

TAX INFORMATION

Bulletin



WELCOME TO OUR NEW LOOK TAX INFORMATION BULLETIN

The *Tax Information Bulletin (TIB)* is our primary tool for formally communicating with taxpayers, particularly in regard to pronouncements and developments in tax law and information on specialist tax topics.

As part of our ongoing commitment to providing quality products we have made some improvements to the *TIB* which we believe will make it easier for you to find the information most relevant to you.

This is the first issue which incorporates our new design. We have introduced a summary page to provide an overview of each section of the *TIB* as well as provide an easy reference point. Tabs have been placed on the right-hand side of the pages to quickly and easily differentiate each section.

We know the *TIB* is an important information source for many of you. We would like to know your thoughts about the new look as well as any suggestions you may have about other improvements we can make. Please send them to us at tibdatabase@ird.govt.nz

Regards,

A handwritten signature in dark ink, appearing to read 'Colin McDonald', written in a cursive style.

Colin McDonald
Acting Commissioner of Inland Revenue

GET YOUR TIB SOONER ON THE INTERNET

This *Tax Information Bulletin (TIB)* 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 would prefer to get the *TIB* from our website, please email us at tibdatabase@ird.govt.nz and we will take you off our mailing list.

You can also email us to advise a change of address or to request a paper copy of the *TIB*.

THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

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

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

The following draft items are available for review/comment this month, having a deadline of 30 May 2008.

Ref.	Draft type	Description
XPB0032	Re-issued public ruling	GST – Supply of leasehold land
DDG0139	General depreciation determination	Plant supports

The following draft items are available for review/comment this month, having a deadline of 6 June 2008.

Ref.	Draft type	Description
ED00102	Standard practice statement	Discretion to not assess a shortfall penalty for taking an unacceptable tax position
ED00103	Standard practice statement	Voluntary disclosure

See inside back cover for details on how to obtain a copy.

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2008 International tax disclosure exemption ITR19

In general, for interests of 10% or more the scope of the 2008 disclosure exemption is the same as the 2007 exemption. However, for attributing interests of less than 10% in foreign investment funds, the scope of the 2008 exemption has changed in situations where the fair dividend rate or comparative value calculation method is used.

Fair dividend rate method determinations

Determination FDR 2008/07

Use of fair dividend rate method for a type of attributing interest in a foreign investment fund (ING Credit Opportunities Fund's interests in offshore credit opportunities funds)

Determination FDR 2008/08

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Use of fair dividend rate method for a type of attributing interest in a foreign investment fund (ABN AMRO Global Equities Hindsight Trust)

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 12 months ending 31 March 2008.

Legal decisions – case notes

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Tax advisor's statutory non-disclosure right narrower than legal professional privilege Iain Wilson Blakeley v The Commissioner of Inland Revenue

The protection afforded by section 20 B is much more confined than legal professional privilege. The Court ruled that a list of clients' names was not protected as their names and IRD numbers were not tax advice documents for the purposes of section 20B.

A deed of gift of money and declaration of trust

Begg and Jacksons v The Commissioner of Inland Revenue

The Court ruled that a deed for a gift of money to be paid in the future coupled with a declaration of trust for a home to secure that payment is not a gift.

Trinity Supreme Court hearing adjourned

Ben Nevis Forestry Ventures Limited, Accent Management Limited and Ors v The Commissioner of Inland Revenue

The Supreme Court has adjourned the Trinity appeal hearing from 3 March 2008 to 23 June 2008 due to a conflict of fixture.

Application to represent a taxpayer company by virtue of a long-standing association with the company Central Equipment Company v The Commissioner of Inland Revenue

An application to file special leave with the Court of Appeal was initiated by Mr. Faloon, purportedly as a representative of the taxpayer company, against the decision of the High Court to put the company into liquidation. The application was dismissed.

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.

2008 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR19

Introduction

Section 61 of the Tax Administration Act 1994 (TAA) requires disclosure of interests 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 attributing interest in a foreign investment fund (FIF) at any time during an income year must disclose the interest held¹. 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).

To balance the revenue forecasting and risk assessment needs of the Commissioner with the compliance costs of taxpayers providing the information, the Commissioner has issued an international tax disclosure exemption under section 61(2) which applies for the income year corresponding to the tax year ended 31 March 2008. This exemption may be cited as "International tax disclosure exemption ITR19" and the full text appears at the end of this item.

Scope of exemption

In general for interests of 10% or more, the scope of the 2008 disclosure exemption is the same as the 2007 exemption. However, for attributing interests in FIFs that are direct income interests of less than 10%, the scope of the 2008 exemption has changed in situations where the fair dividend rate or comparative value calculation method is used.

Interests held by residents

Disclosure is required by residents holding these interests:

1. an attributing interest in a FIF in respect of which FIF income or FIF loss arises where the :
 - a. branch equivalent, accounting profits, deemed rate of return or cost method of calculation is used, or
 - b. fair dividend rate or comparative value method of calculation is used and the resident is a "widely held entity", or

- c. fair dividend rate or comparative value method of calculation is used and the resident is not a widely held entity. In this case disclosure is required if the attributing interest in the FIF is incorporated in the case of a foreign company, or in all other cases is tax resident, in a country with which New Zealand does not have a double tax agreement in force as at 31 March 2008. The countries with which New Zealand does have a double tax agreement in force as at 31 March 2008 are listed below.

Australia	Malaysia
Austria	Mexico
Belgium	Netherlands
Canada	Norway
Chile	Philippines
China	Poland
Denmark	Russian Federation
Fiji	Singapore
Finland	Spain
France	South Africa
Germany	Sweden
India	Switzerland
Indonesia	Taiwan
Ireland	Thailand
Italy	United Arab Emirates
Japan	United Kingdom
Korea	United States of America

No disclosure is required by non-widely held taxpayers whose attributing interests in FIFs are incorporated or tax resident in a treaty country.

A widely held entity for the purposes of this disclosure is one which is a:

- portfolio investment entity, or
- widely held company, or
- widely held superannuation fund, or
- widely held GIF.

Portfolio investment entity, widely held company, widely held superannuation fund and widely held GIF are all as defined in section OB 1 of the ITA.

¹ In the case of partnerships, however, disclosure will need to be made by the individual partners in the partnership. The partnership itself is not required to disclose.

The disclosure required by widely held entities of attributing interests in FIFs which use the fair dividend rate or the comparative value method of calculation is that, for each calculation method, they disclose the end-of-year New Zealand dollar market value of investments split by the jurisdiction in which the attributing interest in a FIF is held or listed. A split by the currency in which the investment is held, will be also accepted as long as it is a reasonable proxy – that is at least 90–95% accurate – for the underlying jurisdictions. For example, investments denominated in euros will not be able to meet this test and so euro-based investments will need to be split into the underlying jurisdictions.

2. an income interest of 10% or more held in a foreign company. The disclosure obligation applies in respect of all foreign companies regardless of the country of residence. For this purpose the following interests are counted:
 - a. an income interest held directly in a foreign company
 - b. an income interest held indirectly through any interposed foreign company
 - c. an income interest held by an associated person (not being a controlled foreign company) as defined by section OD 8(3) of the ITA.

For determining an income interest at 10% or more for controlled foreign companies, sections EX 14 to EX 17 of the ITA apply. For determining an income interest of 10% or more for entities that are not CFCs, for the purpose of this exemption, sections EX 14 to EX 17 of the ITA are to be applied as if the foreign company were a CFC.

