative part of the dispute resolution process.

In the event the Adjudication Unit decides in favour of the taxpayer, Inland Revenue has no right of appeal against the Adjudication Unit's decision. However, where the Adjudication Unit has found in favour of Inland Revenue, a taxpayer has further rights in relation to the dispute. If they wish to continue the dispute they can do so by filing a challenge in the Taxation Review Authority or the High Court. It is noted here that section 138G of the TAA provides that where Inland Revenue has issued a Disclosure Notice, both Inland Revenue and the taxpayer may raise during challenge, only the facts, evidence, issues and propositions of law that are disclosed in the SOPs.

The dispute resolution process is described in more detail (including tables of applicable timeframes) in:

- Standard Practice Statement 05/04 - Disputes resolution process commenced by a taxpayer: **http://www.ird.govt.nz/technical-tax/standard-practice/disputes/sps-05-04-disputes-bytaxpayer.html**; *Tax Information Bulletin* Vol 17, No 3 (April 2005); and

- Standard Practice Statement 05/03 - Disputes resolution process commenced by the Commissioner of Inland Revenue: **http://www.ird.govt.nz/technical-tax/standard-practice/disputes/sps-05-03.html**; *Tax Information Bulletin* Vol 17, No 3 (April 2005).

## The Adjudication Unit

The Adjudication Unit is part of the Office of the Chief Tax Counsel based in Wellington and part of Inland Revenue's National Office. The Adjudication Unit is separate to the audit/investigation function and takes a fresh look at the dispute, providing an independent and impartial decision on the issues.

Each dispute is considered by a team of three people who all have professional legal and/or accounting qualifications and have experience in researching and analysing tax issues. The team members have differing levels of seniority and involvement in the consideration of the dispute. The final adjudication decision is made by an Adjudication Manager. The adjudication team takes into account the NOPA, NOR, both parties' SOPs and all evidence sent through to the Adjudication Unit at the time of the referral.

A comprehensive adjudication report is produced and provided to the parties. In addition to providing the adjudication decision and the reasons for that decision, the report also sets out the facts of the dispute, a summary of the arguments put forward by both parties, the issues that need to be addressed, the analysis of the legal issues involved, the application of that legal analysis to the facts of the dispute and the conclusions reached on each issue. In some instances, it may also be necessary to resolve disputed facts where the parties have not agreed. These reports can sometimes be lengthy, but it is considered important for them to encapsulate the relevant information in a single document and provide full analysis and reasoning, including the reasons why any particular arguments were not accepted. It is intended that such detail will assist both parties in any decisions as to their next steps in the dispute or future dealings on similar issues.

In addition, a letter is sent to both parties setting out a summary of the report. The letter also provides some information and guidance should the taxpayer wish to take the matter further (in the event the Adjudication Unit decides in favour of Inland Revenue).

The Adjudication Unit does not perform a mediation or arbitration function. It considers the dispute based on the materials provided and does not conduct further investigation into the matter. Nor does it have any direct communication with either the Inland Revenue officers or the taxpayer involved in the dispute during the course of the adjudication. This is because (in accordance with the recommendations of the Organisational Review Committee in the *Report on the Organisational Review of the Inland Revenue Department* (April 1994)) the Adjudication Unit operates impartially and independently.

To maintain transparency and independence, the Technical Services Unit (also part of the Office of the Chief Tax Counsel) handles any necessary correspondence or other communication between the adjudication team and either of the parties. (For more guidance on communication with the Adjudication Unit, please see "Managing communications associated with a dispute" in *Tax Information Bulletin* Vol 15, No 12 (December 2003), **http://www.ird.govt.nz/technical-tax/questions/questions-general/qwba-communications-dispute-adjudication-unit.html**).

There is no charge for the review of the dispute by the Adjudication Unit.

## Performance standards and results

Once a dispute is referred to the Adjudication Unit it is allocated to an adjudication team as soon as is practicable. As the Adjudication Unit is demand driven, and the length and complexity of projects can vary significantly, it is not always possible to allocate disputes to an adjudication team immediately.

