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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**. 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** or post them to:

Public Consultation
Office of the Chief Tax Counsel
Inland Revenue
PO Box 2198
Wellington 6140

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/** or call the Team Manager, Technical Services Unit on 04 890 6143.

Ref	Draft type/title	Description/background information	Comment deadline
QWB0102	Income tax – deductibility of expenditure on inlet race to dairy shed	This item updates and replaces the item "Inlet Race to Milking Shed, Renewed and Extended" published in *Public Information Bulletin* No 22 (May 1965), at page 9. It is a requirement that any items that the PIB Review identifies as still relevant be republished. This QWBA sets out the Commissioner's view on the deductibility of expenditure on the construction of an inlet race to a dairy shed.	
ED0141	General depreciation determination: Fertiliser storage facilities and remedial matters relating to the depreciation of buildings and grandparented structures	This draft determination proposes to add a new asset class to the "Building and structures" asset category for fertiliser storage facilities. In addition, this draft determination proposes to set the depreciation rates that apply to assets, not previously regarded as buildings, but which now come within the meaning of "buildings" under Interpretation Statement IS 10/02: *Meaning of "buildings" in the depreciation provisions*. It also clarifies the rates that apply to grandparented structures.	31 January 2012
ED0142	Draft depreciation determination: Depreciation rate for Dairy Plant Dry Store Buildings	This draft depreciation determination reviews the estimated useful life and depreciation rate applicable to dry store buildings used in the "Dairy Plant" industry. It proposes to set the useful life of an on-site dry store building, built adjacent to, and integral to, a powder dryer building at 33.3 years.	31 January 2012

Correction – to TIB Vol 23, No 9 (November 2011)

In the second example on page 87, the interim payment should be $3,000 and not $3,300.

IN SUMMARY

Legislation and determinations

Determination DEP79: Remedial matters relating to the depreciation of buildings 3

This depreciation determination amends the depreciation rate to 0% for generic building assets that have an estimated useful life of 50 years. Also some assets that were not previously regarded as buildings will now come within the meaning of "buildings".

Depreciation determination DEP80: Residential rental property chattels 6

This depreciation determination deletes the old asset classes in the "Residential rental property chattels" industry category and inserts new asset classes, estimated useful lives and depreciation rates.

Foreign currency amounts – conversion to New Zealand dollars 8

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 six months ending 30 September 2011.

New legislation

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Family tax credit raised for under 16s

Three prescribed family tax credit amounts for children under 16 have been increased for inflation. In conjunction with this, the Working for Families abatement rate increases from 20 cents to 21.25 cents and the abatement threshold decreases from $36,827 to $36,350.

Minimum family tax credit raised

The net income level guaranteed by the minimum family tax credit will rise from $22,204 to $22,568 a year from 1 April 2012.

Canterbury earthquake – information sharing

Temporary information-sharing measures introduced to help support those affected by the Canterbury earthquakes have been extended for a further 12 months.

Canterbury earthquake – remission of use-of-money interest

Inland Revenue's ability to remit use-of-money interest charged when a person has been physically prevented from making a payment due to the Canterbury earthquake has been extended for a further 12 months.

Student Loan Scheme – volunteer exemption

The Student Loan Scheme (Charitable Organisations) Regulations 2011 re-enact the current list of charitable organisations specified for the purposes of the Student Loan Scheme Act 1992 under the Student Loan Scheme Act 2011.

Questions we've been asked

QB 11/03: Income tax – look-through companies and interest deductibility 16

This question we've been asked examines the effect of the tax transparency provisions set out at section HB 1(4) of the Income Tax Act 2007. It confirms that interest deductions previously allowed will continue to be allowed where a loss-attributing qualifying company becomes a look-through company (subject to the limitations on deductions in sections HB 11 and 12).

Legal decisions – case notes

Commissioner's decision to decline instalment arrangement upheld 20

The Court held that it would have been wrong for it to grant a remedy to the plaintiff (even if a reviewable error had been made) because the plaintiff misrepresented her position and the facts upon which the instalment arrangement proposal relied were no longer applicable. The Court further held that the Commissioner had taken into account relevant factors and that his decision to decline the plaintiff's instalment arrangement proposal was not unreasonable or irrational.