Foreign company interests

Under section 61, 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 2008 international tax disclosure exemption also makes no distinction about residence for any interest in a foreign company which is an income interest of 10% or more. Disclosure is to be made on an IR 477 or IR 479 *Interest in a foreign company disclosure schedule* form.

The disclosure exemption makes no distinction on the residence of a foreign company with income interests of 10% or more for these reasons:

- attributed (non-dividend) repatriation rules apply to an income interest of 10% or more in a controlled foreign company (CFC) regardless of the CFC's country of residence
- identifying 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 the "grey list", that is, a jurisdiction listed in schedule 3, Part A of the ITA jurisdiction (Australia, Canada, Federal Republic of Germany, Japan, Norway, Spain, United Kingdom and the United States of America).

Foreign investment fund interests

In previous years, an interest in a foreign entity had to be disclosed if it constituted an attributing interest in a foreign investment fund in respect of which FIF income under section CQ 5 or FIF loss under section DN 6 arose.

This year with the widening of the FIF rules through the removal of the grey-list exemption for interests under 10%, a new approach is being adopted to meet the revenue forecasting and risk assessment needs of the Commissioner without imposing undue compliance costs on taxpayers.

The types of interest that fall within the scope of section 61(1) of the TAA are:

- 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, the following interests are exempt (under sections EX 32 to EX 37) from being an attributing interest in a FIF and do not have to be disclosed:

- an income interest of 10% or more in a CFC (separate disclosure is required of this as an interest in a foreign company)
- an interest in an Australian resident company listed on an approved index of the Australian Stock Exchange and required to maintain a franking account
- an interest in an Australian unit trust that has an RWT proxy with either a high turnover or high distributions
- an interest of 10% or more in a foreign company that is resident and liable to income tax in a country or territory specified in the grey list
- an interest in certain grey-list companies. Only interests in Guinness Peat Group plc and the New Zealand Investment Trust plc qualify for this exemption
- an interest in an employment-related foreign superannuation scheme
- certain foreign pensions or annuities. See Inland Revenue's booklet *Overseas private pensions* (IR 257) for more information

- an interest in certain venture capital investments in New Zealand resident start-up companies that migrate to a grey-list country
- 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.

Interests in foreign entities held by a natural person not acting as a trustee also do not have to be disclosed if the total cost of the interests remains under \$50,000 at all times during the income year. This disclosure exemption is made because no FIF income under section CQ 5 or FIF loss under section DN 6 arises in respect of these interests.

The respective forms to use for whichever FIF calculation method you apply are as follows:²

- IR 439 form for the accounting profits method
- IR 440 form for the branch equivalent method
- IR 443 form for the deemed rate of return method
- IR 445 form for the fair dividend rate method by widely held entities
- IR 446 form for the comparative value method by widely held entities
- IR 447 form for the fair dividend rate by individuals or non-widely held entities
- IR 448 form for the comparative value method by individuals or non-widely held entities
- IR 449 for the cost 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 attributing interest in a 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 attributing interest held in a 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 443, IR 445, IR 446, IR 447, IR 448 or IR 449 form) is required for each interest, or group of interests in the case of fair dividend rate or comparative value method, 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 443, IR 445, IR 446, IR 447, IR 448 or IR 449 form to disclose all attributing interests in FIFs, and in particular:
 - an income interest of less than 10% in a CFC
 - an interest in a foreign life insurance policy or foreign superannuation scheme
2. Use an IR 477 or IR 479 form to disclose:
 - an income interest of 10% or more in a foreign company (regardless of the country of residence) that is not being disclosed on an IR 439, IR 440, IR 443, IR 445, IR 446, IR 447, IR 448 or IR 449 form.

Disclosure is not required on any of the forms for an income interest of less than 10% in a foreign company (whether a CFC or not) which is also not an attributing interest in a FIF or is an attributing interest in a FIF in respect of which no FIF income or loss arises under sections CQ 5(1)(d) or DN 6(1)(d). Examples include an interest which is covered by the Australian listed company exemption from the FIF rules or interests held by a natural person, not acting in the capacity of a trustee, with a total cost of below \$50,000.

Interests held by non-residents and transitional residents

The 2008 disclosure exemption removes the need to disclose interests held by non-residents and transitional residents in foreign companies and FIFs.

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 or to a transitional resident with interests in a foreign company or an attributing interest in a FIF.

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 and transitional residents are not required to calculate or attribute income under the CFC or FIF rules. The disclosure of non-residents' or transitional residents' holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules.

Summary

The 2008 international tax disclosure exemption removes the requirement of a resident to disclose:

- a less than 10% interest in a foreign company that is not an attributing interest in a FIF or an attributing interest in a FIF in respect of which no FIF income or loss arises
- where the taxpayer is not a widely held entity, an attributing interest in a FIF that does not constitute an income interest of 10% or more (ie, it is less than 10%) where the foreign company is incorporated, in the case

² In the case of forms IR 445 to 449 relating to the fair dividend rate, comparative value and cost method of calculation, the intention is that in subsequent years section 35 of the TAA will require mandatory electronic filing. This year the IR 449 – cost method – and IR 447 and 448 – fair dividend rate and comparative value methods for non-widely held entities will still be paper based

of a company, or in all other cases tax resident in a treaty country, and the fair dividend rate or comparative value method of calculation is used.

- where the taxpayer is a widely held entity, it limits disclosure to the end-of-year New Zealand dollar market value of investments split by the jurisdiction in which the attributing interest in a FIF is held or listed in cases where the fair dividend rate or comparative value method is used.

The 2008 disclosure exemption also removes the requirement for a non-resident or transitional 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 ITR19”.

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies and attributing interests in FIFs 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 corresponding to the tax year ending 31 March 2008.

2. Interpretation

For the purpose of this disclosure exemption to determine an income interest of 10% or more, sections EX 14 to EX 17 of the Income Tax Act 2004 apply for interests in controlled foreign companies. In the case of attributing interests in FIFs, those sections are to be applied as if the FIF were a CFC.

The relevant definition of associated persons is that contained in section OD 8(3) of the Income Tax Act 2004.

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

3. Exemption

- Any person who holds an income interest of less than 10% in a foreign company, including interests held by associated persons, that is not an attributing interest in a FIF, or that is an attributing interest in FIF in respect of which no FIF income or loss arises under either section CQ 5(1)(d) or section DN 6(1)(d), is not required to comply with section 61(1) of the Tax Administration Act 1994 for that interest and that income year.

- Any person who is a portfolio investment entity, widely held company, widely held superannuation fund or widely held GIF, who has an attributing interest in a foreign investment fund, other than a direct income interest of 10% or more in a foreign company that is not a foreign investment vehicle, and uses the fair dividend rate or comparative value calculation method for that interest, 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 the person discloses the end-of-year New Zealand dollar market value of investments, in an electronic format prescribed by the Commissioner, split by the jurisdiction in which the attributing interest in a FIF is held or listed.
- Any person who is not a portfolio investment entity, widely held company, widely held superannuation fund or widely held GIF, who has an attributing interest in a foreign investment fund, other than a direct income interest of 10% or more, and uses the fair dividend rate or comparative value calculation method is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, to the extent that the attributing interest is incorporated or tax resident in a country with which New Zealand has a double tax agreement in force at 31 March 2008.
- Any non-resident person or transitional resident who has an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund in the income year corresponding to the tax year ending 31 March 2008, 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 under sections CQ 2(1)(d) or DN 2(d) and/or
 - no foreign investment fund income or loss arises in respect of that interest in that foreign investment fund under sections CQ 5(1)(e) or DN 6(1)(e).