Once allocated, and a preliminary review of the dispute is completed, the adjudication team will provide both parties with an estimated delivery date for the completed adjudication report. While it is difficult to provide universal timeframes for a completed report, the Adjudication Unit operates under the timeliness performance standards set out in the Inland Revenue Statement of Intent 2006-2009 (go to **http://www.ird.govt.nz/aboutir/reports/soi/** for a copy of the *Statement of Intent*). The performance standards require that the majority (80%) of adjudication reports be delivered within 8, 14 or 20 weeks of allocation, according to whether the dispute is of a low, medium or high complexity. This classification will depend on not only the technical and legal complexity, but also the number of issues raised, the factual complexity and the volume of evidence provided by the parties. These delivery standards differ from the earlier estimates referred to in *Tax Information Bulletin* Vol 8, No 3 (August 1996), as they are now based on experience and a better understanding of the nature and complexity of the disputes that are being received. It is noted that in the nine months to 31 March 2007, the Adjudication Unit completed low complexity disputes in an average of 6 weeks, medium complexity disputes in an average of 13 weeks and high complexity disputes in an average of 25 weeks.

The Adjudication Unit completes approximately 50-80 adjudications every year. Given that there can be many issues involved in a dispute, decisions can be made fully or partly in favour of either party. Over the last few years, on average approximately two-thirds of the decisions made by the Adjudication Unit were made predominately in favour of Inland Revenue's position and one third in favour of the taxpayer's position.

## Preparation of dispute documents

As noted above, it has been more than 10 years since the dispute resolution process was introduced and there are some observations that can be made regarding the overall quality and content of the relevant dispute documents. While the overall quality of the dispute documents has improved over time, it is suggested that the following should be taken into account by the parties involved in the dispute resolution process:

- the NOPA must identify the adjustment(s) proposed, provide a statement of the facts and the law in sufficient detail to inform the other party of the grounds for the proposed adjustment and also state how the law applies to the facts (section 89F of the TAA). In addition, where the taxpayer issues a NOPA, the taxpayer must include copies of the documents that it is aware of at the time the NOPA is issued that are significantly relevant to the issues (section 89F(3)(d) of the TAA);
- the SOP must also give an outline of the facts, evidence and propositions of law relied upon and outline the issues each party considers will arise with sufficient detail to fairly inform the other party of its position and arguments (section 89M of the TAA);
- ideally, the facts relevant to the dispute should be set out without incorporating any opinion or analysis;
- it is advisable that, by SOP stage, the parties support all arguments with relevant authority (such as legislative references, case law and, where relevant, other legal resources);
- all arguments and issues raised by the other party should be explicitly addressed, including any alternative arguments that have been raised;
- the contractual and/or legal relationships existing in a transaction should be clearly identified and analysed where the conclusion on the issue may be affected by such relationships;
- when calculation is necessary to reach the proposed adjustment figure(s), the calculation method/ worksheet should be set out clearly. An explanation of the basis of that calculation is also helpful. Wherever possible, it is also helpful to set out gross (before tax) figures when detailing the proposed adjustments;
- where a party receives a NOPA and wishes to propose an adjustment for the same period(s) in dispute but in relation to a different issue, that party cannot propose an adjustment in the NOR. The party would need to prepare a separate NOPA in respect of that issue. However, any such adjustments can be incorporated into a combined SOP from each party if the timing allows; and
- the parties should be mindful of the response periods for the dispute resolution process as failure to reply/issue documents within that the requisite time will result in deemed acceptance.

## Contact information

If you wish to contact the Adjudication Unit in relation to any aspect of the adjudication process, please contact:

Team Manager (Technical Services Unit)
Office of the Chief Tax Counsel
PO Box 2198
Wellington

Phone: 04 890 6143
Fax: 04 978 1630
Email: rulings@ird.govt.nz

Inland Revenue staff formally referring a file to the Adjudication Unit for consideration should send it to the following street address:

Team Manager (Technical Services Unit)
Office of the Chief Tax Counsel
Ground Floor
Freyberg Building
Aitken Street
Wellington

For more information about the Office of the Chief Tax Counsel go to **http://www.ird.govt.nz/aboutir/who-we-are/structure/#octc**

# NEW LEGISLATION

## ORDER IN COUNCIL

### KiwiSaver Amendment Regulations 2007

The KiwiSaver Amendment Regulations 2007 amend the KiwiSaver Regulations 2006, and give effect to the annual fee subsidy to be paid to KiwiSaver members and the rules governing the use of the KiwiSaver mortgage diversion facility.

