

# TAX INFORMATION

## *Bulletin*

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## YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly 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 a user of that legislation, is highly valued.

A list of the items we are currently inviting submissions on can be found at [www.ird.govt.nz](http://www.ird.govt.nz). On the homepage, click on "Public consultation" in the right-hand navigation. Here you will find drafts we are currently consulting on as well as a list of expired items. You can email your submissions to us at [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz) or post them to:

Public Consultation  
Office of the Chief Tax Counsel  
Inland Revenue  
PO Box 2198  
Wellington

You can also subscribe to receive regular email updates when we publish new draft items for comment.

Below is a selection of items we are working on as at the time of publication. If you would like a copy of an item please contact us as soon as possible to ensure your views are taken into account. You can get a copy of the draft from [www.ird.govt.nz/public-consultation/](http://www.ird.govt.nz/public-consultation/) or call the Team Manager, Technical Services Unit on 04 890 6143.

Ref	Draft type/title	Description/background information	Comment deadline
ED0105	Question we've been asked	We have been asked to clarify the relationship between section 113 of the Tax Administration Act 1994 ("section 113") and the second proviso to section 20(3) of the Goods and Services Tax Act 1985 ("the second proviso to section 20(3)") when a registered person ("taxpayer") has not claimed a goods and services tax ("GST") input tax deduction in an earlier taxable period.	12 June 2009
ED0115	Tax depreciation rates general determination	This draft determination adds into the <i>Timber and Joinery Industries</i> industry category the general asset class for Firewood Processors and Log Splitters. This determination applies to taxpayers who own items in this asset class that have been acquired on or after 1 April 2007 and subsequent income years.	12 June 2009
XPB0019	Charitable organisations and fringe benefit tax	The Ruling addresses the issue of when the charitable organisations exclusion from fringe benefit tax in section CX 25 of the Income Tax Act 2007 will apply. The ruling and commentary discuss what activities are non-charitable activities of a charitable organisation, and what it means for a benefit to be provided "mainly in connection with" a non-charitable business activity.	

# IN SUMMARY

## Announcement

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### Commissioner appealing High Court decision on tax avoidance

The Commissioner does not consider the decision correctly reflects the law on tax avoidance and is appealing the decision.

## Binding rulings

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### Public ruling BR PUB 09/01: Payments made by parents or guardians of students to state schools – GST treatment

This item is a re-issue of an expired public ruling that was issued in 2003 and expired in 2006. The ruling addresses the GST treatment of payments made by the parents or guardians of pupils who are New Zealand citizens or residents, and who are enrolled at state schools (including schools integrated with the state system of education under the Private Schools Conditional Integration Act 1975), to the Boards of Trustees of such schools.

## Legislation and determinations

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### DET 09/01: Standard-cost household service for homeshare care providers

This determination only applies to services provided by homeshare providers via the Presbyterian Support (Upper South Island) Homeshare programme operating in the Mid Canterbury area. The determination applies only to natural persons, being homeshare care providers, who provide the service in their own domestic accommodation.

### Foreign currency amounts – conversion to New Zealand dollars

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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 2009.

## Operational statement

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### OS 09/01: Commissioner's statement of a mileage rate for expenditure incurred for the business use of a motor vehicle

Section DE 12(3) requires that the Commissioner sets a mileage rate that taxpayers may use to calculate the expenditure or loss on a motor vehicle that represents the proportion of business use of a motor vehicle. This statement sets a mileage rate as required by section DE 12(3).

## Legal decisions – case notes

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### Value of gain in kind when calculating FIF income or loss was market value of shares disposed of

The Commissioner treated the forfeiture of shares as a disposal at market value. The plaintiff maintained that the shares were not disposed of for gain; rather there was an adjustment to the original purchase price. The Court held that the plaintiff obtained a gain from the transfer of the shares, but it was a gain in kind and not in money.

# IN SUMMARY continued

## Standard practice statements

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### **Withdrawal of INV-300 Acceptance of late objections under section 126 of the Tax Administration Act 1994**

Inland Revenue has decided to withdraw the SPS INV-300 Acceptance of late objections under section 126 of the Tax Administration Act 1994 from 1 April 2009. The withdrawal is due to the introduction of the disputes resolution process applicable to assessments made after 1 October 1996.

## Questions we've been asked

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### **QB 09/02: Holiday houses – income tax treatment**

This item considers the income tax treatment of holiday houses that are rented out by their owners, and addresses the circumstances where owners of holiday houses will be allowed a deduction for expenditure incurred in owning the holiday house.

# ANNOUNCEMENT

## COMMISSIONER APPEALING HIGH COURT DECISION ON TAX AVOIDANCE

<b>Case</b>	Ian David Penny and Gary John Hooper v Commissioner of Inland Revenue
<b>Decision date</b>	19 March 2009
<b>Act</b>	Income Tax Act 1994

### Summary

The two plaintiffs are orthopaedic surgeons. Both practice in the public and private sector. Initially each practiced on their own account but after a period, each incorporated their practice and was then employed by the respective companies to undertake the services they were undertaking as sole practitioners.

Mr Hooper had mirror trusts with his wife and these trusts and Mr and Mrs Hooper held the shares in Hooper Orthopaedic Ltd (HOL). Mr Hooper sold his practice to HOL which, between 2001 and 2003, paid Mr Hooper an annual salary of \$119,200 from revenue from patient fees of between \$447,915 and \$593,914. HOL paid fully imputed dividends to the trusts.

Mr Penny sold his practice to Penny Orthopaedic Services Ltd (POS) of which he was the sole shareholder. He incorporated Orthopaedic Services Ltd (OSC) and established a trust. He transferred the POS shares to the trust and OSC purchased the practice from POS. OSC, between 2001 and 2003, paid Mr Penny an annual salary of \$99,996 from revenue from patient fees of between \$484,779 and \$609,871.

The Commissioner increased the assessed taxable income of Mr Hooper and Mr Penny on the basis that the arrangements were tax avoidance arrangements.

The High Court found that the arrangements did not have the purpose or effect of tax avoidance or, alternatively, if they did, the purpose or effect was merely incidental to the purpose of adopting the corporate form of practice.

### Commissioner's Appeal

The Commissioner does not consider the decision correctly reflects the law on tax avoidance and is appealing the decision. The Commissioner considers that the use of company and trust structures to avoid higher personal tax rates can be tax avoidance.

## BINDING RULINGS

This section of the *TIB* contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates their tax liability based on it.

For full details of how binding rulings work, see our information booklet *Adjudication & Rulings: A guide to binding rulings (IR 715)* or the article on page 1 of *Tax Information Bulletin*, Vol 6, No 12 (May 1995) or Vol 7, No 2 (August 1995).

You can download these publications free from our website at [www.ird.govt.nz](http://www.ird.govt.nz)

### PUBLIC RULING BR PUB 09/01: PAYMENTS MADE BY PARENTS OR GUARDIANS OF STUDENTS TO STATE SCHOOLS – GST TREATMENT

**Note (not part of ruling):** This Ruling is a reissue of public ruling BR PUB 03/04 (*Tax Information Bulletin* Vol 15, No 7 (July 2003)) which expired on 20 June 2006. This Ruling is substantially the same as the expired ruling but expands some of the examples and takes into account consequential amendments to the Goods and Services Tax Act 1985, and the Crown Entities Act 2004.

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

#### Taxation laws

This ruling applies in respect of sections 8 and 10(2) and the definition of “consideration” in section 2 of the Goods and Services Tax Act 1985.

#### The Arrangement to which this Ruling applies

The Arrangement is the payment of amounts (whether described as “school fees”, “activity fees” or otherwise) by parents or guardians of pupils, who are New Zealand citizens or New Zealand residents (or who are otherwise not foreign students under the Education Act 1989) and who are enrolled at state schools (including schools integrated within the state system of education under the Private Schools Conditional Integration Act 1975), to the Board of Trustees of such a school.

#### How the Taxation Laws apply to the Arrangement

The taxation laws apply to the arrangement as follows.

Payments made by parents or guardians of children, who are New Zealand citizens or New Zealand residents (or who are otherwise not foreign students under the Education Act 1989) and who are enrolled at state schools, to the Board of Trustees of such a school for the purpose of a general fund to assist with meeting school costs, are not consideration for the supply of education to which there is a statutory entitlement and which the Board has a statutory obligation

to provide free of charge. Therefore, GST is not payable on such amounts.

If other services, not integral to the supply of education services to which there is a statutory entitlement, are supplied on the basis that the supply is conditional on payment being made for such services, the payment is consideration for that supply. GST is chargeable on payments made in those circumstances.

#### The period or income year for which this Ruling applies

This Ruling will apply for the period 21 June 2006 to 20 June 2013.

This Ruling is signed by me on the 23rd day of March 2009.

#### Susan Price

Director, Public Rulings

### COMMENTARY ON PUBLIC RULING BR PUB 09/01

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in public ruling BR Pub 09/01 (“the Ruling”).

The subject matter covered in the Ruling was previously dealt with in public Ruling BR PUB 03/04 (*Tax Information Bulletin* Vol 15, No 7 (July 2003)). The Ruling applies for the period from 21 June 2006 to 20 June 2013.

#### Background

Under section 93 of the Education Act 1989 (“Education Act”), every state school must have a Board of Trustees. State primary and secondary schools are controlled and managed by their Boards of Trustees: section 75 of the Education Act. Under section 75, except to the extent that any enactment or the general law of New Zealand provides

otherwise, a school's Board has complete discretion to control the management of the school as it thinks fit. Grants are paid out of public money to Boards for the purpose of administering their schools: section 79 of the Education Act.

The Private Schools Conditional Integration Act 1975 ("PSCI Act") enables private schools originally established to provide education with a special character to become part of the state system of education as an integrated school. As with other state schools, an integrated school's controlling authority is its Board of Trustees: section 25(5) of the PSCI Act.

Every Board must have a written charter. The purpose of the charter is to establish the missions, aims, objectives, directions and targets of the school Board that will give effect to the Government's national education guidelines and the Board's priorities: section 61 of the Education Act.

The effect of a school charter is that it is an undertaking by the Board to the Minister of Education to take all reasonable steps to ensure the school is managed, organised, and administered for the purposes set out in the school charter and the school, its students, and community achieve the aims and objectives set out in the school charter: section 63 of the Education Act. A school charter will not take effect if the Secretary for Education determines it is inconsistent with the Education Act or the national administration guidelines: section 63A of the Education Act.

The national education guidelines are defined in section 60 of the Education Act as being:

all the national education goals, foundation curriculum policy statements, national curriculum statements, national standards and national administration guidelines, for the time being in force under section 60A of this Act:

Section 60A(1)(c) of the Education Act sets out the national administration guidelines which the Minister may publish from time to time:

- (c) National administration guidelines, which are guidelines relating to school administration and which may (without limitation)—
  - (i) set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body, including guidelines for the purpose of section 61:
  - (ii) set out requirements relating to planning and reporting including—
    - (A) scope and content areas, where appropriate:
    - (B) the timeframe for the annual update of the school charter:

- (C) broad requirements relating to schools' consultation with parents, staff, school proprietors (in the case of integrated schools) and school communities, and the broad requirements to ensure that Boards take all reasonable steps to discover and consider the views and concerns of Maori communities living in the geographical area the school serves, in the development of a school charter:

- (D) variations from the framework for school planning and reporting for certain schools or classes of schools, based on school performance:

- (iii) communicate the Government's policy objectives:

- (iv) set out transitional provisions for the purposes of national administration guidelines.

Under section 3 of the Education Act, everyone who is not a foreign student (that is, generally a New Zealand citizen or resident) is entitled to free enrolment and free education at any state school during the period beginning on their 5th birthday and ending on the 1st of January after their 19th birthday.

Students enrolled at an integrated school are entitled to free education on the same terms and conditions as students enrolled at other state schools: section 35(1) of the PSCI Act. However, the proprietors of an integrated school may require payment of attendance dues as a condition of enrolment and attendance: section 36 of the PSCI Act. The money received from attendance dues can be used only for the purpose of meeting debts, mortgages, liens, or other charges relating to the school premises or for improvements required under the integration agreement or for capital works required by the Minister of Education under section 40(2)(d) of the PSCI Act: section 36(3) of the PSCI Act. Attendance dues paid to the proprietors of integrated schools are subject to GST, being payments to secure the enrolment of a pupil in a school for which the proprietors provide the buildings and ensure the special character: *Turakina Māori Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032.