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 15th day of April 2008.

Tony Morris
Assurance Manager (Large Enterprises)
Inland Revenue

FAIR DIVIDEND RATE METHOD DETERMINATIONS

The following determinations, concerning New Zealand resident investors' ability to use the fair dividend rate method to calculate foreign investment fund (FIF) income from a type of attributing interest in a FIF, have been made under section 91AAO of the Tax Administration Act 1994.

DETERMINATION FDR 2008/07 – USE OF FAIR DIVIDEND RATE METHOD FOR A TYPE OF ATTRIBUTING INTEREST IN A FOREIGN INVESTMENT FUND (ING CREDIT OPPORTUNITIES FUND'S INTERESTS IN OFFSHORE CREDIT OPPORTUNITIES FUNDS)

Reference

This determination is made under section 91AAO(1)(a) of the Tax Administration Act 1994. This power has been delegated by the Commissioner of Inland Revenue to the position of Policy Manager, Inland Revenue, under section 7 of the Tax Administration Act 1994.

Discussion (which does not form part of the determination)

The ING Credit Opportunities Fund ("INGNZ COF") invests in a number of offshore credit opportunities funds ("COFs"). INGNZ COF's portfolio of COF investments is fully hedged to the New Zealand dollar.

Shares/units in COFs, to which this determination applies, are attributing interests in a foreign investment fund ("FIF") for INGNZ COF. INGNZ COF is required to apply the FIF rules to determine its tax liability in respect of their investments in COFs each year.

COFs comprise interests in non-residents that hold assets of which 80% or more by value consist of financial arrangements that are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective. Therefore the fair dividend rate ("FDR") method under the FIF rules could not apply for the 2008–09 and subsequent income years to units/shares in COFs held by INGNZ COF, in the absence of a determination under section 91AAO of the Tax Administration Act 1994.

I consider that it is appropriate for INGNZ COF to use the FDR method in relation to COFs for the 2008–09 and subsequent income years. Although the assets of the COFs are entirely financial arrangements and the currency risk to INGNZ COF has been removed, I consider these investments (as described to me by the applicant) to be more akin to equity than debt. This is because they are designed to deliver above-average but volatile returns from trading on market opportunities. Much of the investment

proposition is in the fund manager(s), rather than in the underlying debt assets themselves. It is therefore my view that, overall, INGNZ COF's investments are not akin to a New Zealand dollar denominated financial arrangement.

Scope of determination

The following requirements need to be satisfied for this determination to apply for an income year to interests in COFs (not being fixed rate shares or non-participating redeemable shares) held by INGNZ COF:

- (1) A COF must have a minimum "period turnover percentage" of 35% over the lesser of the following "measurement periods":
 - (i) a period of three accounting years of the COF ending on or before 28 February immediately before the start of the relevant income year; or
 - (ii) a period from the commencement date of the COF, ending immediately on 28 February before the start of the relevant income year.

(For clarification, "relevant income year" refers to INGNZ COF's income year beginning on 1 April and ending on 31 March.)

The "period turnover percentage" is calculated as the average of the turnover percentages for each complete and incomplete accounting year of the COF in the relevant "measurement period":

- (i) For each completed accounting year of the COF, the turnover percentage for that accounting year would be calculated as $A / B \times 100$, where A is total sales plus total purchases in that year, divided by 2, and B is the average total market value of the COF's investment portfolio in the year; and
 - (ii) For any incomplete accounting year of the COF, the turnover percentage would be calculated on an annualised basis as $A / B \times 100$, where A is total annualised sales plus total annualised purchases for the relevant period, divided by 2, and B is the average total market value of the COF's investment portfolio in that period.
- (2) INGNZ COF, in respect of an interest in a COF for which the requirements in (1) are met, will exercise no control or influence over the investment decisions of the relevant COF, including the "period turnover percentage" and the asset allocation decisions of the manager.

Interpretation

In this determination, unless the context otherwise requires:

“COFs” means non-New Zealand tax resident credit opportunities funds the units in which are held by the ING Credit Opportunities Fund (INGNZ COF).

COFs are structured credit funds that invest in a diverse range of corporate debt securities including senior secured bank loans, unsecured investment grade bonds, non-investment grade bonds, second-ranking corporate bonds, mezzanine loans and distressed corporate bonds;

“Fixed rate share” means a fixed rate share under section LF 2(3) of the Act;

“Non-participating redeemable share” means a non-participating redeemable share under section CD 14(9) of the Act;

“INGNZ COF” means the ING Credit Opportunities Fund, a New Zealand tax-resident unit trust that is a portfolio investment entity (as that term is defined in the Act). INGNZ COF holds units/shares in offshore credit opportunities funds (the subject of this determination);

“Measurement period” is defined in the Scope of determination;

“Period turnover percentage” is defined in the Scope of determination;

“Relevant income year” is defined in the Scope of determination;

“The Act” means the Income Tax Act 2004, or any equivalent provision in the Income Tax Act 2007, as applicable.

Determination

An attributing interest in a FIF to which this determination applies is a type of attributing interest for which INGNZ COF may use the FDR method to calculate FIF income from the interest.

Application date

This determination applies for INGNZ COF's income years commencing on or after 1 April 2008.

Dated at Wellington this 26th day of March 2008.

David Carrigan
Policy Manager
Inland Revenue

DETERMINATION FDR 2008/08 – USE OF FAIR DIVIDEND RATE METHOD FOR A TYPE OF ATTRIBUTING INTEREST IN A FOREIGN INVESTMENT FUND (MACQUARIE HIGHPOINT TRUST)

Reference

This determination is made under section 91AAO(1)(a) of the Tax Administration Act 1994. This power has been delegated by the Commissioner of Inland Revenue to the position of Policy Manager under section 7 of the Tax Administration Act 1994.

Discussion (which does not form part of the determination)

Units in a non-resident issuer to which this determination applies are an attributing interest in a foreign investment fund (FIF) for New Zealand resident investors. New Zealand resident investors are required to apply the FIF rules to determine their tax liability in respect of their units in the non-resident issuer each year.

As the non-resident issuer invests solely in financial arrangements denominated in New Zealand dollars, section EX 40(9)(d) of the Act applies. In addition, the existence of lock in thresholds may mean that section EX 40(9)(e) of the Act applies. Accordingly, New Zealand resident investors are prevented from using the fair dividend rate method in the absence of a determination under section 91AAO of the Tax Administration Act 1994.

Despite the non-resident issuer having assets which 80% or more by value consist of financial arrangements denominated in New Zealand dollars and the presence of lock in thresholds which potentially provide a guaranteed type return, I consider it is appropriate that New Zealand resident investors in this arrangement may use the fair dividend rate method. The overall arrangement (as described to me by the applicant) contains sufficient risk so that it is not akin to a New Zealand dollar-denominated debt instrument or one that effectively provides guaranteed returns.