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A taxpayer's application for increased costs based on its Calderbank offer failed because its rejection was justified.

Voting interest requires registered shareholding 21

The group loss offset provisions require that for a person to have a voting interest, their shares must be registered on the company's share register.

Whether sale of property was of tenanted property or shares 22

The Court of Appeal rejected an appeal against the decision of the High Court that the sale of the property by the taxpayer was a sale of shares.

No deemed acceptance of a late NOPA 23

The usual dispute resolution procedures under Part 4A of the Tax Administration Act 1994 (including deemed acceptance under section 89H(2)) do not apply to a late Notice of Proposed Adjustment (NOPA) where no "exceptional circumstance" is raised in accordance with section 89K.

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 DEP79: REMEDIAL MATTERS RELATING TO THE DEPRECIATION OF BUILDINGS DEPRECIATION DETERMINATION NUMBER 79

Note to determination DEP79

The Taxation (Budget Measures) Act 2010, enacted on 27 May 2010, introduced significant changes to the depreciation regime applying to buildings. With effect from the start of the 2012 income year, the depreciation rate of buildings with an estimated useful life of 50 years or more was changed to 0%. The changes were intended to make New Zealand's tax rules more neutral by recognising that allowing depreciation on buildings with long lives, and the application of depreciation loading on certain assets, provides tax depreciation rates in excess of true economic depreciation rates.

As a result of this legislation, it is necessary to amend the depreciation rate applicable to all of the generic building assets that have an estimated useful life of 50 years to 0%. These are *Buildings (default class)*, *Buildings with reinforced concrete framing*, *Buildings with steel or steel and timber framing* and *Buildings with timber framing*.

On 30 April 2010 the Commissioner issued Interpretation Statement IS 10/02: *Meaning of "building" in the depreciation provisions* ("IS 10/02"). IS 10/02 concluded that essentially a building is a structure that has walls and a roof, is of considerable size, is meant to last a considerable period of time and is generally fixed to the land on which it stands; a building is a structure that can function independently of any other but is not necessarily a physically separate structure.

The effect of IS 10/02 is that some assets that were not previously regarded as buildings will now come within the meaning of "buildings" and the depreciation rate applicable to them is to be amended to 0%.

Carparking buildings and carparking pads

Carparking buildings were previously regarded as "structures" for depreciation purposes. Inland Revenue acknowledges that many buildings provide carparking facilities for owners/occupiers. For the purposes of this determination, carparking buildings are buildings that are built and used predominately for carparking where the carparking facilities are the main function of the building.

The same treatment cannot be given to carparking pads, which are more in the nature of hardstanding. The depreciation rate available on this type of asset therefore remains unchanged.

In view of this change in treatment, the current reference to *Carparks (buildings and pads)* has been removed from the *Building and structures* asset category and replaced with two new asset classes, *Carparking buildings* and *Carparking pads*.

Buildings (portable) and site huts

A further conclusion of IS 10/02 was that some items within existing asset classes could be either buildings or structures. This is on the basis that, while some of the items may have the appearance of a building, be of a considerable size and are attached to the land, other items may either not look like a building (they will look more like a container or some other structure) and/or may be too small and/or portable to be considered a building. Generally, a structure is considered to be too small to be a building when it is able to be moved without mechanical assistance (such as a crane or hiab) and it is not attached to the land. Due to their varying appearance, size and portability, buildings (portable) and site huts could potentially fall within this category.

The treatment of those portable buildings that have the appearance of a building, are of sufficient size and are sufficiently attached to the land so that they fall within the definition of a "building" remains unchanged. Structures that are too small, are sufficiently easy to relocate and/or do not have the appearance of a building will be treated as *portable huts (not buildings)*.

By their very nature, site huts will be either *portable huts (not buildings)* or *buildings (portable)*, depending on their appearance, size and portability. Because of this,

the current reference to *Site huts* in the *Contractors, builders and quarrying* industry category has been removed and replaced with *Buildings (portable)* and *Portable huts (not buildings)*.