Each year parents or guardians of students enrolled at state schools may be asked by school Boards to pay a nominated amount to assist with meeting school costs. Schools may refer to these payments as "fees". In the case of integrated schools such fees are in addition to attendance dues payable to the proprietors.

The Ministry of Education issued an updated circular (Circular 1998/25) on 23 June 1998 which sets out the rights of Boards of Trustees, parents and students regarding the request for donations and other forms of payments in schools. The circular states that whatever terms are used

to describe such payments, they are in fact donations and cannot be made compulsory.

Schools may also ask for payments to cover a variety of items, including the cost of class trips, the cost of materials in practical subjects such as workshop technology, or fees for performances by visiting drama groups. These payments are commonly referred to as “activity fees”.

The Ruling addresses the issue of whether such payments (however described, but commonly referred to as “school fees” or “activity fees”) are subject to GST.

### Legislation

Under section 8 of the Goods and Services Tax Act 1985 (“GST Act”), GST is charged on supplies (other than exempt supplies) made by a registered person in the course or furtherance of a taxable activity by reference to the value of the supply.

The value of the supply is determined under section 10(2) of the GST Act, which states:

- (2) Subject to this section, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of,
- (a) To the extent that the consideration for the supply is consideration in money, the amount of the money;
  - (b) To the extent that the consideration for the supply is not consideration in money, the open market value of that consideration.

The definition of “consideration” in section 2 of the GST Act reads:

**Consideration**, in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body:

### Application of the legislation

#### *Scheme of the Goods and Services Tax Act 1985*

Under section 8(1) of the GST Act, GST is chargeable on the supply of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person by reference to the value of the supply. The value of the supply is the consideration provided for the supply (including both monetary and non-monetary consideration): section 10(2) of the GST Act.

GST is chargeable on payments made to the Board of Trustees of a state school that is a registered person if such payments are “consideration” as defined in the GST Act. Generally, the Board of Trustees of a state school will be

a registered person as the activities of a school Board are a taxable activity for GST purposes. This is on the basis that every Board of Trustees of a state school is a Crown entity for the purposes of the Crown Entities Act 2004: section 7(1)(d). Under section 2 of the GST Act a Crown entity is a “public authority” and pursuant to section 6(1)(b) the term “taxable activity” includes the activities of any public authority. Section 5(6) of the GST Act deems that a school Board (as a public authority) is supplying goods and services where it brings to charge revenue received from the Crown for the supply of outputs (in this case, the supply of education services). For example, the operational funding received by school Boards from the Crown is “revenue from the Crown” and is the consideration for the supply of those services.

Any other amounts received by a school Board will also be subject to GST where the amount is “consideration” for GST purposes.

As discussed later in this commentary, a payment from a parent for services which a school Board has a statutory obligation to provide free of charge, is not consideration. However, a payment from a parent for other services, not integral to the supply of education services, is consideration. To make this distinction it is necessary to understand what is “consideration” and what education services a school Board has a statutory obligation to provide free of charge.

### Consideration

The statutory definition of “consideration” is wider than the contract law meaning of “consideration”. In *The Trustee, Executors and Agency Co NZ Ltd v CIR* (1997) 18 NZTC 13,076, Chisholm J commented in respect of the definition of “consideration” (at p 13,085):

In the context of this matter I am not persuaded that it is helpful or appropriate to reflect upon the ordinary meaning of the word. The statutory definition extends the ordinary meaning and it is the scope of the extended statutory definition which needs to be determined.

The following principles can be drawn from the cases on the statutory definition of “consideration”.

- Under the first part of the definition of “consideration”, it is irrelevant whether the payment is voluntary. No contract between the person making the supply and the person providing the consideration is necessary. The supply need not be made to the person who makes the payment: *Turakina*. In *Turakina* McKay J, referring to the definition, said (at p 10,036):

It is clear from this definition that the supply of any service for consideration is part of a “taxable activity” under sec 6, even though it is to a person other than the person who provides the consideration. Likewise, the value of the supply



is to be measured by the consideration, whether or not the consideration is provided by the person to whom the service is supplied. It is not necessary that there should be a contract between the supplier and the person providing the consideration, so long as the consideration is “in respect of, in response to or for the inducement of the supply”.

- The supply also need not be made by the person who receives the payment. In the *Trustee, Executors* case Chisholm J said (at p 13,086):

in my opinion the crucial factor is the strength of the connection between the payment and the supply. If there is sufficient proximity between the supply and payment to satisfy the requirement that the payment is “in respect of” (or “in response to, or for the inducement of”) the supply of goods then the payment qualifies as “consideration” notwithstanding that the payment is made to a third party.

- Although the statutory definition of “consideration” is wider than the contract law meaning, not every payment a registered person receives is “consideration” for GST purposes. A distinction is drawn between a payment in respect of the payee’s taxable activity and a payment that is consideration for a supply of goods and services: *Director-General of Social Welfare v De Morgan* (1996) 17 NZTC 12,636.
- For a payment to be “consideration” within the first part of the definition there must be a sufficient relationship between the making of the payment and the supply of goods or services. See *CIR v NZ Refining Co Ltd* (1997) 18 NZTC 13,187; *Chatham Islands Enterprise Trust v CIR* (1999) 19 NZTC 15,075; *Taupo Ika Nui Body Corporate v CIR* (1997) 18 NZTC 13,147; *Trustee, Executors*.

In *NZ Refining* Blanchard J said (at p 13,193):

It is fundamental to the GST Act that the tax is levied on or in respect of supplies. It is not a tax on receipts or on turnover; it is a tax on transactions: *CIR v Databank Systems Ltd*. It is therefore necessary, as Mr Green submitted, to distinguish between supplies and the taxable activity (as defined in s 6) in the course of which they are made. The definition in s 6 itself requires a nexus between a supply and consideration, as does s 10.

The tax itself is levied by s 8 on a supply in the course or furtherance of a taxable activity and is “by reference to the value of that supply”. Section 10 provides that the value of a supply is “to the extent of the consideration for the supply” the amount of the money involved or the non-monetary open market value of the consideration. Already, before turning to the definition of “consideration”, it can be seen that, again, a linkage between supply and consideration is requisite to the imposition of the tax.

**The definition of “consideration”, though broad, cannot and does not dispense with that requirement. To constitute consideration for supply a payment must be**

**made for that supply, though it need not be made to the supplier nor does the supply have to be made to the payer.**

**There is a practical necessity for a sufficient connection between the payment and the supply. The mechanics of the legislation will otherwise make it impossible to collect the GST.**

[Emphasis added.]

- An expectation that the payee will supply goods and services is not enough. It is not sufficient that the person who receives the payment carries out some activity that has the effect of benefiting either the person making the payment or some other person. It is also not sufficient that the payment enables the payee to carry on its activity. Hence, a payment by the Crown to a charitable trust the Crown had established to promote the economic development and well-being of the Chatham Islands’ inhabitants and the provision of services in the interests of the community was not consideration for GST purposes. The trustees were fulfilling their fiduciary duties under the trust, and the payment was not an inducement for the performance of services by the trustees: *Chatham Islands*.
- The expressions “in respect of, in response to, or for the inducement of” in the definition of “consideration” involves an element of reciprocity: *Taupo Ika Nui Body Corporate; Chatham Islands Enterprise Trust*.
- It is necessary to consider the legal arrangements between the parties to determine whether a payment is consideration. In the *Chatham Islands* case, Blanchard J commented (at para 17):

Although the linkage or nexus between a payment and the activity to which it gives rise may be very broad, it is still necessary to have regard to the legal form which is being employed:

... in taxation disputes the Court is concerned with the legal arrangements actually entered into ... not with the economic or other consequences of the arrangements.

(*C of IR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 at p 13,192 citing *Marac Life Assurance Ltd v C of IR* [1986] 1 NZLR 694 at p 706 [also reported as *Marac Life Assurance Ltd v CIR; CIR v Marac Life Assurance Ltd* (1986) 8 NZTC 5,086 at pp 5,097, 5,098]. The tax being one on transactions, it is necessary to pay close attention to the legal nature of what has been done.

### *Statutory arrangement relating to provision of education in state schools*

#### *Role and accountability of school Boards*

In *Maddever v Umawera School Board* [1993] 2 NZLR 478 Williams J discussed the role of school Boards (at p 505).

The [Education Act 1989] was based on *Administering for Excellence: The Report of the Task Force to Review Education Administration* (the Picot report (1988)) which found that the existing administrative structure of the Education Act 1964 was over-centralised and overly complex. Its recommendations for change were largely implemented in the Education Act 1989, the title of which states that it is “An Act to reform the administration of education”. The statute brought about a marked devolution of decision making away from the Minister of Education so that schools became the basic unit of education administration. The primary mechanisms in the statute to achieve the legislative objectives were the novel concept of Boards of Trustees who were given by s 75 broad powers to manage schools and the idea of a school charter.

Williams J then referred to the requirements relating to charters in section 61 of the Education Act and went on to say (at p 505):

It is thus clear that the [Education Act 1989] contemplates that the board, in consultation with the Minister, should have a significant role in determining the school’s educational goals and a degree of independence in deciding how those goals should be achieved. While the Ministry of Education influences a school’s broad objectives through the application of the national educational guidelines established under s 60A ... and the Minister also has a power of approval of school charters, the guidance thus provided is in rather general terms. It is for the parents, staff and other persons to largely determine the distinctive character of the charter for a particular school.

Williams J noted that the accountability of school Boards was achieved in several ways, including the requirement that Boards must adhere to their charters.

The policy of the Education Act, therefore, is to decentralise the administration of education so that Boards of Trustees are responsible for the control and management of the schools. Although school Boards have considerable power to manage schools, such powers are subject to any enactment and the law of New Zealand: sections 72 and 75 of the Education Act. The Education Act provides for several ways to achieve accountability by Boards, including the obligation for Boards to adhere to their school charters (which must incorporate guidelines specified by the Minister of Education for the education services to be provided).

#### *What are education services?*

The term “education” is defined in the *Concise Oxford Dictionary* (11th ed, 2006) as:

the process of educating or being educated. > the theory and practice of teaching. > information about or training in a particular subject.

It is possible to define the limits of the obligation of school Boards to provide education services (and, therefore, the

scope of the entitlement to free education). The national education guidelines issued by the Minister of Education specify:

- the outcomes desired from the school system;
- the policy concerning teaching, learning, and assessment for the purposes of underpinning and giving direction to how curriculum and assessment responsibilities are to be managed;
- the subjects in which education is to be provided (including areas and levels of knowledge).

The Minister of Education specifies through national education guidelines or by regulation, in broad terms, the type, level, and standard of instruction or education to be provided in state schools.

Every school must have a school charter. The purpose of the charter is to establish the missions, aims, objectives, directions and targets of the school Board that will give effect to the Government’s national education guidelines and the Board’s priorities: section 61 of the Education Act. Although the Board has a significant role (through the preparation of the school’s charter) in determining the school’s aims and objectives and how these are to be achieved, the charter does not take effect if the Secretary for Education determines that it is inconsistent with the Education Act or the national administration guidelines: section 63A of the Education Act. The effect of a school charter is that it is an undertaking by the Board to the Minister of Education to take all reasonable steps to ensure the school is managed, organised, and administered for the purposes set out in the school charter and the school, its students, and community achieve the aims and objectives set out in the school charter: section 63 of the Education Act.

Therefore, school Boards have an obligation to provide education (which complies with the requirements of the national education guidelines). New Zealand citizens and residents (or children who are otherwise not foreign students under the Education Act 1989) have a statutory right to free enrolment and free education at any state school: section 3 of the Education Act 1989. The provision of free education in state schools is supported by a grant by the Crown: section 79 of the Education Act.