Scope of determination

The investments to which this determination applies are units in a non-resident issuer which:

- (a) is the Macquarie Highpoint Trust, a unit trust that is established and tax resident in Australia;
- (b) is managed by Macquarie Investment Services Limited (Macquarie), a company incorporated and tax resident in Australia, or an entity which is associated with Macquarie;

- (c) issues New Zealand dollar-denominated units (not being fixed rate shares or non-participating redeemable shares) to New Zealand resident investors;
- (d) invests proceeds from the issue of units in assets which are financial arrangements, in relation to which the return on maturity is calculated by reference to the movement in selected indices relating to shares listed on a recognised exchange;
- (e) may make distributions to the unit holders, but investors are not guaranteed that any income will be derived or that a distribution will be made;
- (f) may provide investors with an amount exceeding the issue price of the unit on redemption, but at the time the unit is first issued the redemption price of a unit is not guaranteed to exceed its issue price.

Interpretation

In this determination, unless the context otherwise requires:

“Associated” means associated persons under sections OD 7 and OD 8 of the Act;

“Financial arrangement” means financial arrangement under section EW 3 of the Act;

“Fixed rate share” means a fixed rate share under section LF 2(3) of the Act;

“Non-participating redeemable share” means a non-participating redeemable share under section CD 14(9) of the Act;

“Non-resident” means a person that is not resident in New Zealand for the purposes of the Act;

“Recognised exchange” means recognised exchange under section OB 1 of the Act;

“The Act” means the Income Tax Act 2004.

Determination

An attributing interest in a FIF to which this determination applies is a type of attributing interest for which a person may use the fair dividend rate method to calculate FIF income from the interest.

Application date

This determination applies for the 2007–08 and subsequent income years.

Dated at Wellington this 26th day of March 2008.

David Carrigan
Policy Manager
Inland Revenue

DETERMINATION FDR 2008/09 – USE OF FAIR DIVIDEND RATE METHOD FOR A TYPE OF ATTRIBUTING INTEREST IN A FOREIGN INVESTMENT FUND (ABN AMRO GLOBAL EQUITIES HINDSIGHT TRUST)

Reference

This determination is made under section 91AAO(1)(a) of the Tax Administration Act 1994. This power has been delegated by the Commissioner of Inland Revenue to the position of Policy Manager under section 7 of the Tax Administration Act 1994.

Discussion (which does not form part of the determination)

Units in the ABN AMRO Global Equities Hindsight Trust (“Hindsight Securities”) to which this determination applies are an attributing interest in a foreign investment fund (FIF) for New Zealand resident investors.

New Zealand resident investors are required to apply the FIF rules to determine their tax liability in respect of their Hindsight Securities each income year.

New Zealand resident investors may be prevented from using the fair dividend rate income calculation method (“FDR method”) in the absence of a determination issued pursuant to section 91AAO of the Tax Administration Act 1994 if the options that the ABN AMRO Global Equities Hindsight Trust (“the Trust”) invests in are “out of the money”. This is because the only asset of the Trust would then be a zero coupon bond denominated in New Zealand dollars. Section EX 40(9) of the Act could then operate to disallow the use of the FDR method.

I consider it is appropriate that New Zealand resident investors in Hindsight Securities may use the FDR method. The overall arrangement, as described to me by the applicant, contains sufficient risk so that it is not akin to a New Zealand dollar-denominated debt investment that effectively provides a guaranteed return.

Scope of determination

The investments to which this determination applies are units (not being fixed rate shares or non-participating redeemable shares) in the ABN AMRO Global Equities Hindsight Trust (“Hindsight Securities”) as described in this determination:

1. ABN AMRO Global Equities Hindsight Trust (“the Trust”) has offered Hindsight Securities to investors.
2. Hindsight Securities comprise an investment in units in the Trust.

3. The Trust in turn has an economic exposure to zero coupon bonds hedged to New Zealand dollars (“NZD”) and a mixture of equity index options purchased from ABN AMRO London (“Index Options”).
4. The term of the investment is approximately 5 years.
5. Depending on interest rates, for every \$1 invested in Hindsight Securities approximately 70 cents will be invested in zero coupon bonds and 30 cents in Index Options.
6. The Index Options comprise options over four global equity indices.
7. The end product does not provide a guaranteed return over and above the amount originally invested.
8. The investors will not bear any currency risk.
9. On maturity, the value of the zero coupon bonds will equal the initial amount invested by the investors. This amount is guaranteed to be repaid to the investors by the Trust and the capital guarantee is effectively achieved through this element of the investment.
10. At maturity, weightings will be assigned to each of the four global equity indices dependent on how the indices perform. The investment and return made on the derivative pool (if any) will be paid to the investors.
11. Depending on the amount of cash required to fund the guaranteed return the Hindsight Securities may be able to provide supplementary returns to boost the performance of the investment, through increasing the investors’ participation rate in respect of the performance of the indices. This will be determined at the close of the offer period when the Hindsight Securities are issued to investors.
12. A distribution may be made by the Trust during the term of the investment. Any such distribution will be contingent on the Hindsight Securities’ performance during the term.

Interpretation

In this determination, unless the context otherwise requires:

“Fixed rate share” means a fixed rate share under section LF 2(3) of the Act.

“Non-participating redeemable share” means a non-participating redeemable share under section CD 14(9) of the Act.

“The Act” means the Income Tax Act 2004, or any equivalent provision in the Income Tax Act 2007, as applicable.

Determination

An attributing interest in a FIF to which this determination applies is a type of attributing interest for which a person may use the fair dividend rate method to calculate FIF income from the interest.

Application date

This determination applies for the 2007–08 and subsequent income years.

Dated at Wellington this 2nd day of April 2008.

David Carrigan

Policy Manager
Inland Revenue

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 12 months ending 31 March 2008.

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 tables, 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.

You can only use this calculator when you have actual details for each month. The calculator cannot be used when details are only available on an annual total basis, in which case you will need to use the 12-monthly average rate in Table A (bottom row for each country).

For calculating FIF or CFC income or loss you have a choice of currency conversion methods.

You can choose either:

- the average rate for the 12 months or the relevant period, or
- the actual rate for the day for each transaction (including closing market value).

For the actual rate we accept the Table A mid-month rate as equivalent to an actual rate for transactions occurring in that month.

You must apply the chosen conversion method to all interests for which you use that FIF or CFC calculation method in that and each later income year.

If you choose the Table A – 12-month average rate, use:

- the figures shown in the non-shaded box on Table A (the bottom row for each country). These are the average of the mid-month exchange rates for that month and the previous 11 months.

If you choose the actual rate for the day, use either:

- the actual rate for the day – you will need to contact one of New Zealand's major trading banks for the day's rate, or
- the Table A mid-month rate. The figures shown in the shaded box on Table A (the top row for each country) are the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the next day on which they were quoted.

Use the mid-month rate when branch equivalent income or loss is calculated under the CFC or FIF rules pursuant to section EX 21(4) of the Income Tax Act 2004 and the accounting period is less than or greater than 12 months.

You can also use the mid-month rate when you have the foreign income amount for each month. If you only have an annual figure then use the 12-month average rate.

Use of Table A

The rates in Table A cover most circumstances when you need to convert foreign currency amounts to New Zealand dollars including:

- FIF income or loss calculated under the accounting profits, comparative value, fair dividend rate, deemed rate of return, or cost methods under sections EX 42(7), EX 44(7), EX 44C(11), EX 44D(13), EX 45 (15), and EX 45B(15) of the Income Tax Act 2004
- branch equivalent income or loss calculated under the CFC or FIF rules pursuant to section EX 21(4) of the Income Tax Act 2004 for accounting periods of 12 months
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under section LC 4(1B) and EX 43(8) and (9) of the Income Tax Act 2004 for accounting periods of 12 months.