Note that despite both *Buildings (portable)* and *Portable huts (not buildings)* having an estimated useful life of 12.5 years, different rates of depreciation apply. The reason for this is the varying formulae used to calculate economic rates contained in subpart EE of the Act.

Grandparenting provisions

On 30 July 2009 the Minister of Revenue announced "grandparenting" provisions for certain items of depreciable property acquired on or before 30 July 2009. This treatment was confirmed by the Taxation (Budget Measures) Act 2010. As carparking buildings and site huts are covered by this grandparenting provision they have been added to this Determination. Despite these assets now coming within the meaning of "buildings" those assets that were acquired or a binding contract was entered into for their purchase or construction, on or before 30 July 2009, will continue to be treated as structures for depreciation purposes.

Grandstands

A further example of assets that may or may not be a building are grandstands. For example, stand-alone tiered seating is a structure, while grandstands that incorporate other facilities, such as changing areas, toilets or storage areas, are likely to be buildings (that have seating attached to them). To take account of this difference, it is proposed to include a new asset category *Tiered seating (not part of a building)* for those grandstands that are structures and to amend the depreciation rate of *Grandstands* to 0%.

GENERAL DEPRECIATION DETERMINATION DEP79

This determination may be cited as "Determination DEP79: Tax Depreciation Rates General Determination Number 79".

1. Application

This determination applies to taxpayers who own items of depreciable property of the kinds listed in the table below.

This determination applies for the 2012 and subsequent income years.

2. Determination

Pursuant to section 91AAF of the Tax Administration Act 1994 I set in this determination the economic rates to apply to the kinds of items of depreciable property listed in the table below by:

- deleting from the "Building and structures" asset category the general asset classes, estimated useful lives and diminishing value and straight-line depreciation rates listed below:

Building and structures	Estimated useful life (years)	DV rate (%)	SL rate (%)
Buildings (default class)	50	3	2
Buildings with reinforced concrete framing	50	3	2
Buildings with steel or steel and timber framing	50	3	2
Buildings with timber framing	50	3	2
Carparks (buildings and pads)	50	4	3
Grandstands	50	3	2

- deleting from the "Contractors, builders and quarrying" industry category the general asset class, estimated useful life and diminishing value and straight-line depreciation rates listed below:

Contractors, builders and quarrying	Estimated useful life (years)	DV rate (%)	SL rate (%)
Site huts	12.5	16	10.5

- adding into the "Building and structures" asset category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Building and structures	Estimated useful life (years)	DV rate (%)	SL rate (%)
Buildings (default class)	50	0	0
Buildings with reinforced concrete framing	50	0	0
Buildings with steel or steel and timber framing	50	0	0
Buildings with timber framing	50	0	0
Carparking buildings	50	0	0
Carparking pads	50	4	3
Carparking buildings acquired, or a binding contract entered into for the purchase or construction of the building on or before 30 July 2009	50	4	3
Grandstands	50	0	0
Tiered seating (not part of a building)	50	4	3
Portable huts (not buildings)	12.5	16	10.5

- adding into the "Contractors, builders and quarrying" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Contractors, builders and quarrying	Estimated useful life (years)	DV rate (%)	SL rate (%)
Buildings (portable)	12.5	13.5	8
Portable huts (not buildings)	12.5	16	10.5
Site huts acquired, or a binding contract entered into for the purchase or construction of the building on or before 30 July 2009	12.5	16	10.5

3. Interpretation

In this determination, unless the context otherwise requires, words and terms have the same meaning as in the Income Tax Act 2007 and the Tax Administration Act 1994.

This determination is signed on 21 October 2011.

Rob Wells
LTS Manager, Technical Standards

DEPRECIATION DETERMINATION DEP80: RESIDENTIAL RENTAL PROPERTY CHATTELS

Note to determination DEP80

Following the issue of Interpretation Statement 10/01: *Residential rental properties – Depreciation of items of depreciable property* ("IS 10/01") in *Tax Information Bulletin* Vol 22, No 4 (May 2010) the Commissioner has issued a general depreciation determination to provide a new list for the "Residential rental property chattels" industry category. The list is consistent with the Commissioner's position set out in IS 10/01 and includes items of depreciable property that are commonly found in residential properties.