#### *Ministry of Education circular*

The Ministry of Education (which is responsible for developing the national education guidelines and reviewing school charters) issued a circular (Circular 1998/25) to Boards of Trustees and principals of state and integrated schools on the rights of Boards, parents, and students in relation to requests for donations and other forms of payments in schools. The Ministry’s views are as follows.

- No charge may be imposed for materials used in delivering the curriculum such as photocopying charges, charges for using musical instruments or computer facilities. This is because the right to free education implies that there should be no charge for materials used in the delivery of the curriculum. However, students may be charged for the hire of musical instruments owned by the school and used outside the basic delivery of the music curriculum. A charge may be made for costs involved in project work (such as the production of a T-shirt in a design class) if the student takes ownership of the finished product. Schools cannot, however, insist that the students take the finished product home.
  - No charge may be imposed for a student's attendance at a school camp that is a compulsory part of the school's curriculum or part of the content of a particular course at the school. The Ministry of Education stated in Circular 1998/25 that it considers:
 

It is reasonable, however, for parents to be asked to contribute towards the cost of food and towards the costs which are involved in travel to and from the camp. In cases where parents are unwilling or unable to pay for a camp, teachers should try to provide work which will be an appropriate alternative to the camp. In cases where attendance at an outdoor or recreational activity is voluntary, parents should expect to meet the costs involved if they agree to their children's participation.
  - Students should not be excluded from activities organised away from school as part of the curriculum (for example, field work in geography or biology and outdoor education programmes). The Ministry of Education stated in Circular 1998/25 that:
 

It is reasonable to expect parents to pay the travel costs which are inevitably connected with such activities, provided the staff have made every effort to minimise costs by ensuring that the activities are held as close to the school as possible. In cases where parents are unwilling or unable to pay for a trip, teachers should provide an alternative which would give the student an insight into the curriculum experience covered by the trip. To avoid misunderstanding which may lead to later problems with payment, boards should ensure that parents are made aware of the situation at the beginning of the year.
  - Boards cannot require a student to purchase a workbook that accompanies a course and in which answers are written. However, the Ministry of Education states in Circular 1998/25 that if, a student chooses to purchase a workbook, a charge may be imposed. The Ministry considers that workbooks lie between textbooks, which are provided free to students, and stationery, which students are expected to provide for themselves.
  - No charge may be imposed for programmes such as Reading Recovery, English for Speakers of Other Languages, special education services (speech therapy, behaviour or learning difficulties), or music tuition. In Circular 1998/25, the Ministry of Education states that resourcing is provided to schools for these programmes as part of the conventional curriculum or through the Ongoing Resource Scheme, Specialist Education Services, or Special Education Grant.
  - No charge may be imposed where secondary schools purchase tertiary level courses that they offer to senior students as part of the school programme. However, where the school merely facilitates a student's enrolment in a tertiary course, the student would be enrolled only part time at the school, so would be required to pay the fees associated with the tertiary course.
  - A charge may be imposed for in-school activities at which attendance is voluntary such as performances by visiting drama groups.
  - Under the national education guidelines Boards are required to report on student progress and Boards are subject to the Official Information Act 1982 and Privacy Act 1993. Therefore, Boards are not entitled to withhold items such as students' reports or leaving certificates to encourage parents to pay school donations or resolve unpaid debts for services the school has provided.
- The Commissioner accepts the Ministry of Education's views as expressed in Circular 1998/25. The supply of services that are necessary to the supply of education services (in which a school Board has an obligation under its charter to provide instruction and in which participation by students is compulsory) are also within the scope of education services to which there is a statutory entitlement to receive free of charge. Services that are necessary to the supply of education services include the:
- use of materials or goods necessary for delivering the curriculum (for example, the use of computers, photocopying charges for materials used in delivering the curriculum, and materials for practical subjects (such as woodwork));
  - right to participate in activities that are a compulsory part of the curriculum (for example, outdoor education camps that are part of the curriculum or fieldwork in geography or biology); and
  - provision of programmes such as Reading Recovery, English for Speakers of Other Languages, and special education services (for speech therapy or behavioural or learning difficulties).

There is a distinction between the supplies described above and supplies made in circumstances where the supply made is not necessary to the supply of education services and students have a choice as to whether to receive the supply. Examples of such supplies include:

- goods supplied where there is a very clear take-home component such as stationery or materials where a student is entitled to ownership of a finished product from practical classes such as woodwork. In such circumstances a school may not insist that the student take ownership of such goods; or
- attendance at or participation in activities that is voluntary; or
- transport to or from school activities (such as a camp) or food supplied at a camp.

#### *Whether sufficient relationship between payment and a supply*

Pursuant to section 5(6) of the GST Act, where a school Board brings to charge as revenue amounts received from the Crown, such as operational grants for the supply of education services, that supply is deemed to be a supply for GST purposes. The amounts paid by the Crown are consideration, being a payment made in respect of the supply of services.

The grant the Crown provides for the supply of education services in terms of the undertaking given to the Minister of Education may be taxed only once, but GST is chargeable on any separate supply the Board makes to parents:

Case R34 (1994) 16 NZTC 6,190; *Suzuki NZ Ltd v CIR* (2001) 20 NZTC 17,096.

In *Suzuki* the taxpayer had an obligation to repair defective vehicles under a warranty the taxpayer gave to its customers. In turn, the taxpayer had a warranty from its parent company (from which the taxpayer had purchased the vehicles) and had received payments from the parent company for carrying out the obligations of the parent company under the parent company's warranty. There were two separate supplies: the supply of repair services under the warranty to customers and the supply of repair services to satisfy the obligations of the parent company under its warranty. As two separate supplies were made, the Court of Appeal did not accept that the Commissioner had sought to impose tax on the same supply (at para 24).

The Court of Appeal said (at para 23):

This is simply an instance of the common enough situation in which performance obligations under two separate contracts with different counter-parties overlap, so that performance of an obligation under one contract also happens to perform an obligation under another. In such

case a supply can simultaneously occur for GST purposes under both contracts. There is a nexus in both cases between the performance and the consideration given by the other party.

In some circumstances an existing statutory obligation may mean that there is an insufficient relationship between the payment and a supply. Two GST cases have related to a situation where the parties had statutory rights or obligations outside any contractual relationship there might have been between the parties: *Television NZ Ltd v CIR* (1994) 16 NZTC 11,295; *Case U1* (1999) 19 NZTC 9,001.

The *Television NZ* case concerned payments the Department of Māori Affairs made to the Broadcasting Council (whose assets and liabilities were later vested in Television New Zealand) for the purpose of a training scheme operated by the Broadcasting Council (and later Television New Zealand) for Māori trainees. The taxpayer's argument was that a supply had not been made for the payment because in collaborating with the Department of Māori Affairs, the Broadcasting Council was merely discharging a statutory obligation to be a good employer (which included operating a personnel policy that complied with the principle of being a good employer, including recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori as employees of the Broadcasting Council).

Tompkins J held that the Broadcasting Council had made a supply of services, being the provision of the training programme. There was a contractual obligation to provide the services, and the fact the supply was in accordance with the statutory obligations of the Broadcasting Council did not affect the conclusion that a supply was made under the contract.

Under contract law, the performance of a statutory duty is not consideration, although the undertaking of something more than the bare discharge of the duty can be good consideration: *Ward v Byham* [1956] 2 All ER 318; *Williams v Williams* [1957] 1 All ER 305. The *Television NZ* case is consistent with that principle. There was reciprocity between the Broadcasting Council and Department of Māori Affairs. Payment would not have been made if the services had not been provided. The Broadcasting Council had discretion about how it would carry out its statutory obligation to be a good employer. The provision of training services under the agreement with the Department of Māori Affairs was in accordance with the Broadcasting Council's statutory obligations, but there was no direct and specific statutory obligation to provide the training.

In *Case U1* the taxpayer had granted a lease under which the tenant had an obligation to pay rates (in addition to rental). The tenant was an “occupier” under the Rating Powers Act 1988 (being the lessee of a property under a lease for a term of not less than 12 months). Under that Act the occupier had primary liability to pay rates. The issue in *Case U1* was whether the payment of rates formed part of the consideration for the lease. (Hence, the issue considered in *Case U1* is slightly different from that considered in the *Television NZ* case.) Judge Barber considered and rejected the argument that the payment of rates was consideration (as the obligation contained in the lease to pay rates was “in respect of” the lease). He also rejected the argument that the payment of rates by the lessee was part of the inducement to persuade the landlord to lease the farm at the rental figure agreed on and was also part of the lessee’s response to the granting of the lease. Judge Barber considered that the lease merely recorded the legal position and was not consideration, as the payment of rates by the lessee satisfied the lessee’s own statutory obligation rather than an obligation of the lessor. (However, the payment of rates by a lessee under a lease would be part of the consideration for the lease, if the lessor was primarily liable for the payment of rates and the lessee had accepted an obligation under the lease to meet the lessor’s liability.)

In the *Television NZ* case the statutory obligation was expressed in general terms. However, in *Case U1* the lessee had a specific statutory obligation to pay rates.

Payments made by parents or guardians may supplement the Crown grant to the school. School Boards have a considerable degree of autonomy as to how their funds are used. How the amounts paid are used is not the test of whether a supply is made for the payment: *Chatham Islands Turakina* also confirms that how payments are used does not determine the nature of the supply for the payments. In *Turakina* the court (at p 10,037) rejected the taxpayers’ argument that because attendance dues were applied to meet mortgage obligations of the proprietors of the schools, the attendance dues were paid for exempt supplies (being the payment or collection of any amount of interest, principal, or any other amount in respect of a debt security in terms of sections 14(1)(a) (previously section 14(a)) and 3(1)(ka) of the GST Act).

There is an expectation that amounts paid by parents will be used for the purposes of the school. However, the Commissioner considers that as the supply of education services is not conditional on payment being made by parents and as students have a statutory right to receive education services in a state school free of charge if they are “domestic students”, there is an insufficient relationship between the payments and the supply of education services to which there is a statutory entitlement. The

Commissioner also considers that when the payments made by parents are not made for any particular purpose and the school Boards do not undertake any obligations in return for payment, there is not a sufficient relationship between the payment and any other supply: *Chatham Islands*.

Some school Boards may attempt to collect amounts unpaid by withholding items, for example, reports, leaving certificates, or school magazines, until payment is made. It is possible to argue that although school Boards have an obligation to the Minister of Education to supply education services, if there is a threat to withhold education services unless payment is made, there is a separate obligation to parents to supply education services under a separate transaction with the parents. On that basis it could be argued that the payments are consideration, being a payment for the inducement of the supply of education services.

The relationship between the pupils and the school Board is based at least partly on the Education Act: *Grant v Victoria University of Wellington* 13 November 1997, Ellis J, HC Wellington CP312/96; *A-G v Daniels* [2002] 2 NZLR 742. There is a statutory right to free education. School Boards have a corresponding statutory obligation to provide education in state schools free of charge. Although Boards may represent that education services would not be supplied if payment is not made, the true legal nature of the transaction is that the Board cannot require payment for the supply of education services as students have a statutory entitlement to receive education free of charge. In the *Chatham Islands* case Tipping J commented (at para 25):

GST is payable on transactions. When deciding whether a particular transaction is of a kind which attracts GST, it is important to analyse carefully its legal characteristics.

A person may waive a statutory benefit conferred on that person under a statute if the waiver does not infringe some public right or public policy: *Bowmaker Ltd v Tabor* [1941] 2 All ER 72; *Reckitt & Colman (NZ) Ltd v Taxation Board of Review* [1966] NZLR 1032. To determine whether a statutory right to free education can be waived, it is appropriate to consider whether the purpose of the legislation under which the right is conferred would be infringed by the waiver or contracting out: *Johnson v Moreton* [1978] 3 All ER 37; *Lieberman v Morris* (1944) 69 CLR 69.

Sections 20 and 25 of the Education Act require all New Zealand citizens and residents between the ages of 6 and 16 to be enrolled at a state-registered school and to attend the school. Private schools must satisfy requirements as to the suitability of premises, staffing, equipment, and curriculum and, in order to be registered, must give students a tuition

no lower in standard than that of tuition given to students enrolled at state schools: section 35A of the Education Act. The purpose of the PSCI Act was to enable private schools, originally established to provide education of a special character, to be brought within the state system of education as integrated schools. As with other schools in the state system, the Board of a private integrated school is responsible for providing education free of charge to its pupils.