Example 1: Table A – 12-month average

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:

$$\text{PHP } 350,000 \div 33.3144 = \$10,505.97$$

Example 2: Table A – 12-month average

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), which converts to:

$$\text{HKD } 200,000 \div 5.5401 = \$36,100.43$$

Example 3: Table A – 15th of the month

A resident individual with a 31 March 2008 accounting period acquires a FIF interest in a Japanese company in January 2008 for 10,500,000 yen. The interest is sold in March 2008 for 10,000,000 yen. Using the comparative value method, these amounts are converted as:

$$\text{JPY } 10,500,000 / 85.2042 = \$123,233.40$$

$$\text{JPY } 10,000,000 / 80.4491 = \$124,302.20$$

Example 4: Table A – 15th of the month

A CFC resident in Singapore was formed on 21 April 2007 and has a balance date of 30 September 2007. 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:

$$1.1153 + 1.1549 + 1.1896 + 1.1093 + 1.0766 = 5.6457 \div 5 = 1.1291$$

(ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 1.1291 = \$442,830.57$$

Table B – End of month

Table B lists the end-of-month exchange rates acceptable to us for the 12-month period ended 31 March 2008, when you are required to carry out the conversion at the end of the month.

Currency rates 2008 – mid month (Rates table type ‘A’)

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	15 - Oct-07 12 month rate	15 - Nov-07 12 month rate	15 - Dec-07 12 month rate	15 - Jan-08 12 month rate	15 - Feb-08 12 month rate	15 - Mar-08 12 month rate
Australia	Dollar	AUD	0.8857	0.8860	0.8975	0.9029	0.8712	0.8466	0.8519	0.8489	0.8880	0.8788	0.8746	0.8679
			0.8609	0.8671	0.8716	0.8782	0.8819	0.8795	0.8816	0.8770	0.8776	0.8774	0.8764	0.8755
Bahrain	Dollar	BHD	0.2783	0.2778	0.2826	0.2963	0.2740	0.2689	0.2819	0.2865	0.2868	0.2964	0.2969	0.3067
			0.2503	0.2537	0.2578	0.2631	0.2662	0.2679	0.2698	0.2747	0.2770	0.2801	0.2830	0.2869
Canada	Dollar	CAD	0.8390	0.8158	0.8012	0.8243	0.7759	0.7344	0.7504	0.7355	0.7762	0.8032	0.7874	0.8056
			0.7588	0.7687	0.7778	0.7883	0.7940	0.7937	0.7928	0.7930	0.7930	0.7913	0.7910	0.7881
China	Yuan	CNY	5.7093	5.6669	5.7232	5.9609	5.5061	5.3610	5.6335	5.6681	5.6350	5.7185	5.6815	5.7717
			5.2380	5.2907	5.3528	5.4365	5.4776	5.4864	5.5171	5.5792	5.5792	5.5993	5.6268	5.6510
Denmark	Krone	DKK	4.0688	4.0519	4.1927	4.2383	3.9908	3.9985	3.9457	3.8759	3.9512	3.9396	4.0181	3.8686
			3.8336	3.8691	3.9127	3.9619	3.9879	3.9986	3.9853	3.9853	4.0161	4.0204	4.0175	4.0237
European Community	Euro	EUR	0.5444	0.5444	0.5636	0.5702	0.5368	0.5133	0.5298	0.5207	0.5302	0.5296	0.5394	0.5193
			0.5145	0.5194	0.5252	0.5320	0.5356	0.5351	0.5355	0.5374	0.5379	0.5376	0.5385	0.5382
Fiji	Dollar	FJD	1.1999	1.1933	1.2126	1.2438	1.1773	1.1536	1.1891	1.1900	1.2588	1.2223	1.2211	1.2220
			1.1282	1.1380	1.1487	1.1628	1.1707	1.1721	1.1812	1.1812	1.1837	1.1930	1.1984	1.2029
French Polynesia	Franc	XPF	65.2299	65.0562	67.4086	68.1513	64.2149	61.3356	63.2998	62.4198	63.0254	63.3373	64.5423	62.1755
			61.3767	61.9762	62.7074	63.5366	63.9959	63.9462	63.9851	64.2474	64.2946	64.2568	64.3684	64.3551
Hong Kong	Dollar	HKD	5.7646	5.7605	5.8642	6.1496	5.6880	5.4513	5.8164	5.9481	5.9582	6.1483	6.1576	6.3299
			5.1753	5.2493	5.3360	5.4471	5.5141	5.5401	5.5899	5.6829	5.7333	5.7972	5.8583	5.9363
India	Rupee	INR	31.1412	29.6418	30.2524	31.5188	29.3598	28.5024	29.3006	29.6461	29.9127	30.5521	31.0019	32.6395
			29.6142	29.7538	29.9227	30.1877	30.2208	30.0683	30.0493	30.1261	30.0815	30.0870	30.1494	30.3535
Indonesia	Rupiah	IDR	6724.8150	6492.6250	6807.4400	7103.5900	6799.1150	6690.6650	6852.1950	7,038.5400	7,130.8800	7436.4750	7279.7300	7,501.0500
			6073.3929	6155.0896	6231.0692	6349.2354	6440.1238	6494.4700	6538.3342	6,660.7333	6,733.6433	6828.0017	6909.2104	7,002.8825
Japan	Yen	JPY	88.1194	88.7226	92.2068	95.8622	85.5847	82.1812	86.6689	85.1322	86.5354	85.2042	85.1709	80.4491
			77.9984	79.6473	81.3760	83.3751	84.4033	84.7833	85.0989	86.4548	86.9062	87.0860	87.1987	87.1932