The regulations came into force on 1 July 2007.

### Fee subsidy

Regulation 20 deals with the payment of the fee subsidy. The regulation requires the Ministry of Economic Development to pay a fee subsidy of $40 per annum for each member of a KiwiSaver scheme. The function of paying the fee subsidy has been delegated to Inland Revenue.

The fee subsidy must be paid in instalments twice a year. The first instalment is to be paid on the date on which the $1,000 kick-start contribution is payable for the member. Subsequent instalments are payable on each six-month anniversary of that date, provided the person is still a member of a KiwiSaver scheme and the age of eligibility for fund withdrawal has not been reached (the age of entitlement to New Zealand superannuation or five years of membership, whichever comes later).

Each instalment of the fee subsidy must be paid to the member's KiwiSaver provider at the instalment date. The fee subsidy must be applied on a pro rata basis across the investment products of the scheme to which the member has subscribed or been allocated to. If the member has subscribed, or been allocated to more than one investment product within the KiwiSaver scheme the provider must, to the extent it is practical, credit the subsidy on a pro rata basis across only the investment products that do not contain unvested contributions.

### Mortgage diversion facility

Regulations 21 to 29 deal with the mortgage diversion facility.

The regulations enable a facility that allows contributions to be withdrawn from a KiwiSaver scheme to be applied towards amounts that are secured by a mortgage over a member's principal residence, if the provider and the mortgagee choose to participate.

The terms and conditions of the facility are implied in the terms of any trust deed of any scheme that participates in the facility and override any express terms of the trust deed to the contrary.

Participation must be in accordance with the principles in section 229(2) of the KiwiSaver Act. The regulations cover:

- the types of mortgages that qualify for participation in the facility;
- what a KiwiSaver member must do to participate in the facility;
- what the mortgagee must do to participate in the facility;
- what a KiwiSaver member must do after their mortgagee has agreed to participate in the facility;
- what scheme providers must do to participate in the facility; and
- the circumstances upon which the facility is terminated and what happens with the contribution on termination.

*KiwiSaver Amendment Regulations 2007 (2007/152)*

# QUESTION WE'VE BEEN ASKED

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.

[This item was issued by the Office of the Chief Tax Counsel on 10 October 2007. It was previously released for public consultation as exposure draft QB0041].

## QB 07/05: ABILITY TO RULE WHERE THE COMMISSIONER IS AUDITING OR INVESTIGATING – WHETHER THE COMMISSIONER HAS A DISCRETION TO RULE OR IS PROHIBITED

### Tax Administration Act 1994 ("TAA"), section 91E(4)(g) – Private Rulings

All legislative references in this item are to the TAA unless otherwise stated.

### The question

We have been asked whether the Commissioner has a discretion to make a private ruling as to how the tax laws apply to a taxpayer and to an arrangement where that taxpayer is being audited or investigated, or whether the relevant provision is a mandatory prohibition.

### The answer

Section 91E(4)(g) prohibits the Commissioner from making a private ruling where the Commissioner is auditing or investigating. The Commissioner does not have a discretion in such circumstances.

### Background

Under section 91E(1), the Commissioner must make a private ruling on how a taxation law applies, or would apply, to a person and to the arrangement for which a ruling is sought. An arrangement that is the subject of a private ruling application may also be the subject of an audit or investigation by Inland Revenue at the same time. This would result in two different parts of Inland Revenue concurrently considering the same arrangement. In such situations, section 91E(4)(g) provides that the Commissioner "may not" make a private ruling as to how a taxation law applies to the person and to the arrangement.

### Legislation

Section 91E(1) provides:

> 91E(1) Subject to section 91EF, the Commissioner must make a private ruling on how a taxation law applies, or would apply, to a person and to the arrangement, whether a single or a recurring arrangement, for which the ruling is sought.

Section 91E(4) provides:

> 91E(4) The Commissioner may not make a private ruling if—
>
> ….
>
> (g) The Commissioner is auditing or investigating how the taxation law applies to the person and to the arrangement for a period or a tax year to which the proposed ruling would apply; or
>
> …

### Whether the Commissioner has a discretion to rule

Section 91E(4)(g) states that the Commissioner may not rule if there is an audit or investigation as to how the taxation law applies to the person and to the arrangement for a period or a tax year to which the proposed ruling would apply.