Parents can choose to have their children educated at non-state schools. It could be argued that in that sense the statutory entitlement to free education can be waived. However, the public policy objective expressed in the Education Act is that all children are to receive education of a minimum standard. The provision of public funding for education and the entitlement to free education are intended to ensure that cost is not a barrier to access to education. That free education is provided for a public purpose is confirmed by the 1993 statement of national education goals (*New Zealand Gazette* No 58, 29 April 1993), which states:

**Education is at the core of our nation's efforts to achieve economic and social progress. In recognition of the fundamental importance of education, the Government sets the following goals for the education system of New Zealand.**

1. The highest standards of achievement, through programmes which enable all students to realise their full potential as individuals, and to develop the values needed to become full members of New Zealand's society.
2. Equality of educational opportunity for all New Zealanders, by identifying and removing barriers to achievement ...
- ...
6. Excellence achieved through the establishment of clear learning objectives, monitoring student performance against those objectives, and programmes to meet individual need.

[Emphasis added.]

Therefore, it can be argued that the right to free education is not solely a private right. If Boards were able to impose a requirement for the payment of "fees" and individual parents were able to waive the right to free education, the purpose of the legislation would be infringed.

Although school Boards have wide discretion to manage and control schools, such powers cannot be exercised in a manner inconsistent with a statutory provision: sections 72 and 75 of the Education Act. The Commissioner's view is that school Boards do not have the power to require the payment as a condition of the provision of education or

any other services or items that are properly regarded as being integral to the supply of education to which there is a statutory entitlement. The Commissioner acknowledges that, given that an illegal activity can be a taxable activity and given that the definition of "consideration" does not require a contract to exist between the supplier and recipient for a payment to be consideration, payment need not be enforceable for the payment to be consideration. Therefore, the fact the transaction is invalid because the parties do not have the power to enter into a transaction, does not mean the transaction would not be recognised for GST purposes: *C & E Commrs v Oliver* [1980] 1 All ER 353. However, the statutory entitlement to education cannot be altered by a representation that education services are conditional on the payment of "fees".

Therefore, amounts paid to the Board of Trustees of a state school are not consideration for the supply of education services, even if there were a representation that reports or other information relating to the assessment of students would be withheld unless payment was made (albeit contrary to the legal position). However, if school Boards supplied other goods or services not integral to the supply of education services on the basis that the supply was conditional on payment being made, the payment would be consideration for that supply. If the payment made includes a charge for an item that is not integral to the supply of education services, such as a school magazine, there will be a case for apportionment of the payment. Section 10(18) of the GST Act states:

Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

## Conclusion

Amounts paid by parents are not consideration for the supply of education services to which there is a statutory entitlement, for the following reasons:

- The definition of consideration under the GST Act is not the same as the contract law definition. A contract is not required between parents and school Boards for the payments to be consideration for GST purposes: *Turakina*. However, for the payments to be consideration for a supply, there must be a sufficient relationship between payments and a supply: *NZ Refining; Chatham Islands; Suzuki; Trustee, Executors*.
- As there is a statutory right to free education, in circumstances where the amounts are not paid for any particular purpose or for the Board undertaking any specific obligation there is not a sufficient connection between the payments and a supply (whether of

education services or a supply of a different nature). This is so even though there is an expectation that the payments would be used for the Board's taxable activity: *Chatham Islands; NZ Refining*. The fact the amounts are used to pay for things not covered by the government grant does not establish that they are paid for services of a particular nature: *Turakina; Chatham Islands*.

- It is possible to argue that where a representation is made that education services would be withheld if payment is not made, the payments would be made "in respect of, in response to or for the inducement of" the supply of education services. However, as there is a statutory entitlement to free education in state schools, the true legal position is that education services would be provided whether or not payment was made. Therefore, there would not be a sufficient connection between the payment of "fees" and the supply of education services to which there is a statutory entitlement.
- GST consequences are determined on the basis of the legal character of the transaction: *Chatham Islands*. The relationship between parents and school Boards is based on the Education Act, which requires Boards of state schools to provide education and entitles students to free enrolment and education at state schools, and the PSCI Act, which entitles students enrolled at integrated schools to free education on the same terms and conditions as in state schools. The true legal nature of the arrangement between parents and the school Board is that school Boards have a statutory obligation to provide free education and students have a right to free education. The supply of education services is not conditional on the payment being made, and payment is not required for the supply of education services.
- A statutory right conferred on a person may be waived only if the waiver does not infringe the purpose of the legislation: *Bowmaker Ltd v Tabor; Reckitt & Colman (NZ) Ltd v Taxation Board of Review; Johnson v Moreton; Lieberman v Morris*. The purpose of the Education Act is that all children should receive education of a minimum standard, and there should be no barriers to access to such education. That purpose would be infringed by a waiver of the right to free education and an ability of school Boards to require the payment of "fees" for education.
- The scope of the obligation to provide education services is defined by the national education guidelines and by the school's charter (into which the guidelines are incorporated). The supply of reports and other information relating to the assessment of students is integral to the supply of education services, and such

information must be supplied free. The amounts would not be consideration, even if there was a representation that the supply of such information would be withheld unless payment was made (albeit contrary to the legal position).

Therefore, GST is not payable on amounts paid for the purpose of a general fund to assist the schools with meeting costs or for "activity fees" for activities that are an integral part of the course requirements in which the school has an obligation to provide instruction and in which participation by pupils is compulsory. However, if other services not integral to the supply of education services are supplied on the basis that the supply is conditional on payment being made, the payment will be consideration for that supply. If a separate charge is not made for such an item, apportionment may apply: section 10(18) of the GST Act.

For payments made by parents or guardians to schools to be consideration, it must be possible to identify a supply of goods or services other than the supply of education services that the schools must supply in terms of their charters. The issues that need to be considered are:

- whether what is provided to students is within the scope of the statutory entitlement to education services; and
- if the supply made is outside the scope of the statutory entitlement, whether there is a sufficient relationship between the supply and the payment.

### Examples

It is assumed for the purposes of the following examples that the students are either New Zealand citizens or New Zealand residents.

#### Example 1

Each year the Board of Trustees of a state school asks parents or guardians of students enrolled at the school to pay a nominated amount to assist with meeting school costs. The Board is not required to use the fee for any particular purpose, and the fee is paid for the general purposes of the school. The only benefits received by pupils are facilities for common use, such as the school library, swimming pool, or computer facilities.

The payment is not consideration for the supply of education services as there is a statutory entitlement for students to receive education free of charge. As the payment is received for the general purposes of the school and the Board of Trustees does not undertake any obligation to supply any goods or services, such payments are not consideration for a supply of a different nature by the Board. Therefore, GST is not chargeable on the payments.

**Example 2**

Students at a state school are required to pay a fee for materials used in a clothing class. The students are not required to take ownership of the completed item but will not be entitled to ownership unless payment is made.

A charge cannot be made for the use of materials necessary for the delivery of education services to which there is a statutory entitlement, but a charge can be made for the right to ownership of an item completed using such materials. The fee is not consideration for the use of the materials as the use of such materials is necessary for the provision of instruction in the subject. However, if a student elects to take ownership of the completed item, the fee is consideration for the right to ownership of the item and the Board is liable to account for GST on the fee.

**Example 3**

In addition to the general school donation, parents of students at a state school are asked to pay photocopying charges for materials (such as articles, extracts from textbooks, or homework exercises) used in teaching, even though such materials should be provided free of charge. The payment is not consideration. It is implicit in the right to free education that there should be no charge for the cost of materials used in the delivery of the curriculum. The provision of photocopied materials necessary for teaching is integral to the supply of education services. GST is not chargeable on the payment.

However, if a student chooses to purchase a photocopy of an optional workbook or magazine produced by students that the student may retain, the payment made would be consideration for the supply of that item and GST would be chargeable on the payment.

**Example 4**

A state school hires a bus to transport students on a field trip to carry out activities that are part of the geography curriculum. Students are asked to pay an amount to cover the cost of hiring the bus. The payment does not relate to the right to participate in the activities carried out on the field trip. Although transport is necessary to enable students to receive instruction in the subject, the supply of transport is not integral to the supply of education. In the same way, transport to the school premises does not constitute education services, although a student must travel to the school in order to receive education services. The payment is consideration for the supply of transport and GST is chargeable on the payment.

**Example 5**

Students at a state school are asked to make a payment to cover the costs of food provided at a school camp and transport to the camp site. Attendance at the camp is a compulsory part of the school's curriculum. The payment does not relate to the right to participate in activities at the camp. The payment is consideration for the supply of food and transport and GST is chargeable on the payment.

(The school may waive payment for food and transport by some students but this does not mean that a payment for food and transport made by other students is not made for the supply of food and transport.)

**Example 6**

A state school asks students to pay for stationery and a workbook that students are entitled to keep. The payment is made for the supply of the stationery and the work book and is consideration. Therefore, GST is chargeable on the payment.

**Example 7**

A drama group puts on a performance at a state school. Attendance by students is voluntary but if students wish to attend a charge is payable. The payment is consideration for the right to attend the performance and GST is chargeable on the payment.

**Example 8**

The Board of Trustees of a state school asks parents or guardians of students enrolled at the school to make a single payment in advance, being the estimated cost of future items such as transport for class trips, workshop technology, and visiting drama groups. These activities are not integral to the supply of education which the school has a statutory obligation to provide. The payment is made for the right to participate in the activities to which the payment relates or for the right to ownership of an item. The entitlement of students to these rights is conditional on payment being made and GST is chargeable on the payment.



## LEGISLATION AND DETERMINATIONS

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

### DETERMINATION DET 09/01: STANDARD-COST HOUSEHOLD SERVICE FOR HOMESHARE CARE PROVIDERS

This determination may be cited as “Determination DET 09/01: *Standard-cost household service for home share care providers*”.

#### Introduction

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

- (a) This determination sets out the standard-cost household service that has been provided as homeshare care services by taxpayers, who are natural persons, in the service providers ('taxpayers') own domestic accommodation.
- (b) It also sets out the components of expenditure that are generally incurred in the provision of the standard-cost household service by these taxpayers.
- (c) This determination determines a figure for a cost or costs that for the purpose of the Tax Administration Act 1994 may be treated as being incurred by a taxpayer in deriving:
  - (i) exempt income; and
  - (ii) gross income.
- (d) This determination also prescribes a method of calculating such a figure, as set out in paragraph (c).

#### Application

This determination only applies to services provided by homeshare providers via the Presbyterian Support (Upper South Island) Homeshare programme operating in the Mid Canterbury area.

The determination applies only to natural persons, being homeshare care providers, who provide the service in their own domestic accommodation.

The standard costs contained in this determination are inclusive of goods and services tax (“GST”). Persons who are registered for GST may be required to make an adjustment to their GST return to the extent that they have claimed GST back on goods and services which are subsequently used in providing homeshare services, ie, as these costs would not have been incurred in the course or furtherance of their taxable activity

This determination, unless specifically withdrawn, shall apply from the 2009 and subsequent income years.

#### Definitions

In this determination, unless the context otherwise requires—

Expressions used have the same meanings as those in sections CW 61 and YA 1 of the Income Tax Act 2007 and section 91AA of the Tax Administration Act 1994:

“Homeshare care” means the provision of a day activity programme for older people, aimed particularly at those in rural areas who have difficulty accessing centralised services, using local people as hosts. Service providers are contracted to provide a daytime base in their own accommodation, hosting activities, companionship and meals. *Note:* This service is not to be confused with a homeshare partnership between a householder, usually an older person with a spare room, and a homesharer, a younger person who in return for accommodation provides help around the home or companionship and/or security.