Note: Some of these items cost less than $500.00 and under section EE 38 of the Income Tax Act 2007 low-cost items (not part of any other property) may be treated as an expense item rather than separate depreciable property. Other items not common to residential rental properties have been removed but taxpayers may use a depreciation rate for a similar item in another industry or asset category. For example, depreciation rates for spa pools/saunas that are listed in the "Leisure" industry category may be used.

GENERAL DEPRECIATION DETERMINATION DEP80

1. Application

This determination applies to taxpayers who own depreciable property of the kind listed in the table below.

This determination applies from 1 April 2011, to the 2012 and subsequent income years.

2. Determination

Pursuant to section 91AAF of the Tax Administration Act 1994 I set in this determination the economic rates to apply to the kind of items of depreciable property listed in the table below by:

- deleting from the "Residential rental property chattels" industry category all the asset classes, estimated useful lives and depreciation rates listed under that category;
- inserting into the "Residential rental property chattels" industry category, the following asset classes, estimated useful lives, diminishing value depreciation rates and straight line equivalent depreciation rates listed below:

Asset class	Estimated useful life (years)	DV rate (%)	SL rate (%)
Chattels (default class)	5	40	30
Air conditioners and heat pumps (through wall or window type)	10	20	13.5
Air ventilation systems (in roof cavity)	10	20	13.5
Alarms (burglar/smoke, wired or wireless)	6.66	30	21
Appliances (small)	4	50	40
Awnings	10	20	13.5
Bedding	3	67	67
Blinds	8	25	17.5
Carpets	8	25	17.5
Clotheslines	8	25	17.5
Crockery	3	67	67
Curtains	8	25	17.5
Cutlery	3	67	67
Dehumidifiers (portable)	4	50	40
Dishwashers	6.66	30	21
Drapes	8	25	17.5
Dryers (clothes, domestic type)	6.66	30	21
Freezers (domestic type)	8	25	17.5
Furniture (loose)	10	20	13.5
Glassware	3	67	67
Heaters (electric)	3	67	67
Heaters (gas, portable and not flued)	5	40	30
Lawn mowers	4	50	40
Light shades/fashion items affixed to a standard light fitting*	10	20	13.5

* Light fittings are connected to the electrical wiring and part of a residential rental building and without the function of lighting would not be considered complete.

Asset class	Estimated useful life (years)	DV rate (%)	SL rate (%)
Linen	3	67	67
Mailboxes	15	13	8.5
Microwave ovens	4	50	40
Ovens	8	25	17.5
Refrigerators (domestic type)	8	25	17.5
Satellite receiving dishes	12.5	16	10.5
Stereos	5	40	30
Stoves	8	25	17.5
Televisions	5	40	30
Utensils (including pots and pans)	3	67	67
Vacuum cleaners (domestic type)	3	67	67
Washing machines (domestic type)	6.66	30	21
Waste disposal units (domestic type)	8	25	17.5
Water heaters (heat pump type)	10	20	13.5
Water heaters (over-sink type)	10	20	13.5
Water heaters (other eg, electric or gas hot water cylinders)	15.5	13	8.5
Water heaters (solar type)	10	20	13.5

3. Interpretation

In this determination, unless the context otherwise requires, words and terms have the same meaning as in the Income Tax Act 2007 and the Tax Administration Act 1994.

This determination is signed on 10 November 2011.

Rob Wells
LTS Manager, Technical Standards

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 six months ending 30 September 2011.

The Income Tax Act 2007 ("2007 Act") requires foreign currency amounts to be converted into New Zealand dollars applying one of the following methods:

- actual rate for the day for each transaction (including close of trading spot exchange rate on the day), or
- rolling 12-month average rate for a 12-month accounting period or income year (see the table **Currency rates 6 months ending 30 September 2011 – rolling 12-month average**), or
- mid-month actual rate as the basis of the rolling average for accounting periods or income years greater or lesser than 12 months (see the table **Currency rates 6 months ending 30 September 2011 – mid-month actual**).