We have been asked whether the use of the words "may not" in section 91E means that the Commissioner has a discretion to rule in the circumstances outlined in the section, or whether it prohibits the Commissioner from ruling.

The *Concise Oxford English Dictionary* (11th ed, 2004) defines "may" as:

> 1 expressing possibility 2 expressing permission 3 expressing a wish or hope.

The same dictionary defines "not" as:

> *adv*. Used chiefly with an auxiliary verb or 'be' to form the negative.

The dictionary definition indicates that the term "may" can express either a possibility, permission, or a wish. Which meaning is appropriate depends on the context in which the word is used. It seems unlikely in the context of a statute governing tax administration that either of meanings 1 or 3 were intended. Particularly because section 91E(4)(g) follows section 91E(1), which imposes a requirement to rule, the use of the word "may" suggests "expressing permission" is the intended meaning. "Not", expressing the negative following an auxiliary verb, would appear to suggest that "may not" means no permission or a prohibition.

For reasons set out below, the context in which the term "may not" is used within the TAA and within section 91E itself supports interpreting "may not" as a mandatory prohibition rather than a discretion.

The context of section 91E(4) within section 91E indicates that the Commissioner has no discretion to rule where any of the circumstances within the subsection apply.

Section 91E(1) places an obligation on the Commissioner to make binding rulings; subsections (3) and (4) provide exceptions to this obligation. Section 91E(3) states that the "Commissioner may decline" to rule in certain circumstances. The use of the words "may decline" appears to give the Commissioner a discretion as to whether or not to rule. The context of the phrase "may decline", used in section 91E(3), indicates more clearly than section 91E(4) that the Commissioner is being empowered with a discretion by the Act. It is arguable that if Parliament had intended that the Commissioner was to have a similar discretion under section 91E(4) then the same words would have been used.

Some of the exceptions set out in both subsections (3) and (4) require an exercise of the Commissioner's judgement to determine if the subsection applies, while others have no such element explicit in their application. However, whereas subsection (3) states "the Commissioner may decline to make a private ruling", subsection (4) states "the Commissioner may not make a private ruling". The only rational grounds for a distinction between the wording chosen in subsections (3) and (4) is that those in subsection (3) were meant to be discretionary, while those in subsection (4) are obligatory. It is considered then that if the circumstances fall within subsection (4) the Commissioner cannot make a ruling.

The view that Parliament intended "may not" to denote a denial of permission, as in "cannot", in section 91E(4)(g) is further illustrated by amendments made to the regime, such as the enactment of section 91E(4)(ga). The disputes resolution process came into force on 1 October 1996, 18 months after the binding rulings regime on 1 April 1995. It therefore became necessary to insert paragraph (ga) into the TAA to accommodate the disputes resolution process. To this extent, it is stated in the commentary on the Taxation (Accrual Rules and Other Remedial Matters) Bill 1998:

> The policy intent behind the binding rulings legislation is that it should not overlap with existing dispute resolution procedures. Section 91E (4) will be amended to clarify that a binding ruling cannot be sought on an arrangement that is within the scope of a NOPA. [Emphasis added]

That this later amendment was inserted to ensure the binding rulings regime could not interfere with the dispute resolution process indicates that the Commissioner is not meant to have a discretion to rule where the situations in section 91E(4) arise. It suggests that the drafters considered "may not" equates to "cannot" in section 91E(4), because the circumstance outlined in paragraph (ga) is clearly one where the Commissioner is not meant to have a discretion to rule.

In other provisions of the TAA "may not" indicates cannot. For example, section 89B(4) provides:

> The Commissioner may not issue a notice of proposed adjustment—
>
> (a) If the proposed adjustment is already the subject of a challenge; or
>
> (b) **After the expiry of the time bar** that, under—
>
> (i) Sections 108 and 108B; or
>
> (ii) Sections 108A and 108B,—
>
> applies to the assessment. [Emphasis added]

Section 108(1), in turn, provides:

> Except as specified in this section or in section 108B, if—
>
> (a) A taxpayer furnishes an income tax return and an assessment has been made; and
>
> (b) **4 years have passed** from the end of the tax year in which the taxpayer provides the tax return,—
>
> the Commissioner **may no**t amend the assessment so as to increase the amount assessed. [Emphasis added]