“Standard-cost household service for homeshare care providers”, in relation to any homeshare care service, means the standard-cost that has been determined by the Commissioner of Inland Revenue for the purpose of the Income Tax Act 2007 and the Tax Administration Act 1994:

#### Determination

##### *Provision of homeshare care service*

A homeshare care service shall be a standard-cost household service where:

- (a) the service provider is a natural person; and
- (b) the homeshare care service requires the use of the service provider's domestic accommodation; and
- (c) the homeshare care service involves activities that commonly occur in a family household; and
- (d) the homeshare care service provided is in accordance with the Home and Community Support Sector Standard (NZS 8158:2003); and
- (e) the service is provided as part of the Presbyterian Support (Upper South Island) Homeshare programme.

*Standard-cost for homeshare care providers*

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

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

*(a) Variable standard-cost*

Variable standard-cost shall be:

- (a) \$16.20 each day, for the first guest, and
- (b) \$12.85 each day, for the second and subsequent number of guests.

This shall cover expenditure on items such as electricity/fuel, food, wear and tear, outings and associated transport costs, laundry, educational resources, equipment and first aid.

*(b) Fixed standard-cost*

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

Administration and record keeping fixed standard-cost shall be \$260.00 per annum and shall include such items as the use of telephone, postage and stationery, the use of computers and other incidental administration costs.

The domestic accommodation fixed standard-cost is to be calculated using the formula relevant to the service provider circumstances, i.e. whether they own or rent their domestic accommodation.

Additionally, where the service provider is entitled to an accommodation supplement, the annual deduction calculated shall be reduced by the amount of the accommodation supplement received.

*(i) Homeshare care provider who owns their domestic property*

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

$$[(a \times 5\%) - b] \times 50\% \times 8\%$$

where—

- a is the purchase price of the domestic property; and
- b is the annualised amount of accommodation supplement received by the service provider (ie, weekly amount received x 52 weeks); and

5% represents the expenditure normally incurred in owning a domestic property, including depreciation of the building and outgoings such as rates, insurance, mortgage interest cost; and

50% represents the usage factor that is based on usage by area such as bedrooms, kitchen, laundry, toilet/bathroom, other living areas and the use of outdoor areas; and

8% represents the availability factor that is based on a 5½ hour day for an average of 2⅓ days each week, averaging 12⅔ hours per week.

*(ii) Homeshare care provider who rents their domestic property*

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

$$(a - b) \times 50\% \times 8\%$$

where—

- a is the annualised rental payment (i.e. weekly rent paid x 52 weeks); and
- b is the annualised amount of accommodation supplement received by the service provider (ie, weekly amount received x 52 weeks); and

50% represents the usage factor that is based on usage by area such as bedrooms, kitchen, laundry, toilet/bathroom, other living areas and the use of outdoor areas; and

8% represents the availability factor that is based on a 5½ hour day for an average of 2⅓ days each week, averaging 12⅔ hours per week.

*(c) Exempt income*

The sum of the variable standard cost and the fixed standard cost calculated in accordance with this determination, relevant to the homeshare care provider's circumstances, shall be treated as exempt income or expenditure incurred in providing the services.

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

This determination is signed on the 15th day of April 2009.

**Rob Wells**

LTS Manager, Technical Standards

## COMMENTARY ON DETERMINATION DET 09/01

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

### Standard-cost basis and actual-cost basis

- (a) In accordance with section 91AA(3) of the Tax Administration Act 1994, a homeshare care service provider who uses the standard-cost basis set by the Commissioner in determining their income tax liability has elected this basis to be appropriate for their circumstances.
- (b) A service provider who elects to use the standard-cost basis determined by the Commissioner must use this basis to calculate their income tax liability for the elected income year.
- (c) The service provider must adopt either the standard-cost basis or the actual-cost basis, but not both, for an income year with the exception of one-off costs actually incurred (refer to the commentary on additional costs).
- (d) As the use of the standard-cost basis is optional, service providers will not be precluded from adopting the actual-cost basis or from opting in and out of the standard-cost basis for any subsequent income year.
- (e) A service provider who does not elect to use the standard-cost basis set by the Commissioner in determining their income tax liability must use the actual-cost basis. In electing to use the actual-cost basis, the service provider must ensure that they have adhered to all the record keeping requirements for verifying the costs.

### Income tax implications and filing of tax returns

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

- (a) Standard-cost expenditure that exceeds payments received is not available as expenditure against other income for any income year, nor can it be carried forward to future income years.
- (b) In accordance with section 33A of the Tax Administration Act 1994, a service provider would not be required to file a tax return for that income year if:
  - (i) after deducting the amount of standard-cost under the determination, the service provider has zero income tax liability; and
  - (ii) the service provider did not have any other income where tax has not been deducted at source.

### Goods and services tax (GST)

As the annual turnover from homeshare care services is expected to be well below the registration threshold for GST and it is presumed that service providers will not be registered for GST for the homeshare care service activity. Therefore, the standard-cost components determined by the Commissioner have been prepared on a GST-inclusive basis.

### Purchase price of domestic property

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

### Receipt of accommodation supplement by a service provider

A service provider may be entitled to an accommodation supplement. The Ministry of Social Development assesses each applicant's entitlement based on a set of guidelines. The assessment of entitlement takes into account such factors as accommodation costs, income and assets, family status, employment status and residential location. Where a service provider is entitled to an accommodation supplement, the amount of annual domestic accommodation fixed standard-cost calculated will be reduced by the annual amount of the accommodation supplement received. The examples in Appendix B illustrate how the receipt of an accommodation supplement affects the calculation of the annual domestic accommodation fixed standard-cost.

### Additional costs

Where a service provider has incurred additional one-off costs, which have not been taken into account by the Commissioner in arriving at the standard-cost in the determination, such costs will be allowed as an additional deduction. The service provider must however demonstrate to Inland Revenue that such costs have been incurred for the homeshare care service they provide. An example may be expenses incurred to comply with the training requirements of the Home and Community Support Sector Standard (NZS 8158:2003).

### Reimbursements

Where a funding organisation or guest reimburses a service provider for specific costs incurred, these costs are not allowed as deductions against their gross income. For example, the money received from guests for the admission fee to the cinema is not regarded as gross income. The admission fee to the cinema will not be allowed as a deduction to the service provider.

## APPENDIX A

### Weekly variable standard-cost items

The standard-cost per guest has been based on the cost for an operation providing services to three guests on a weekly basis (average 2½ / 3 days) as below:

Item of expenditure	Cost (\$)
Electricity/fuel	10.00
Food	21.00
Wear and tear	7.50
Laundry	5.00
Equipment	4.00
First aid	1.00
<b>Total</b> (based on 5.5 hours average for 3 days)	48.50
<b>Average daily cost for first guest</b>	\$16.20
<b>Average daily cost for second and subsequent number of guests</b> (less adjustment for common cost of electricity/fuel)	\$12.85

### Explanation of weekly variable standard-cost items

*Electricity/fuel* (\$10.00) – This covers the use of all appliances including the cost of heating, lighting and hot water. It includes other heating fuels such as gas, wood and coal.

*Food* (\$21.00) – This covers the cost of food that is supplied and includes basics such as bread, milk, fruit juice and biscuits. The cost of baking involved/provided for guests is also included in this figure. It also covers incidentals such as tea and coffee consumed by service providers and guests.

*Wear and tear* (\$7.50) – These cover all related expenses and include such expenses as the cleaning of carpets, repairing/replacing furnishings (e.g. rugs, linen), repairs and maintenance of equipment and appliances.

*Laundry* (\$5.00) – This not only covers obvious cleaning and laundry products but also rubber gloves, toilet paper and other similar items.

*Equipment* (\$4.00) – This covers the cost of providing indoor and outdoor equipment such as video tapes/DVDs, puzzles and games.

*First aid* (\$1.00) – This covers the requirement to have a first aid cabinet equipped to the standard set by the Ministry of Health/District Health Boards.

## APPENDIX B

### Application of the standard-cost basis as determined by the Commissioner for homeshare care providers

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

#### Example 1

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

$$[(\$200,000 \times 5\%) - (\$10 \times 52)] \times 50\% \times 8\% = \$379.00$$

#### Example 2

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

$$[(\$200 \times 52) - (\$20 \times 52)] \times 50\% \times 8\% = \$374.00$$

#### Example 3

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

The service provider provided care for an average of three guests in the income year for a total of 96 days. The service provider elected to use the standard-cost basis in accordance with Determination DET 09/01: *Standard-cost household service for homeshare care providers*.

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

<b>Income</b>		\$12,960.00
<b>Less:</b>		
Variable standard-cost	First guest @ \$16.20 × 96 days = \$ 1,555.20	
	Second & subsequent guest @ 2 × \$12.85 × 96 days = \$2,467.20	\$4,022.00
		\$8,938.00
<b>Less:</b> Fixed standard-cost Domestic accommodation as per Example 1	\$379.00	
Administration and record keeping	\$260.00	\$639.00
<b>Taxable income</b>		\$8,299.00

**Example 4**

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

The service provider provided care for an average of three guests in the income year for a total of 96 days. The service provider elected to use the standard-cost basis in accordance with Determination DET 09/01: *Standard-cost household service for homeshare care providers*.

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

<b>Income</b>		\$12,960.00
<b>Less:</b>		
Variable standard-cost		\$4,022.00
		\$8,938.00
<b>Less:</b> Fixed standard-cost Domestic accommodation as per Example 2	\$374.00	
Administration and record keeping	\$260.00	\$634.00
<b>Taxable income</b>		\$8,304.00

## FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND DOLLARS

This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the twelve months ending 31 March 2009.

Table A provides mid-month and 12-month average exchange rates.

Table B provides exchange rates for the last day of the month.

You can choose either:

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

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

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

This calculator can only be used where you have actual details for each month. The calculator cannot be used where 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).

### Table A – mid-month and 12-month average exchange rates

#### 12-month average rate

The non-shaded box is the average of the mid-month exchange rates for that month and the previous 11 months – that is the 12-month average (bottom row for each country).

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

- FIF income or loss calculated under the accounting profits, comparative value, fair dividend rate, deemed rate of return, or cost methods under sections EX 49(8), and EX 51 to EX 57 of the Income Tax Act 2007
- branch equivalent income or loss calculated under the CFC and FIF rules pursuant to section EX 21(4) of the Income Tax Act 2007 for accounting periods of 12 months
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under sections LK 2 and LK 3 of the Income Tax Act 2007 for accounting periods of 12 months.

**Example 1**

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is a FIF but does not produce a guaranteed yield). The opening market value of the shares on 1 April 2009 or their closing market value on 31 March 2009 is PHP350,000. The average exchange rate from Table A for the year ended March 2009 is 29.3634. Using the fair dividend rate the opening market value for the 2008–09 income year is converted as follows:

$$\text{PHP } 350,000 \div 29.3634 = \$11,919.60$$

**Example 2**

A CFC resident in Hong Kong has an accounting period ending on 31 March 2009. Branch equivalent income for the period 1 April 2008 to 31 March 2009 is HKD200,000. The average exchange rate from Table A for the year ended March 2009 is 5.0194. Branch equivalent income therefore converts to:

$$\text{HKD } 200,000 \div 5.0194 = \$39,845.39$$

**Mid-month rate**

The shaded box (top row for each country) in 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.

You can use the mid-month rate if you have chosen to use actual rates for conversion. This mid-month rate is acceptable to Inland Revenue as equivalent to an actual rate for transactions occurring in that month (see section YF 1 of the Income Tax Act 2007).

You can also use the mid-month rate where a branch equivalent income or loss is calculated under the CFC or FIF rules pursuant to section EX 21(4) of the Income Tax Act 2007 and the accounting period is less than or greater than 12 months.

**Example 3**

A resident individual with a 31 March balance date acquires a FIF interest in a Japanese company in January 2009 for 10,500,000 yen. The interest is sold in March 2009 for 10,000,000 yen. The mid-month exchange rate from Table A for January 2009 is 48.1846. The rate for March is 51.2655. Using the comparative value method, these amounts are converted as:

$$\text{JPY } 10,500,000 \div 48.1846 = \$217,911.94$$

$$\text{JPY } 10,000,000 \div 51.2655 = \$195,062.95$$

**Example 4**

A CFC resident in Singapore was formed on 21 October 2008 and has a balance date of 31 March 2009. During the period 21 October 2008 to 31 March 2009, branch equivalent income of 500,000 Singaporean dollars was derived.