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	15 - Oct-07 12 month rate	15 - Nov-07 12 month rate	15 - Dec-07 12 month rate	15 - Jan-08 12 month rate	15 - Feb-08 12 month rate	15 - Mar-08 12 month rate	
Korea	Won	KOR	686.7800	681.4550	697.6600	721.7300	677.3250	661.9650	689.5250	697.0100	710.7100	738.9500	746.8450	811.5100	
			628.1113	636.0438	644.3133	655.2167	661.1375	663.5425	668.4963	677.2017	683.5279	690.9925	698.9121	712.0138	712.0138
Kuwait	Dollar	KWD	0.2132	0.2130	0.2166	0.2272	0.2050	0.2003	0.2093	0.2105	0.2092	0.2145	0.2159	0.2189	
			0.1920	0.1945	0.1976	0.2017	0.2036	0.2044	0.2054	0.2084	0.2084	0.2092	0.2105	0.2118	0.2134
Malaysia	Ringgit	MYR	2.5473	2.5124	2.6038	2.7157	2.5308	2.4866	2.5649	2.5649	2.5564	2.5403	2.5679	2.5589	2.5775
			2.3892	2.4110	2.4375	2.4743	2.4925	2.4971	2.5061	2.5061	2.5262	2.5262	2.5339	2.5453	2.5557
Norway	Krone	NOK	4.4254	4.4548	4.5650	4.5102	4.2837	4.0120	4.0532	4.0532	4.1291	4.2215	4.1488	4.2699	4.1527
			4.0978	4.1549	4.2136	4.2675	4.3679	4.3438	4.3202	4.3202	4.3202	4.3171	4.3131	4.2884	4.2873
Pakistan	Rupee	PKR	44.5202	44.4288	45.2343	47.3828	43.7453	42.9748	45.2101	45.2101	46.3244	46.3589	48.9260	49.2993	50.8077
			40.0053	40.5828	41.2566	42.1094	42.6183	42.8924	43.2375	43.2375	44.0336	44.0336	44.4203	45.0155	45.6291
Papua New Guinea	Kina	PGK	2.1691	2.1728	2.2148	2.3561	2.1294	2.0582	2.1534	2.1534	2.1108	2.0912	2.1531	2.1684	2.2207
			1.9766	1.9989	2.0261	2.0669	2.0874	2.0951	2.2984	2.2984	2.2984	2.1317	2.1367	2.1461	2.1568
Philippines	Peso	PHP	35.0597	34.3998	34.6833	35.8652	33.1356	32.7471	33.5485	33.5485	32.3914	31.0294	31.5487	31.9955	33.3229
			33.1649	33.3526	33.5109	33.8216	33.9226	33.9007	33.8117	33.8117	33.8117	33.9622	33.5698	33.3972	33.2964
Singapore	Dollar	SGD	1.1162	1.1153	1.1549	1.1896	1.1093	1.0766	1.1157	1.1157	1.1026	1.1068	1.1248	1.1171	1.1182
			1.0339	1.0451	1.0589	1.0763	1.0861	1.0891	1.0926	1.0926	1.1033	1.1033	1.1125	1.1169	1.1220
Solomon Islands	Dollar	SBD	5.3856	5.3618	5.4462	5.6742	5.2488	5.2421	5.4844	5.4844	5.5327	5.4415	5.7783	5.9671	6.1368
			4.9025	4.9546	5.0160	5.0993	5.1457	5.1695	5.2819	5.2819	5.2872	5.2872	5.3961	5.4767	5.5690
South Africa	Rand	ZAR	5.2945	5.1035	5.3825	5.4708	5.3287	5.0985	5.1543	5.0167	5.0167	5.2515	5.3131	6.0642	6.4465
			4.7266	4.8268	4.9198	5.0039	5.0887	5.1054	5.1217	5.1217	5.1517	5.1517	5.1895	5.2174	5.3068
Sri Lanka	Rupee	LKR	80.1327	81.4902	82.9234	87.5668	81.0439	80.2357	84.7504	84.7504	84.1019	82.7747	84.9628	84.7099	87.2186
			70.3354	71.7654	73.3480	75.3014	76.6352	77.6766	78.5431	78.5431	80.3425	80.3425	81.0580	81.9347	82.7296
Sweden	Krona	SEK	5.0716	5.0115	5.3079	5.2206	5.0065	4.7550	4.8832	4.7985	4.9776	4.9627	5.0322	5.0322	4.9037
			4.7296	4.7682	4.8308	4.8924	4.9324	4.9289	4.9203	4.9203	4.9510	4.9510	4.9715	4.9808	4.9971
Switzerland	Franc	CHF	0.8947	0.8987	0.9349	0.9450	0.8805	0.8514	0.8793	0.8580	0.8580	0.8812	0.8608	0.8661	0.8124
			0.9024	0.9144	0.9286	0.9437	0.9520	0.9541	0.8718	0.8718	0.9641	0.9641	0.9679	0.9679	0.8857
Taiwan	Dollar	TAI	24.4750	24.5700	24.8350	25.8200	23.9600	23.6000	24.5650	24.5650	24.6450	24.7450	25.4950	25.0300	25.0050
			21.7808	22.1833	22.5633	23.0279	23.3113	23.4642	23.6067	23.6067	24.0017	24.0017	24.1913	24.4300	24.6063

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	15 - Oct-07 12 month rate	15 - Nov-07 12 month rate	15 - Dec-07 12 month rate	15 - Jan-08 12 month rate	15 - Feb-08 12 month rate	15 - Mar-08 12 month rate
Thailand	Baht	THB	23.7157	24.3348	24.1085	23.8209	22.9442	22.6156	23.5973	23.8884	22.8215	23.2090	25.0540	25.7056
			23.6714	23.7407	23.7809	23.8253	23.7998	23.6495	23.6674	23.6490	23.6490	23.5442	23.4246	23.6048
Tonga	Pa'anga	TOP	1.4424	1.4397	1.4601	1.4907	1.4080	1.4223	1.4730	1.4253	1.4285	1.4666	1.4407	1.4437
			1.3313	1.3466	1.3634	1.3836	1.3961	1.4034	1.4093	1.4262	1.4303	1.4355	1.4407	1.4476
United Kingdom	Pound	GBP	0.3719	0.3728	0.3810	0.3868	0.3640	0.3553	0.3700	0.3714	0.3791	0.4025	0.4008	0.4031
			0.3482	0.3516	0.3553	0.3594	0.3620	0.3623	0.3623	0.3623	0.3665	0.3688	0.3730	0.3769
United States	Dollar	USD	0.7381	0.7377	0.7505	0.7867	0.7274	0.7131	0.7499	0.7640	0.7653	0.7882	0.7898	0.8139
			0.6649	0.6740	0.6847	0.6987	0.7069	0.7113	0.7170	0.7170	0.7316	0.7379	0.7460	0.7540
Vanuatu	Vatu	VUV	76.7021	74.8213	76.1899	77.9888	70.8117	70.1409	71.8682	71.1343	72.9869	75.3557	75.1619	76.0944
			71.8748	72.4049	72.9998	73.7890	73.9384	73.6857	73.9528	73.7001	73.7357	73.8742	74.0161	74.2728
Western Samoa	Tala	WST	1.9487	1.8840	1.9222	1.9877	1.8341	1.8653	1.8968	1.8854	1.8670	1.9592	1.9524	1.9441
			1.8208	1.8237	1.8396	1.8612	1.8697	1.8723	1.8817	1.8897	1.8905	1.8973	1.9044	1.9165

How to use Table A

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown. If you are using the mid month rate (ie not the average for the last 12 months) then you can use our online currency converter and have the income and tax deductions converted for you.

Key

X

The exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the next day on which they were quoted. (Top row for each country; blue background)

Y

The average of the mid-month exchange rates for that month and the previous 11 months. (Bottom row for each country; white background)

If you need an exchange rate for a country or a day not listed in these tables, contact one of New Zealand's major trading banks. Round the exchange rate calculations to four decimal places wherever possible.