The associated provision relating to GST, section 108A(1) provides:

> Subject to this section and section 108B, if a taxpayer provides a GST tax return for a GST return period and an assessment has been made, the Commissioner may not amend the assessment to increase the amount assessed if 4 years have passed from the end of the GST return period in which the tax return was provided. [Emphasis added]

In *Simunovich Fisheries Limited v Commissioner of Inland Revenue & Anor* (2001) 20 NZTC 17,065 Priestley J noted that section 108A(1) prohibits the Commissioner from issuing further assessments beyond a stipulated period. At page 17,083 he states:

> [90] The four-year time limit contained in s 108A(1) must be seen in the context of that provision and the statutory regime generally. **The legislative policy is to stipulate a period beyond which the Commissioner cannot issue further assessments** which have the effect of increasing the amount of tax payable. …
>
> [91] In examining analogous provisions, T*ipping J in Dandelion Investments Limited v C of IR* (2000) 19 NZTC 15,585 at p 15,588, adopting perhaps the perspective of the taxpayer, saw the policy this way:
>
>> Clearly Parliament intended that after four years the Commissioner could not issue any further assessments increasing the amount of tax beyond the amount of the last valid assessment made within the four years.
>>
>> [Emphasis added]

Sections 89B(4), 108(1) and 108A(1) use "may not" in a context where the Commissioner is not permitted to either issue a Notice of Proposed Adjustment ("NOPA") or raise an assessment.

This indicates that the term "may not" also prohibits the Commissioner from ruling in section 91E(4).

In summary, interpreting the term "may not" as imposing a prohibition on the Commissioner ruling is consistent with how the phrase is used in other sections of the TAA, namely sections 89, 108 and 108A where it is also used as a prohibition. The context of section 91E(4) within section 91E also indicates that the Commissioner has no discretion to rule where any of the circumstances within the subsection apply. The Commissioner not having the discretion to rule in such circumstances ensures that private rulings do not overlap or interfere with other procedures within Inland Revenue.

Therefore, the words used in section 91E(4)(g) and the context indicate that the Commissioner is prohibited from ruling, where an arrangement is subject to an audit or investigation.

In addition, it is considered that section 91E(4)(g) can apply any time up to the Commissioner making a ruling, even if the taxpayer's ruling application was submitted before the audit commenced. However, it is noted that section 91E(4)(g) applies where "the Commissioner is auditing or investigating". Therefore, it only applies if an arrangement is currently being audited or investigated.

# 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.

## FILING CHALLENGE OUT OF TIME (APPEAL)

| | |
|---|---|
| **Case:** | Amaltal Fishing Co Ltd v The Commissioner of Inland Revenue |
| **Decision date:** | 31 August 2007 |
| **Act:** | Tax Administration Act 1994 |
| **Keywords:** | Application for leave, commence proceedings, expiry of response period, exceptional circumstances |

### Summary

The taxpayer appealed the decision of the Authority which declined to grant leave to commence proceedings out of time, on the basis that no exceptional circumstances existed.

### Facts

In about 2000, a dispute developed between the parties over tax payable in the 1994 and 1995 years. There were dealings between the taxpayer's solicitors and the investigator based in Nelson, Litigation Management and the Crown Law Office. The in-house accountant received copies of all communications between the parties but generally such communications took place between the taxpayer's solicitor and the Inland Revenue Department ("IRD").

The IRD sent a letter to the taxpayer's solicitor on 20 April 2006 to advise notices of assessment would be issued shortly. The letter also noted that the assessments would be sent directly to the taxpayer. A copy of the letter was sent to the in-house accountant, and the external accountant. The assessments were then issued on 27 April 2006. The taxpayer failed to commence proceedings before the response period expired on 26 June 2006, but did so on 10 August 2006.

The in-house accountant received the assessments on either 28 April or 1 May 2006, but took no action until 8 May 2006. That appeared to be due to the investigator having telephoned the external accountant in relation to the assessments, and the external accountant telephoning the in-house accountant who said he had received them and would contact the external accountant to discuss them.

In mid June 2006, the external accountant reminded the in-house accountant he had not forwarded on the assessments. The in-house accountant undertook to do so, but did not attend to that until 26 June 2006, the last day of the response period.