- (i) Calculating the average monthly exchange rate for the complete months November–March 2009.

$$(0.8392 + 0.8121 + 0.8068 + 0.7873 + 0.8055 = 4.0509) \div 5 = 0.8101$$

- (ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 0.8101 = \$617,207.75$$

**Table B – end of month exchange rates**

Table B lists the end-of-month exchange rates acceptable to us for the twelve-month period ended 31 March 2009. They are provided simply as a service and are generally not relevant for the CFC or FIF rules.

Table A: Currency rates 2009 – mid month<sup>1</sup> and 12-month average<sup>2</sup>

Country	Currency	Code	15-Apr-08 12 month rate	15-May-08 12 month rate	15-Jun-08 12 month rate	15-Jul-08 12 month rate	15-Aug-08 12 month rate	15-Sep-08 12 month rate	15-Oct-08 12 month rate	15-Nov-08 12 month rate	15-Dec-08 12 month rate	15-Jan-09 12 month rate	15-Feb-09 12 month rate	15-Mar-09 12 month rate	
Australia	Dollar	AUD	0.8526	0.8137	0.7993	0.7854	0.8144	0.8129	0.8885	0.8543	0.8228	0.8185	0.7989	0.7966	
			0.8728	0.8667	0.8586	0.8488	0.8440	0.8412	0.8437	0.8388	0.8442	0.8388	0.8337	0.8274	0.8215
Bahrain	Dollar	BHD	0.2972	0.2865	0.2828	0.2874	0.2660	0.2510	0.2331	0.2084	0.2056	0.2038	0.1966	0.1968	
			0.2885	0.2892	0.2892	0.2885	0.2878	0.2863	0.2814	0.2681	0.2749	0.2681	0.2604	0.2521	0.2429
Canada	Dollar	CAD	0.8035	0.7616	0.7728	0.7679	0.7480	0.7081	0.7205	0.7205	0.6834	0.6813	0.6735	0.6458	0.6652
			0.7847	0.7802	0.7778	0.7731	0.7708	0.7686	0.7658	0.7658	0.7615	0.7615	0.7536	0.7428	0.7310
China	Yuan	CNY	5.5207	5.3289	5.1936	5.2312	4.8494	4.5612	4.2399	3.7811	3.7416	3.6882	3.5776	3.5776	3.5806
			5.6701	5.6419	5.5978	5.5369	5.4822	5.4156	5.2833	5.2833	5.1260	4.9682	4.7991	4.6237	4.6237
Denmark	Krone	DKK	3.7164	3.6599	3.6348	3.5752	3.5799	3.4833	3.3809	3.3809	3.2713	3.0389	3.0570	3.0231	3.0168
			3.9929	3.9602	3.9137	3.8584	3.8242	3.7813	3.7236	3.6733	3.6733	3.5972	3.5237	3.4408	3.4408
European Community	Euro	EUR	0.4987	0.4911	0.4879	0.4797	0.4805	0.4656	0.4540	0.4997	0.4930	0.4828	0.4729	0.4618	0.4523
			0.5344	0.5300	0.5237	0.5161	0.5114	0.5075	0.4997	0.4997	0.4930	0.4828	0.4729	0.4618	0.4523
Fiji	Dollar	FJD	1.1944	1.1631	1.1521	1.1509	1.1328	1.0995	1.0722	1.0722	0.9959	0.9787	0.9736	0.9621	0.9621
			1.2082	1.2057	1.2007	1.1929	1.1892	1.1847	1.1733	1.1733	1.1571	1.1571	1.1337	1.1130	1.0914
French Polynesia	Franc	XPF	59.5488	58.6815	58.4675	57.6330	57.5038	55.8065	54.2786	52.0917	48.9090	48.6361	48.5649	48.5649	48.4793
			63.8816	63.3504	62.6053	61.7288	61.1695	60.7088	59.7850	59.7850	58.9243	57.7480	56.5229	55.1914	54.0501
Hong Kong	Dollar	HKD	6.1416	5.9215	5.8724	5.9589	5.5145	5.1976	4.8107	4.8107	4.2867	4.2306	4.1928	4.0497	4.0559
			5.9677	5.9811	5.9818	5.9659	5.9515	5.9303	5.8299	5.8299	5.6915	5.5475	5.3846	5.2089	5.0194
India	Rupee	INR	31.1686	31.9694	32.0203	32.5626	30.0314	30.2425	29.5426	29.5426	26.8139	26.3019	26.1841	25.2467	26.8213
			30.3557	30.5497	30.6970	30.7840	30.8400	30.9850	30.9408	30.9408	30.7048	30.4039	30.4039	30.0399	29.5603
Indonesia	Rupiah	IDR	7,248.5900	7073.4350	7005.7500	6993.9500	6487.1550	6290.6350	6048.5100	6048.5100	6413.5450	6042.5700	5989.8250	6156.5650	6272.8350
			7,046.5304	7094.9313	7111.4571	7102.3204	7076.3238	7042.9879	6961.2250	6961.2250	6909.1421	6818.4496	6697.8954	6604.2983	6501.9471
Japan	Yen	JPY	79.6408	79.7866	81.1073	81.0811	77.9651	70.5702	63.0743	63.0743	53.4465	49.9823	48.1846	47.7247	51.2655
			86.4867	85.7420	84.8171	83.5853	82.9504	81.9828	79.6431	79.6431	77.0026	73.9565	70.8716	67.7510	65.3191

Country	Currency	Code	15-Apr-08 12 month rate	15-May-08 12 month rate	15-Jun-08 12 month rate	15-Jul-08 12 month rate	15-Aug-08 12 month rate	15-Sep-08 12 month rate	15-Oct-08 12 month rate	15-Nov-08 12 month rate	15-Dec-08 12 month rate	15-Jan-09 12 month rate	15-Feb-09 12 month rate	15-Mar-09 12 month rate
Korea	Won	KOR	772.3700	796.9000	785.5550	766.8700	733.5500	738.0800	748.2400	775.2600	748.5450	730.0550	734.0800	775.5300
			719.1463	728.7667	736.0913	739.8529	744.5383	753.8825	760.4033	763.5563	761.7513	758.7529		
Kuwait	Dollar	KWD	0.2092	0.2027	0.1994	0.2020	0.1896	0.1784	0.1654	0.1500	0.1502	0.1551	0.1528	0.1542
			0.2131	0.2122	0.2108	0.2087	0.2074	0.2056	0.2013	0.1913	0.1864	0.1811	0.1757	
Malaysia	Ringgit	MYR	2.4967	2.4883	2.4692	2.4718	2.3659	2.3055	2.1711	1.9940	1.9608	1.9295	1.8870	1.9419
			2.5637	2.5617	2.5505	2.5302	2.5164	2.5013	2.4641	2.4172	2.3689	2.3157	2.2598	2.2068
Norway	Krone	NOK	3.9528	3.8563	3.9229	3.8639	3.8277	3.8046	3.8776	3.8502	3.7821	3.9008	3.5546	3.5701
			4.2416	4.1917	4.1382	4.0843	4.0463	4.0290	4.0023	3.9791	3.9425	3.9218	3.8622	3.8136
Pakistan	Rupee	PKR	49.6068	51.5631	49.7165	52.8920	52.5463	50.6476	48.8520	44.2400	42.7535	42.4393	41.3232	41.7299
			46.8186	47.4132	47.7867	48.2458	48.9792	49.6186	49.7950	49.6213	49.3209	48.7803	48.1157	47.3592
Papua New Guinea	Kina	PGK	2.1433	2.0247	1.9907	1.9767	1.8289	1.7033	1.5756	1.4128	1.4165	1.4287	1.4024	1.4617
			2.1699	2.1575	2.1389	2.1073	2.0822	2.0526	1.9990	1.9408	1.8846	1.8242	1.7604	1.6971
Philippines	Peso	PHP	32.6099	32.3167	33.1934	34.2927	31.7734	30.9413	29.0903	27.0428	26.1003	25.3366	24.4651	25.1979
			33.1102	32.9366	32.8125	32.6814	32.5679	32.4174	32.0421	31.5964	31.1857	30.6680	30.0404	29.3634
Singapore	Dollar	SGD	1.0683	1.0454	1.0347	1.0319	0.9998	0.9540	0.9066	0.8392	0.8121	0.8068	0.7873	0.8055
			1.1180	1.1122	1.1022	1.0890	1.0799	1.0697	1.0508	1.0289	1.0043	0.9778	0.9503	0.9243
Solomon Islands	Dollar	SBD	5.9335	5.8003	5.7522	5.8488	5.4053	5.1020	4.7455	4.2264	4.1212	4.1222	4.0543	4.1876
			5.6146	5.6512	5.6767	5.6912	5.7042	5.6926	5.6203	5.5115	5.4014	5.2634	5.1040	4.9416
South Africa	Rand	ZAR	6.1946	5.7972	6.0856	5.8459	5.5478	5.3816	5.6271	5.6271	5.5325	5.5275	5.3427	5.0870
			5.4915	5.5493	5.6079	5.6391	5.6574	5.6810	5.7143	5.7573	5.7803	5.7828	5.7054	5.5921
Sri Lanka	Rupee	LKR	84.5827	81.4159	80.6769	81.9635	75.7057	71.6020	66.7265	60.5418	60.4154	61.2583	59.3173	59.7460
			84.1051	84.0989	83.9117	83.4448	82.9999	82.2804	80.5368	78.5734	76.7102	74.7348	72.6187	70.3293
Sweden	Krona	SEK	4.6866	4.5680	4.5624	4.5473	4.4929	4.4349	4.4339	4.4017	4.3718	4.5513	4.3711	4.5008
			4.9699	4.9330	4.8709	4.8148	4.7720	4.7453	4.7001	4.6670	4.6165	4.5822	4.5271	4.4936
Switzerland	Franc	CHF	0.7891	0.8012	0.7864	0.7757	0.7735	0.7498	0.7029	0.6613	0.6411	0.6047	0.6067	0.6207
			0.8748	0.8666	0.8543	0.8401	0.8312	0.8228	0.8048	0.7884	0.7884	0.7470	0.7254	0.7094
Taiwan	Dollar	TAI	23.9000	27.1550	26.5450	23.2350	22.1450	21.2950	20.1050	18.3150	18.1900	17.9150	17.8050	18.0650
			24.7404	24.9558	25.0983	24.8829	24.7317	24.5396	24.1083	23.5808	23.0346	22.4029	21.8008	21.2225



Country	Currency	Code	15-Apr-08		15-May-08		15-Jun-08		15-Jul-08		15-Aug-08		15-Sep-08		15-Oct-08		15-Nov-08		15-Dec-08		15-Jan-09		15-Feb-09		15-Mar-09			
			12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate	12 month rate
Thailand	Baht	THB	24.6873	24.3229	24.6809	24.1381	23.6032	22.7918	20.9609	19.1928	18.9773	18.7150	18.1916	18.6528														
			23.9504	23.9494	23.9971	24.1381	24.1930	24.2077	23.9365	23.5452	23.2248	22.8503	22.2785	21.6907														
Tonga	Pa'anga	TOP	1.4209	1.3644	1.3502	1.3770	1.3193	1.2893	1.3045	1.1794	1.1682	1.1267	1.1278	1.1482														
			1.4459	1.4396	1.4304	1.4210	1.4136	1.4025	1.3859	1.3654	1.3437	1.3153	1.2893	1.2646														
United Kingdom	Pound	GBP	0.3989	0.3903	0.3853	0.3828	0.3787	0.3701	0.3555	0.3758	0.3651	0.3706	0.3655	0.3739														
			0.3830	0.3845	0.3849	0.3845	0.3858	0.3870	0.3849	0.3852	0.3841	0.3814	0.3785	0.3760														
United States	Dollar	USD	0.7885	0.7596	0.7517	0.7639	0.7060	0.6670	0.6203	0.5533	0.5460	0.5407	0.5225	0.5233														
			0.7685	0.7703	0.7704	0.7685	0.7667	0.7629	0.7482	0.7306	0.7123	0.6917	0.6694	0.6452														
Vanuatu	Vatu	VUV	73.9818	71.3191	70.5083	71.7440	69.2301	69.8334	67.8085	63.7464	62.8787	60.0669	61.3151	60.9903														
			74.0462	73.7543	73.2808	72.7604	72.6286	72.6030	72.0965	71.4809	70.6385	69.3644	68.2105	66.9519														
Western Samoa	Tala	WST	1.9072	1.8711	1.8463	1.8781	1.7689	1.7946	1.6879	1.6193	1.5971	1.5570	1.5971	1.5884														
			1.9130	1.9119	1.9056	1.8965	1.8911	1.8852	1.8635	1.8397	1.8191	1.7855	1.7559	1.7263														

### 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 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.

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.