Currency rates 2008 – end of 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	31-Oct-07	30-Nov-07	31-Dec-07	31-Jan-08	28-Feb-08	31-Mar-08
Australia	Dollar	AUD	0.8930	0.8870	0.9082	0.8959	0.8605	0.8519	0.8323	0.8323	0.8489	0.8880	0.8603	0.8672
Bahrain	Dollar	BHD	0.2789	0.2746	0.2895	0.2881	0.2637	0.2819	0.2883	0.2885	0.2868	0.2964	0.3076	0.2989
Canada	Dollar	CAD	0.8270	0.7825	0.8140	0.8171	0.7418	0.7504	0.7295	0.7685	0.7762	0.8032	0.7941	0.8128
China	Yuan	CNY	5.7258	5.5772	5.8543	5.7924	5.2908	5.6335	5.7286	5.6855	5.6350	5.7185	5.8133	5.5815
Denmark	Krone	DKK	4.0420	4.0412	4.2515	4.1515	3.8263	3.9457	3.9488	3.8836	3.9512	3.9396	3.9941	3.7423
European Community	Euro	EUR	0.5431	0.5430	0.5717	0.5585	0.5143	0.5298	0.5301	0.5214	0.5302	0.5296	0.5365	0.5033
Fiji	Dollar	FJD	1.1979	1.1932	1.2324	1.2222	1.2045	1.1891	1.1889	1.1983	1.2588	1.2223	1.2332	1.2075
French Polynesia	Franc	XPF	64.9091	64.9589	68.2149	66.8270	61.4948	63.2998	63.4596	62.2677	63.0254	63.3373	64.5423	62.1755
Hong Kong	Dollar	HKD	5.7981	5.6937	6.0049	5.9852	5.4673	5.8164	5.9310	5.9945	5.9582	6.1483	6.1576	6.3299
India	Rupee	INR	30.0006	29.3342	31.0016	30.5691	28.5046	29.3006	29.8001	30.2064	29.9127	30.5521	31.0019	32.6395
Indonesia	Rupiah	IDR	6731.3550	6448.2650	6978.4000	7050.2050	6606.1500	6852.1950	6981.2050	7224.4050	7130.8800	7436.4750	7279.7300	7501.0500
Japan	Yen	JPY	88.4460	88.6826	94.6144	90.9607	81.1774	86.6689	87.8292	84.4098	86.5354	85.2042	85.1709	80.4491
Korea	Won	KOR	688.7000	678.9200	712.2450	706.5850	659.2350	689.5250	695.1650	714.9250	710.7100	738.9500	746.8450	811.5100
Kuwait	Dollar	KWD	0.2139	0.2106	0.2219	0.2158	0.1970	0.2093	0.2121	0.2108	0.2092	0.2145	0.2159	0.2189
Malaysia	Ringgit	MYR	2.5392	2.4835	2.6679	2.6534	2.4595	2.5649	2.5673	2.5996	2.5403	2.5679	2.5589	2.5775
Norway	Krone	NOK	4.4100	4.4221	4.5395	4.4657	4.0829	4.0532	4.0880	4.2317	4.2215	4.1488	4.2699	4.1527
Pakistan	Rupee	PKR	44.7233	44.0537	46.2419	46.0166	42.3181	45.2101	46.1527	46.6823	46.3589	48.9260	49.2993	50.8077
Papua New Guinea	Kina	PGK	2.1949	2.1536	2.2735	2.2281	2.0268	2.1534	2.1487	2.1102	2.0912	2.1531	2.1684	2.2207
Philippines	Peso	PHP	34.8469	33.4272	35.3333	34.5263	32.5546	33.5485	33.2075	32.4520	31.0294	31.5487	31.9955	33.3229

Country	Currency	Code	30-Apr-07	31-May-07	30-Jun-07	31-Jul-07	31-Aug-07	30-Sep-07	31-Oct-07	30-Nov-07	31-Dec-07	31-Jan-08	28-Feb-08	31-Mar-08
Singapore	Dollar	SGD	1.1211	1.1132	1.1766	1.1568	1.0666	1.1157	1.1089	1.1124	1.1068	1.1248	1.1171	1.1182
Solomon Islands	Dollar	SBD	5.4512	5.3027	5.5199	5.6301	5.1606	5.4844	5.6581	5.5022	5.4415	5.7783	5.9671	6.1368
South Africa	Rand	ZAR	5.2175	5.2050	5.4273	5.4444	5.0163	5.1543	4.9988	5.2507	5.2515	5.3131	6.0642	6.4465
Sri Lanka	Rupee	LKR	81.2639	80.5530	85.0692	85.1875	78.7710	84.7504	84.8360	84.6966	82.7747	84.9628	84.7099	87.2186
Sweden	Krona	SEK	4.9559	5.0506	5.2782	5.1340	4.8256	4.8832	4.8739	4.8931	4.9776	4.9627	5.0322	4.9037
Switzerland	Franc	CHF	0.8928	0.8931	0.9466	0.9204	0.8438	0.8793	0.8888	0.8599	0.8812	0.8608	0.8661	0.8124
Taiwan	Dollar	TAI	24.6700	24.0600	25.2450	25.1300	23.1850	24.5650	24.8500	24.8700	24.7450	25.4950	25.0300	25.0050
Thailand	Baht	THB	23.9413	23.7116	24.1548	22.5483	22.6590	23.5973	24.0161	23.5126	22.8215	23.2090	25.0540	25.7056
Tonga	Pa'anga	TOP	1.4519	1.4349	1.4683	1.4249	1.4038	1.4730	1.4435	1.4379	1.4285	1.4666	1.4407	1.4437
United Kingdom	Pound	GBP	0.3712	0.3693	0.3839	0.3779	0.3484	0.3700	0.3702	0.3732	0.3791	0.4025	0.4008	0.4031
United States	Dollar	USD	0.7417	0.7297	0.7685	0.7653	0.7015	0.7499	0.7656	0.7699	0.7653	0.7882	0.7898	0.8139
Vanuatu	Vatu	VUV	75.4933	76.2846	77.4440	75.2090	70.5729	71.8682	71.0052	72.5803	72.9869	75.3557	75.1619	76.0944
Western Samoa	Tala	WST	1.9142	1.8750	1.9542	1.9080	1.8466	1.8968	1.9244	1.9148	1.8670	1.9592	1.9524	1.9441

How to use this table

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

If you need an exchange rate for a country or a day not listed in these tables, contact one of New Zealand's major trading banks.

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

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.

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.

TAX ADVISOR'S STATUTORY NON-DISCLOSURE RIGHT NARROWER THAN LEGAL PROFESSIONAL PRIVILEGE

Case	Iain Wilson Blakeley v The Commissioner of Inland Revenue
Decision date	3 March 2008
Act	Sections 17, 17A and 20B – G of the Tax Administration Act 1994
Keywords	non-disclosure right, waiver, impossibility

Summary

The protection afforded by section 20 B is much more confined than legal professional privilege. A list of clients' names is not protected thereby.

Facts

In the course of an investigation a taxpayer gave the Commissioner four tax opinions prepared by the plaintiff, a chartered accountant. The Commissioner considered that the "lease prepayment arrangements" and "lease assignment arrangements" referred to in the opinions were tax avoidance arrangements.

In an attempt to identify other taxpayers that had entered into similar arrangements the Commissioner issued a section 17 notice to the plaintiff requiring him to provide the names and IRD numbers of persons that he had provided advice to for similar arrangements.

The plaintiff declined to comply with the notice arguing that, as the Commissioner already had the content of the advice, the plaintiff would unavoidably be providing the content of the advice to his clients in breach of their non-disclosure right contained in section 20B of the Tax Administration Act (TAA) if he provided the information sought. He asserted further that it was in any event impossible to provide the information sought.

The Commissioner successfully applied to the District Court for an order that the information sought was not a classified

document for the purposes of section 20B and for an order requiring production of the information in terms of section 17A. The District Court found that there had in any event been a waiver of the non-disclosure right.

The plaintiff appealed that decision.

Decision

The plaintiff relied on the principle, accepted in cases involving legal professional privilege, that a client's identity would be protected if disclosure risked revealing confidential communications. The Commissioner argued that the statutory non-disclosure right was not the same as legal professional privilege and that the information sought was not protected on a plain reading of the words of the section.