### Decision

The taxpayer essentially advanced the same propositions that were rejected by the Authority. These included:

1. It was reasonable to expect the notices to have been copied to the solicitor given this is what had happened in the past. The failure of IRD to do this was beyond the accountant's control.
2. It was reasonable for the accountant to ignore the fact that the letter from IRD said the assessments would be issued shortly and what the time period was given the history of the proceedings.

Justice France considered the taxpayer's submissions owed much to the misreading of the Court of Appeal decision in *Fuji Xerox*. Whilst that Court accepted in isolation the fact the notices had not been sent to the agent who had been dealing with the dispute was beyond the taxpayer's control, it dismissed the argument that such a fact provided a reasonable justification. As in the current case, it was not a relevant factor once the taxpayer had the notices.

His Honour considered it was an impossible proposition to suggest that the statutory test of exceptional circumstances was met here. While errors were made they were not beyond the taxpayers' control.

It was incorrect to say the failure of the IRD to copy the letter to the solicitor was beyond the taxpayer's control.

IRD advised the parties a week before the assessments were issued where they would be going and how long the period to challenge was. The same analysis in *Fuji* existed here—it was not the omission to send a copy that was causative of the failure to file in time but the omissions of the accountant who received the assessments.

## GST TAX AVOIDANCE

| | |
|---|---|
| **Case:** | Ch'elle Properties (NZ) Limited v The Commissioner of Inland Revenue |
| **Decision date:** | 6 September 2007 |
| **Act:** | Good and Services Tax 1985 |
| **Keywords:** | Input/Output tax, Invoice/Payment basis, Property transactions, Deferrable contracts, Credit contracts, Contract cancellation, Tax avoidance arrangement, Tax advantage, Objective test. |

### Summary

The taxpayer had claimed GST input tax credits on a total of 117 property transactions. Payment to the vendor was by way of a small deposit with the remainder payable on settlement. The difference in registration types (payment and invoice) between the parties saw the taxpayer claiming an input credit on the entire purchase price whilst the vendor only paid output tax on the deposit paid. The Commissioner considered the arrangement was set up for the tax advantages it could obtain and alleged tax avoidance under section 76 of the GST Act. The TRA, High Court and Court of Appeal all agreed with the Commissioner.

### Background

This was an application for leave to appeal the Court of Appeal ("CA") decision upholding the Taxation Review Authority ("TRA") and High Court ("HC") decisions finding that the Commissioner was correct in disallowing input tax credits claimed by Ch'elle Properties Ltd ("Ch'elle").

### Facts

In 1996 and 1997, the taxpayer incorporated a total of 114 companies, all registered for GST purposes on a payment basis.

A friend of the taxpayer's former wife registered Ch'elle in July of 1998 and for GST purposes, it was registered on a monthly invoice basis. The taxable activity was "property trader".

On 5 November 1998, each of the 114 taxpayer companies entered into conditional contracts to purchase from Waverly Developments Ltd a lot in a subdivision in Papakura for $70,000.00. Each contract provided for a $10 deposit on execution with the remainder of the deposit to be payable on the date for settlement specified in the contracts which was 31 August 1999.

On 21 May 1999 Ch'elle entered into conditional contracts with the 114 taxpayer companies to purchase these properties for a total price of $80 million; an average of about $700,000.00 per contract.

Settlement was deferred for between 10 to 20 years. An initial deposit of $10 was payable on execution, with the balance of the deposit ($29,990) being payable subsequently. The vendor did not hold the deposit as a stakeholder but, during the deferred period, the vendor was to construct a house on each section. Each of the vendors issued an invoice to Ch'elle for the total ultimate price.

In June 1999 Ch'elle filed a GST return for the period ending 31 May 1999 claiming input tax credits of $398,333.00 in relation to 13 property transactions, including 10 of the 114 transactions. On 20 October 1999, Ch'elle filed a further GST return for the remaining 104 properties, claiming $9 million in input tax credits based on the estimated market value on the respective settlement dates 10 to 20 years into the future.

The Commissioner issued notices disallowing the claims and all 114 contracts between Waverly Developments and the companies were cancelled for failure to settle on the stipulated date of October 1999.