<sup>1</sup> 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; teal background).

<sup>2</sup> The average of the mid-month exchange rates for that month and the previous 11 months (bottom row for each country; white background).

Table B: Currency rates 2009 – end of month

Country	Currency	Code	30-Apr-08	31-May-08	30-Jun-08	31-Jul-08	31-Aug-08	30-Sep-08	31-Oct-08	30-Nov-08	31-Dec-08	31-Jan-09	28-Feb-09	31-Mar-09
Australia	Dollar	AUD	0.8292	0.8144	0.7912	0.7770	0.8135	0.8361	0.8711	0.8399	0.8354	0.7868	0.7821	0.8261
Bahrain	Dollar	BHD	0.2917	0.2933	0.2868	0.2763	0.2640	0.2525	0.2241	0.2076	0.2170	0.1934	0.1919	0.2116
Canada	Dollar	CAD	0.7840	0.7696	0.7689	0.7505	0.7375	0.7010	0.7183	0.6794	0.7010	0.6287	0.6362	0.7078
China	Yuan	CNY	5.4139	5.4021	5.2224	5.0113	4.7891	4.6165	4.0627	3.7485	3.9418	3.5260	3.4885	3.8300
Denmark	Krone	DKK	3.7099	3.7399	3.5906	3.5100	3.5550	3.4685	3.3970	3.2061	3.0500	2.9562	2.9741	3.1701
European Community	Euro	EUR	0.4977	0.5018	0.4819	0.4708	0.4767	0.4654	0.4566	0.4306	0.4090	0.3970	0.3995	0.4258
Fiji	Dollar	FJD	1.1813	1.1735	1.1546	1.1247	1.1252	1.0928	1.0530	0.9960	1.0038	0.9332	0.9440	1.0043
French Polynesia	Franc	XPF	59.5514	59.2887	58.0894	56.9809	57.2846	55.7870	54.5028	51.6807	48.8701	47.5262	47.7981	50.8586
Hong Kong	Dollar	HKD	6.0893	5.9976	5.9032	5.8403	5.4940	5.2138	4.6999	4.2733	4.4523	3.9944	3.9525	4.3424
India	Rupee	INR	31.0838	32.4468	32.1802	31.6983	30.2584	30.6742	29.2671	26.8990	27.4850	25.0582	25.5427	28.5071
Indonesia	Rupiah	IDR	7228.2350	7161.3175	7009.6375	6845.5400	6450.2150	6325.2900	6217.9350	6508.8275	6319.2450	5833.0150	6110.4000	6473.4150
Japan	Yen	JPY	80.1741	80.9513	76.2565	80.1639	77.3708	70.3834	60.6982	52.9417	51.8032	46.1988	50.1549	54.4176
Korea	Won	KOR	778.1300	799.6225	789.6625	755.6875	745.9000	768.6175	741.5625	790.6950	725.5650	705.6950	771.8850	779.7200
Kuwait	Dollar	KWD	0.2076	0.2043	0.2004	0.1984	0.1885	0.1789	0.1621	0.1502	0.1589	0.1505	0.1504	0.1635
Malaysia	Ringgit	MYR	2.4844	2.5119	2.4776	2.4349	2.3720	2.3165	2.1359	1.9928	2.0093	1.8569	1.8745	2.0480
Norway	Krone	NOK	3.9676	3.9067	3.8851	3.8216	3.8002	3.8382	3.8935	3.8444	4.0466	3.5249	3.5304	3.8337
Pakistan	Rupee	PKR	49.4873	51.7219	50.5604	52.3932	52.5033	51.4203	48.3871	43.6513	44.9358	40.2672	40.4391	44.5990
Papua New Guinea	Kina	PGK	2.1232	2.0603	1.9880	1.9319	1.8140	1.7061	1.5422	1.4088	1.5002	1.3607	1.3839	1.5756
Philippines	Peso	PHP	32.5483	33.1255	33.5303	33.2819	31.7859	31.1566	28.8916	26.8801	27.0445	23.8114	24.4801	27.0357

Country	Currency	Code	30-Apr-08	31-May-08	30-Jun-08	31-Jul-08	31-Aug-08	30-Sep-08	31-Oct-08	30-Nov-08	31-Dec-08	31-Jan-09	28-Feb-09	31-Mar-09
Singapore	Dollar	SGD	1.0611	1.0541	1.0347	1.0167	0.9964	0.9572	0.8883	0.8348	0.8267	0.7753	0.7831	0.8533
Solomon Islands	Dollar	SBD	5.9241	5.8750	5.7821	5.7375	5.3896	5.1270	4.6384	4.2035	4.5110	3.9770	3.9686	4.4715
South Africa	Rand	ZAR	6.0390	5.8441	6.0464	5.6287	5.4785	5.4886	5.7644	5.5201	5.2327	5.1558	5.0324	5.4406
Sri Lanka	Rupee	LKR	83.9713	82.4720	81.1160	80.2237	75.5070	72.0615	65.5367	60.3394	64.6329	58.4907	58.3540	64.0837
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	0.7971	0.8091	0.7806	0.7724	0.7720	0.7408	0.6885	0.6635	0.6173	0.5926	0.5936	0.6457
Taiwan	Dollar	TAI	23.8475	25.4325	24.8325	22.8150	22.1400	21.4575	19.7850	18.2975	18.9150	17.3550	17.7800	19.1050
Thailand	Baht	THB	24.5573	24.6974	24.9875	24.9481	23.6726	22.7531	20.7074	19.2574	19.7391	17.8310	18.1759	19.7628
Tonga	Paanga	TOP	1.4154	1.3760	1.3586	1.3461	1.3095	1.3041	1.2759	1.1758	1.2177	1.1011	1.2034	1.2158
United Kingdom	Pound	GBP	0.3962	0.3921	0.3833	0.3952	0.3808	0.3708	0.3578	0.3665	0.3925	0.3603	0.3561	0.3945
United States	Dollar	USD	0.7820	0.7691	0.7582	0.7487	0.7037	0.6704	0.6063	0.5515	0.5745	0.5151	0.5099	0.5605
Vanuatu	Vatu	VUV	73.5547	72.1113	70.9596	70.5461	69.1774	68.9111	67.7671	63.8255	64.5196	60.3849	60.0047	63.1403
Western Samoa	Tala	WST	1.9089	1.8829	1.8518	1.8430	1.7884	1.7919	1.6682	1.6238	1.6974	1.8682	1.5582	1.6276

### 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.

# OPERATIONAL STATEMENT

## OS 09/01: COMMISSIONER'S STATEMENT OF A MILEAGE RATE FOR EXPENDITURE INCURRED FOR THE BUSINESS USE OF A MOTOR VEHICLE

This statement may be cited as "Operational Statement 09/01: Commissioner's statement of a mileage rate for expenditure incurred for the business use of a motor vehicle".

### Introduction

All legislative references are to the Income Tax Act 2007.

Under section DE 3 a self-employed person may use one of three methods to calculate the proportion of business use of a motor vehicle, namely:

- actual records
- a logbook, or
- a mileage rate.

Section DE 12(3) requires that the Commissioner sets a mileage rate that taxpayers may use to calculate the expenditure or loss on a motor vehicle that represents the proportion of business use of a motor vehicle. This statement sets a mileage rate as required by section DE 12(3).

### Application

#### *Self-employed*

The mileage rate applies in respect of:

- self-employed taxpayers
- up to a maximum of 5,000 kilometres of work-related travel each year
- motor vehicles irrespective of engine size whether they are powered by petrol or diesel.

The mileage rate applies from the 2008–2009 income year.

The mileage rate does not apply in respect of motor cycles.

#### *Employee reimbursement*

The mileage rate may be used as a reasonable estimate by employers reimbursing employees for:

- business use of an employee's vehicle, and
- shareholder employees.

### Mileage Rate

Under section DE 12(3) the mileage rate set by this statement for motor vehicles is 70 cents per kilometre.

### Background (not part of the Operational Statement)

Section DE 12(3) requires that the Commissioner must from time to time set and publish a mileage rate.

The above rate is based on information obtained from a survey of the running costs of petrol and diesel vehicles across a range of engine sizes.

It includes the cost of repairs and maintenance, purchase prices and the cost of fuel (\$1.58 and \$0.98 per litre for 91 octane petrol and diesel respectively) and is based on 14,000 kilometres of travel per year.

It is noted that the price of fuel is only one component that is considered in the setting of the above mileage rate. Calculations show that fluctuations in the price of fuel have only a small influence on the overall mileage rate. Therefore, it will not be necessary to review this mileage rate each time there is a change in the price of fuel. However, Inland Revenue will continue to monitor fuel prices and issue a revised mileage rate where appropriate. Such a review will also be done at least once a year.

Based on this information, the Commissioner has arrived at a weighted average figure that applies in respect of both petrol and diesel motor vehicles.

### Alternative methods for the self-employed

Section DE 3 provides three methods for calculating the business use, namely actual records (section DE 5), a logbook (sections DE 6 to DE 11) and a mileage rate (section DE 12). Therefore those in self-employment may also use either of the following two methods, ie they may calculate their actual business-related expenditure or use the logbook method. If their business-related travel is over 5,000 kilometres then they must use one of these methods.

#### *Actual expenditure (section DE 5)*

Instead of using the above mileage rate a self-employed person may claim deductions for the actual expenditure they incur and an amount of depreciation loss for the business use of their motor vehicle. If you do this then you must make sure that you keep accurate records to determine the proportion of business use. Those records will need to show the reasons for and the distance of journeys by a motor vehicle for business purposes.

**Rob Wells**

LTS Manager, Technical Standards

### *Logbook method (sections DE 6 to DE 11)*

Alternatively, to establish the proportion of business use of a motor vehicle, a person may keep a logbook for a test period of at least 90 consecutive days.

The log book test period is used to establish the average proportion of travel by the vehicle for business purposes during the logbook term. Taxpayers may then apply that proportion for the logbook term (up to three years) to calculate the deduction for the expenditure that they incur and the amount of depreciation loss for the business use of the motor vehicle.

The logbook must record:

- the start and end of the 90 day test period; and
- the vehicle's odometer readings at the start and end of the test period; and
- the distance of each business journey; and
- the date of each business journey; and
- the reason for each business journey; and
- any other detail that the Commissioner may require.

### **Employee reimbursement**

Section CW 17(2) provides an exemption for an amount that an employer pays to an employee as reimbursement of expenditure incurred by the employee in connection with the employee's employment or service. Employers may reimburse the employee based on the actual expenditure incurred by that employee. Alternatively, section CW 17(3) provides that an employer may make a reasonable estimate of the amount of expenditure likely to be incurred by an employee or group of employees.

The Commissioner accepts that employers may regard the mileage rate set out above when reimbursing employees under section CW 17(2) as being a reasonable estimate under section CW 17(3).

### *Shareholder-employees*

Where shareholder-employees meet the employee criteria, they may be reimbursed using the mileage rate as a reasonable estimate.

## 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.

### VALUE OF GAIN IN KIND WHEN CALCULATING FIF INCOME OR LOSS WAS MARKET VALUE OF SHARES DISPOSED OF

<b>Case</b>	Govind Prasad Saha v Commissioner of Inland Revenue CA 617/2008
<b>Decision date</b>	13 March 2009
<b>Act</b>	Income Tax Act 1994, Foreign Investment Fund Rules
<b>Keywords</b>	Comparative value method, Forfeiture, FIF, Shares

#### Summary

The Commissioner treated the forfeiture of shares as a disposal at market value. Dr Saha maintained that the shares were not disposed of for gain; rather there was an adjustment to the original purchase price. The Court held that Dr Saha obtained a gain from the transfer of the shares to Cap Gemini, but it was a gain in kind and not in money. There was no evidence of the market value of the gain in kind but as it could not be less than the market value of the shares at the time of disposition, the market value of the shares was to be used.