Rodney Hansen J, accepting the Commissioner's argument, held that the protection afforded by section 20B was much more confined than legal professional privilege. It was a limited statutory right and there was no reason why it should be construed as if it were an extension to legal professional privilege. In accordance with the established principles of statutory interpretation, words should bear their plain and ordinary meaning but with reference to the context in which they appear and to the purpose of the legislation. *CIR v Alcan New Zealand Limited* [1994] 3 NZLR 439 (CA) followed.

Dismissing the appeal the Court held that the statutory protection was not available as the names and IRD numbers were not tax advice documents for the purposes of section 20B.

Although it did not affect the outcome of the case his Honour overturned the finding of waiver by the District Court. He held that waiver did not arise under sections 20B – G as the right to non-disclosure does not arise automatically but must be claimed following the detailed procedure set out in section 20D.

Finally, the fact that the plaintiff asserted that compliance with section 17 was impossible was no bar to the relief claimed. The practical difficulties of complying with the section 17 notice did not render the exercise of the power unlawful.

A DEED OF GIFT OF MONEY AND DECLARATION OF TRUST

Case	Begg and Jacksons v The Commissioner of Inland Revenue
Decision date	28 February 2008
Act	Estate and Gift Duties Act 1968
Keywords	disposition of property, creation of trust

Summary

A deed for a gift of money to be paid in the future coupled with a declaration of trust for a home to secure that payment is not a gift.

Facts

The taxpayers executed a deed and a declaration of trust of their home for the purported purpose of making a gift of a sum of money to family members. While the intention of the deed was to make the gift of a sum of money, payment of it was deferred to the future upon sale of the home of the taxpayers. A trust was declared on the home to secure payment of the money.

Decision

The key to the Court's decision lay in its interpretation of "the creation of the trust" as a gift in the Act. The Court, taking a narrow interpretation, held that "the creation of the trust" was a subset to the general definition of "disposition of property" which speaks of "settlement ... of property ... in equity". That meant the gift was for a property in existence at the time of settlement. In other words, the subject of the gift had to be the sum of money in existence. As the home was clearly not the subject of the gift, although the trust was valid, there was no disposition of property for the purpose of the Act.

Taking this approach, it did not appear necessary for the Court to discuss whether the beneficiaries' rights to the proceeds from the sale of the home in the trust could constitute a disposition of property.

TRINITY SUPREME COURT HEARING ADJOURNED

Case	Ben Nevis Forestry Ventures Limited, Accent Management Limited and Ors v The Commissioner of Inland Revenue
Decision date	19 February 2008
Act	Tax Administration Act 1994, Income Tax Act 1994
Keywords	Trinity – tax avoidance – adjournment

Summary

The Supreme Court has adjourned the Trinity appeal hearing until 23 June 2008.

Facts

The appellants are the taxpayers in the "Trinity forestry scheme" test case proceedings. A five-day fixture was set down to commence in the Supreme Court on 3 March 2008. The Ben Nevis appellants (SC 43/2007) applied for an adjournment of the fixture and the Accent Management appellants (SC 44/2007) supported the application. The Commissioner opposed the application for an adjournment.

Leave to appeal to the Supreme Court was granted on 9 October 2007. After allocating a fixture commencing on 12 February 2008, an application for an adjournment was made and was granted unopposed on 17 December 2007. In the Notice advising of the adjournment, the Registrar allocated a fixture commencing 3 March 2008 having ascertained the date was suitable with Mr Carruthers QC for Ben Nevis and Mr Gudsell QC for Accent Management. The Registrar was aware that Mr Stewart QC was not available and the notice of the fixture to the parties noted specifically that it was a date on which "the majority" of counsels were available.

It was not until 17 January 2008 that Mr Stewart QC filed a further application for an adjournment. He had not earlier notified counsel for the Commissioner or the Court that such an application was contemplated.

Decision

The appellants' application for an adjournment was granted, the 3 March 2008 fixture was vacated and the hearing adjourned to 23 June 2008.

The Court said that under the Supreme Court Rules, the Registrar was obliged to consult with counsel before allocating a fixture but the agreement of counsel was not required. Although the Registrar should try to accommodate the preferences of counsel, it might not be possible to do so and also meet the interests of other parties and the public interest in the orderly dispatch of the work of the Supreme Court.

The principal reason advanced for the adjournment was Mr Stewart QC's conflicting fixture on 3 March 2008 in the High Court. At the adjournment hearing, Mr Stewart QC said he considered his obligations to his clients precluded him withdrawing from the cases which clashed with the Supreme Court appeal. In addition, it was said that counsel for the Ben Nevis parties had been unable to confer in preparation for the hearing.

The Supreme Court noted that there were a number of unsatisfactory aspects about the course of events. The Court noted that it was "hard to accept" that counsel for Ben Nevis could not have immediately applied for an adjournment and that it was "harder still to accept" that informal advice could not have been immediately given; the overall effect being that the Supreme Court was "presented with something of a *fait accompli*".

The Supreme Court found that it was "unsatisfactory" that the Registrar was expected to consult about the fixture separately with all counsel who had the joint conduct of one appeal. Counsel could not expect the preferences of all counsel to be accommodated. However, the Court also said that it would be unreasonable to impose a fixture without notice to allow counsel and the parties to adjust other commitments, including relinquishing briefs; but said that in most cases three months should be more than sufficient time. The Court went on to say that if counsel could not meet a fixture allocated on this basis, it would usually be necessary for other counsel to be instructed.

An adjournment was granted on the basis that the appellants would be "clearly prejudiced" by the insufficient preparation by their counsel. The Court acknowledged that the case raised matters of "substantial public importance on which the Supreme Court is entitled to expect submissions which are well prepared from counsel who are on top of their arguments". In this case, the Court held that it was in the interests of justice for the fixture to be vacated.

APPLICATION TO REPRESENT A TAXPAYER COMPANY BY VIRTUE OF A LONG-STANDING ASSOCIATION WITH THE COMPANY

Case	Central Equipment Company v The Commissioner of Inland Revenue
Decision date	03 March 08
Act	Sections 146 and 170A of the Town and Country Planning Act 1977, Resource Management Act 1991
Keywords	Personal representative of the person bringing the appeal, authority to initiate application

Summary

An application to file special leave with the Court of Appeal was initiated by Mr Faloon, purportedly as a representative of the taxpayer company, against the decision of the High Court to put the company into liquidation. The application was dismissed.

Facts

This case concerns an application by Mr Faloon on appeal wishing to act on behalf of the taxpayer company. The High Court on 2 October 2006 put the taxpayer company into liquidation. The proceeding which was filed in this Court was an application by the taxpayer for special leave to appeal against the Judge's decision. Mr Faloon was seeking to represent the taxpayer company by virtue of a long-standing "association" with it.

Decision

The application for special leave to appeal was dismissed. Mr Faloon, as found by the Court, did not have the authority to initiate the application on behalf of the taxpayer company. His conduct of the taxpayer company's tax affairs did not provide any basis for representing the same. Sections 146 and 170A of the Town and Country Planning Act which Mr Faloon relied on for his arguments applied only to proceedings under that Act, and had no bearing on liquidation proceedings in this Court.

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.

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Draft depreciation determination

Comment deadline

- | | |
|--|-------------|
| <input type="checkbox"/> XPB0032: GST – Supply of leasehold land | 30 May 2008 |
| <input type="checkbox"/> DDG0139: Plant supports | 30 May 2008 |
| <input type="checkbox"/> ED00102: Discretion to not assess a shortfall penalty for taking an unacceptable tax position | 6 June 2008 |
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