The TRA, HC and CA all considered the scheme constituted tax avoidance pursuant to section 76 of the GST Act. The HC and CA considered the test of avoidance under that section was an objective one and that while timing mismatches were provided for in the Act, these transactions exploited that provision and defeated the intent and purpose of the Act.

### Decision

The Supreme Court considered it unnecessary to express any view on the merits of Ch'elle's arguments that 1) the CA erred in finding it was unnecessary for the Commissioner to show an intention to defeat the intent and application of the Act and 2) that an arrangement can defeat the intent and application of the act only if there is a tension between the commercial and juristic nature of the transactions, on the basis the TRA had made factual findings that Ch'elle did have an intention to defeat the intent and application of the Act.

The Supreme Court also considered Ch'elle's third ground of appeal that it did not gain a "tax advantage" equally as hopeless. The definition of that term included "any increase in the entitlement of any registered person to a refund of tax". Ch'elle clearly came within this definition.

## DISPUTANT'S CLAIM STRUCK OUT

**Case:** Decision Number 13/2007

**Decision date:** 30 August 2007

**Act:** Tax Administration Act 1994

**Keywords:** strike out, damages, costs

## Summary

Part VIII of the Tax Administration Act 1994 ("TAA"), the objections procedure, applies to assessments issued after 1 April 1995 and before 1 October 1996. The TRA has no jurisdiction to award costs or damages.

## Facts

The Commissioner had originally assessed the taxpayer for the income tax years dated 31 March 1990 to 31 March 1996. The assessments were issued on the basis that the Commissioner considered certain transactions reflected in the taxpayer's income tax returns were a sham.

Notices of Objection were received from the taxpayer in relation to those assessments during September and November 1996. The Commissioner did not respond to the Notices of Objection.

The taxpayer issued a Notice of Proposed Adjustment ("NOPA") to the Commissioner on 30 August 2004 in relation to the Commissioner's assessments and the "refusal of the Commissioner" to deal with the Notices of Objection.

The Commissioner did not issue a Notice of Response on the basis that the assessment periods fell outside the current disputes resolution regime and were subject to the old "objections" procedure as the assessments were issued between the period 1 April 1995 and 1 October 1996. On 3 November 2005 the Commissioner decided to reassess the taxpayer on the basis of the returns originally filed, effectively allowing the taxpayer's original objection.

Subsequently, the taxpayer filed a Notice of Claim in the Taxation Review Authority ("TRA"). The taxpayer sought costs and damages against the Commissioner for inordinate delay, breach of section 27 of the Bill of Rights Act 1990, breach of section 6 of the Tax Administration Act 1994, vendetta, lack of fairness, unlawfulness, abuse of legal process, an alleged fraud on the taxpayer, lack of evidence and denial of natural justice to the taxpayer. The Commissioner sought to strike out the taxpayer's claim.

## Decision

The TRA confirmed that its jurisdiction is confined to dealing with the correctness of tax assessments, in this case the assessments for the 1990 to 1996 income tax years. The Commissioner had allowed the objections, albeit nine years after the original Notices of Objection were received, and reassessed the taxpayer to its "as returned" position. Accordingly, the TRA had no jurisdiction to take matters further. Given the TRA's decision in relation to its own jurisdiction there were no live issues to be dealt with and the TRA granted the Commissioner's application to strike out the taxpayer's Notice of Claim.

In terms of compensation sought by the taxpayer, the TRA has no jurisdiction to award costs or damages and even if it could, the TRA stated there was no merit in any suggestion that the taxpayer was entitled to damages.

The challenge procedure did not apply to the assessments.

# REGULAR FEATURES

## DUE DATES REMINDER

### November 2007

**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

**28 GST return and payment due**

### December 2007

**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

### January 2008

**15 GST return and payment due**

**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

**28 GST return and payment due**

These dates are taken from Inland Revenue's *Smart business tax due date calendar 2007–2008*. This 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 internet**: Visit **www.ird.govt.nz**
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**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.

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____________________

| *Draft depreciation determinations* | *Comment deadline* |
|---|---|
| ☐ DDP0006: LED screens | 30 November 2007 |
| ☐ DDG0131: Speed humps | 30 November 2007 |

| *Draft interpretation guideline* | *Comment deadline* |
|---|---|
| ☐ IG03162: Allowances and payments to employees | 28 December 2007 |

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