#### Impact of decision

Where there is no valuation evidence of the market value of the gain derived in kind but if it is less than the market value of the shares at the time of disposition, this market value must be adopted in accordance with section CG 23(5) of the Income Tax Act 1994 (ITA).

#### Facts

This was an appeal against the decision of Simon France J delivered on 23 September 2008.

Dr Saha was a partner in Ernst & Young (EYNZ). In 2000, EYNZ sold a portion of its business to an overseas company, Cap Gemini. The then partners in EYNZ were paid by means of an allocation of shares in Cap Gemini. Part of the sale arrangements was that some EYNZ partners, including Dr Saha, would work for Cap Gemini for five years; and agreements were entered into to give effect to this commitment. The agreements included a share forfeiture regime, which was to apply if the partner stopped working for Cap Gemini before the five years was up. This is what happened with Dr Saha, and he was later required to return some of the shares he had received.

The share allocations and disposals were caught by the Foreign Investment Fund (FIF) Rules. Dr Saha chose to return his FIF income/losses under the comparative value method (section CG18 of the ITA) whereby if the value of a person's holding has increased during the course of a tax year, that increase will be treated as income, and if it has decreased it will be treated as a deductible loss. In the 2001 tax year Dr Saha applied the formula in section CG 18 of the ITA to the acquisition of his parcel of shares, sales he had made, and the market value of the shares at the time of acquisition and at year's end. Because the value of Cap Gemini shares had dropped over the year, he was able to claim a loss of \$1,210,651.

During the 2002 year, Dr Saha forfeited 2095 shares as he had left the employment of Cap Gemini. The Commissioner and Dr Saha disagreed as to the treatment of these shares in the formula in section CG 18 of the ITA. The Commissioner treated the disposal of the forfeited shares as a gain at market value to Dr Saha. Dr Saha maintained that the forfeiture operated as a purchase price adjustment.

In the High Court, Simon France J treated the forfeiture of shares as an adjustment to the original purchase price. However, he concluded that because the shares were disposed of for nil consideration, section CG 23(5) of the ITA deemed that disposal to be at market value.

## Decision

The Court of Appeal focused on the settlement deed agreed to between Dr Saha and Cap Gemini upon termination of his employment, rather than the deed of covenant; the settlement deed effected a new contractual arrangement between the parties.

Clause 4 of the settlement deed provided:

CGE&EYNZ and Cap Gemini agree that 50% of Unreleased Transaction Shares (being 2095 shares) will not be forfeited. The remaining Unreleased Transaction Shares will be transferred to Cap Gemini or as it directs. The Deed of Covenant will remain in full force and effect

In respect of the matters it covered, the settlement deed was expressed to supersede all previous agreements and understandings between the parties and recorded various agreements to end the employment dispute between them.

The Court stated that Dr Saha agreed to relinquish half of his unreleased transaction shares as part of his side of the bargain. The shares were not forfeited but transferred as part of an overall settlement of his employment dispute, and in return Dr Saha received certain benefits such as the freedom to undertake other employment.

In reaching its decision, the Court took a different line of reasoning from the High Court and considered the position was covered by section CG 14(2) of the ITA:

**CG 14(2) [Non-monetary gain]** For the purposes of the FIF rules, where any gain is derived in kind and not in money, the amount of gain shall be equal to the market value of the gain derived in kind, measured at the time derived.

The Court held that Dr Saha did obtain a gain from the transfer of the shares to Cap Gemini, but it was a gain in kind and not in money. There was no valuation evidence of the market value of the gain but if it was less than the market value of the shares at the time of disposition, section CG 23(5) of the ITA deemed that consideration received was the market value of the shares. Accordingly, the Court held that it was the market value of the shares that was to be applied in the formula in section CG 18 of the ITA.

## STANDARD PRACTICE STATEMENTS

These statements describe how the Commissioner will, in practice, exercise a discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

### WITHDRAWAL OF INV-300 ACCEPTANCE OF LATE OBJECTIONS UNDER SECTION 126 OF THE TAX ADMINISTRATION ACT 1994

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Inland Revenue has decided to withdraw the Standard Practice Statement (SPS) INV-300 Acceptance of late objections under section 126 of the Tax Administration Act 1994 from 1 April 2009. The withdrawal is due to the introduction of the disputes resolution process applicable to assessments made after 1 October 1996.

Two SPSs are available on the current disputes resolution process, namely SPS 08/01 Disputes resolution process commenced by the Commissioner of Inland Revenue and SPS 08/02 Disputes resolution process commenced by a taxpayer. These SPSs provide some guidance on disputes initiated outside the response period.

**Rob Wells**

LTS Manager, Technical Standards



## QUESTIONS WE'VE BEEN ASKED

### QB 09/02: HOLIDAY HOUSES — INCOME TAX TREATMENT

All references are to the Income Tax Act 2007.

#### Question

We have been asked about the correct income tax treatment when an individual owns a holiday house and rents it out from time to time.

#### Answer

The following answer necessarily sets out general principles only. The facts of particular cases always need to be considered carefully, and it may be necessary to obtain advice from a tax advisor.

#### *Rental income*

Any rental income received is taxable under section CC 1 and should be returned in the owner's tax return for the income year in which it is derived. This legislative provision taxes any rental income derived from the leasing or licensing of land (and land includes any house on that land), regardless of whether the activity amounts to a business or whether market rates are charged.

#### *Deductibility of expenses*

Whether any expenses incurred in owning the holiday house are deductible, depends on their connection with the income earned. Under section DA 1, a person is allowed a deduction for an amount of expenditure or loss (including an amount of depreciation) to the extent to which the expenditure or loss is incurred in deriving their assessable income. However, a person is denied a deduction to the extent to which the expenditure is private in nature: section DA 2(2). Deductions are also not available for costs that are capital in nature: section DA 2(1).

In the case of a holiday house that is rented out for only some of the income year, the owner's ability to deduct expenses such as interest, insurance, depreciation, and rates depends on the specific circumstances of the case and whether the expenses have sufficient connection with the earning of rental income.

If the holiday house is rented to a tenant on an arm's length basis for a long-term stay, then the owner is generally able to apportion those costs on a time basis. For example, if the holiday house is rented for six months of the year, then any interest charges that relate to that period and the depreciation costs, insurance, and rates that relate to that period are deductible.

If the holiday house is available for rent for only some parts of a year, the ability to deduct a proportion of those expenses depends on the degree of connection the expenses have with the earning of income (as compared with the private ownership of the holiday house).

If a holiday house is essentially available only to the owner and their family and friends, so it is available to rent to third parties on only a limited basis, then Inland Revenue will apply the following principles.

- The owner is not entitled to claim a deduction for expenses incurred for the periods the holiday house is not rented.
- If the holiday house is rented out on an arm's length basis, (unless there are particular circumstances that would suggest the holiday house is not being genuinely used as an income-earning asset), an owner can claim a proportion of the expenses incurred equal to the time that the holiday house was actually rented (unless the nature of the expenses are such that the taxpayer can show that a different basis of apportionment would be appropriate, for example, a power bill that relates to actual useage may be more appropriately spread over the days that the property was actually occupied). If one or more parts of the holiday house are not available to be used by the person renting the holiday house (eg, a room is used to store the owner's personal possessions and it is locked so only the owner can access it), then a deduction is available only for the proportion of the holiday house that is available for use by the person renting the holiday house.
- In cases where a holiday house is used by friends or family who are not charged rent, but instead make a minor contribution towards the owner's expenses, this payment will generally not be rental income. Consequently, the owner will not be required to return the amount received, but nor will any deductions be allowed for the corresponding period. If a holiday house is rented for less than a full market rental, such as to family and friends, the Commissioner will accept a deduction for that period up to the amount of rent received for that period.

Evidence of a holiday house being available for rent generally needs to be more than a mere statement of its availability, sporadic or limited advertising, or advertising

that is of a nature that is unlikely to attract many customers. Rather, there must be evidence of active and regular marketing of the holiday house at market rates and of the availability of the holiday house at times and for periods that demonstrate the holiday house is earning rental income or is genuinely available to earn rental income. Therefore, any expenditure incurred, which is potentially deductible, is not denied because it is private.

If a holiday house is available for only limited and/or undesirable periods and/or at non-competitive rates, such factors tend to indicate that the expenditure is not incurred in deriving assessable income.

In terms of meeting the statutory test, if the holiday house has mixed uses, the ability to deduct expenditure comes down to a case-by-case assessment that weighs all the evidence. Objective evidence is required that the holiday house is genuinely available for rent and that there is a real prospect of occupancy and rental income being earned. This needs to be considered separately in relation to each year (ie, just because a holiday house has been genuinely available for rent and sufficiently marketed and/or actually rented in one income year, does not mean a deduction will be automatically allowed in subsequent income years).

#### Example 1

A holiday house in the Coromandel has earned significant rental income after active marketing at competitive rates in newspapers and on internet sites for almost all of the year. However, the owner's family uses the holiday house for two weeks over the Christmas/New Year period. Even though, in this case, the holiday house may not be actually rented out for every day of the remaining 50 weeks, provided it is available for rent during those 50 weeks, it is generally possible to deduct expenses for that period (ie, for 50 weeks out of the full year). Any expenses that are variable in nature (ie, incurred when the property is occupied) should be spread on an appropriate basis.

#### Example 2

A holiday house in Mount Maunganui is used by its owner and her friends and family for most of the year. However, the holiday house is rented out to a third party for two weeks over the Christmas/New Year period for \$3,000. In this case, the owner may deduct expenses (eg, interest charges, depreciation costs, insurance, and rates) for the proportion of the year that the holiday house was actually rented out (ie, for two weeks out of 52 weeks). Any expenses that are variable in nature (ie, incurred when the property is occupied) should be spread on an appropriate basis.

#### Example 3

A holiday house in Queenstown is available to be rented for eight weeks a year when it is not being used by the owner. For four of those weeks it is rented to members of the public for its market rental of \$600 per week. For the remaining four weeks it is rented out to a family friend. The friend is charged "mates rates" of \$350 per week. In this case, the Commissioner would accept the owner deducting expenses (eg, interest charges, depreciation costs, insurance, and rates) for the proportion of the year that the holiday house was rented to the friend (ie, for four weeks out of 52 weeks) up to a maximum of \$1400 (the amount of rent received). Full deductibility would be allowed for the remaining four weeks that the property is rented out.

#### Example 4

A holiday house in Papamoa is used by the owner for most of the year. A market rental for the property would be approximately \$450 per week. The holiday house is made available for use by a family friend for three weeks during summer. The friend is not charged for staying at the property, but chooses to make a contribution of \$200 to the owner towards the cost of power, water, etc for the three weeks. In this case, the amount received is not income of the owner and, consequently, does not need to be returned to Inland Revenue (nor would any tax return need to be filed – unless the owner otherwise had to file one). Similarly, no deductions are available to the owner.

#### Item provides general guidance only

This item provides general guidance only. This item also does not consider any possible Goods and Service Tax consequences of renting out a holiday house. Individual circumstances are inevitably different. The Inland Revenue Department suggests that anyone considering purchasing a holiday house and intending to rent it, seeks advice from a tax advisor.

## REGULAR CONTRIBUTORS TO THE TIB

### Office of the Chief Tax Counsel

The Office of the Chief Tax Counsel (OCTC) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The OCTC also contributes to the “Questions we’ve been asked” and “Your opportunity to comment” sections where taxpayers and their agents can comment on proposed statements and rulings.

### Legal and Technical Services

Legal and Technical Services contribute the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters.

Legal and Technical Services also contribute to the “Your opportunity to comment” section.

### Policy Advice Division

The Policy Advice Division advises the government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as the Orders in Council.

### Litigation Management

Litigation Management manages all disputed tax litigation and associated challenges to Inland Revenue’s investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

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