Legislation enacted in September 2010 with effect from 1 April 2008 permits the Commissioner to set currency rates and approve methods of calculating exchange rates. The Commissioner can set rates for general use by taxpayers or for specific taxpayers. The Commissioner's ability to set rates and approve methods applies in all circumstances, ie, where the Act does not contain a specific currency conversion rule (sections YF 1(5) and (6), or in circumstances where the Act provides a rate or method for currency conversion (section YF 2)).

Inland Revenue uses wholesale rates from Bloomberg for rolling 12-month average, mid-month actual and end of month. These rates are provided in three tables.

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: All section references relate to the Income Tax Act 2007.

Actual rate for the day for each transaction

The actual rate for the day for each transaction can be used in the following circumstances:

- Where the 2007 Act does not provide a specific currency conversion rule, then foreign currency amounts can be converted by applying the close of trading spot exchange rate on the date that the transaction which is required to be measured or calculated occurs (section YF 1(2)).
- Where a person chooses to use the actual rate for the day of the transaction when calculating their FIF income or loss when applying either: the comparative value method, fair dividend rate method, deemed rate of return method or the cost method (section EX 57(2)(a)).
- Where a person chooses to use the close of trading spot exchange rate to convert foreign income tax paid by a CFC (section LK 3(a)).

Unless the actual rate is the 15th or the last day of the month, these rates are not supplied by Inland Revenue.

The table **Currency rates 6 months ending 30 September 2011 – month end** provides exchange rates for the last day of the month. These are provided for convenience to assist taxpayers who may need exchange rates on those days.

Currency rates 6 months ending 30 September 2011 – rolling 12-month average table

This table is the average of the mid-month exchange rate for that month and the previous 11 months, ie, the 12-month average. This table should be used where the accounting period or income year encompasses 12 complete months.

This table can be used to convert foreign currency amounts to New Zealand dollars for:

- FIF income or loss calculated under the accounting profits method (section EX 49(8)); comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57)
- branch equivalent income or loss calculated under the CFC and FIF rules (section EX 21(4)) for accounting periods of 12 months
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under section LK 3(b) for accounting periods of 12 months.

Currency rates 6 months ending 30 September 2011 – mid-month actual table

This table sets out the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the preceding working day on which they were quoted. This table can be used as the basis of the rolling average where the accounting period or income year is less than or greater than 12 months (see Example 4). You can also use the rates from this table as the actual rate for any transactions arising on the 15th of the month.

This table can be used as the basis of the rolling average for calculating:

- branch equivalent income or loss calculated under the CFC or FIF rules (section EX 21(4)) for accounting periods of less than or greater than 12 months
- a person's FIF income or loss under: the comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57(2)(b)) for accounting periods or income years of less than or greater than 12 months
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under section LK 3(b) for accounting periods of less than or greater than 12 months.

Example 1

A taxpayer with a 30 September balance date purchases shares in a Philippine company (which is a FIF but does produce a guaranteed yield) on 7 September 2011. Its opening market value on 1 October 2011 or its closing market value on 30 September 2011 is PHP 350,000. Using the comparative value method and applying the actual rate for the day (section EX 57(2)(a)), the opening market value is converted as follows:

PHP 350,000 ÷ 33.5621 = $10,428.43

(In this example, the rate selected is the month-end rate for September 2011 for PHP. Refer to the table "Currency rates 6 months ending 30 September 2011 – month end".)

Example 2

A CFC resident in Hong Kong has an accounting period ending on 30 June 2011. Branch equivalent income for the period 1 July 2010 to 30 June 2011 is 200,000 Hong Kong dollars (HKD), which converts to:

HKD 200,000 ÷ 5.8956 = $33,923.60

(In this example, the rate selected is the rolling 12-month average rate for June 2011 for HKD. Refer to the table "Currency rates 6 months ending September 2011 – rolling 12-month average".)

Example 3

A resident individual with a 30 September 2011 accounting period acquires a FIF interest in a Japanese company on 1 October 2010 for 10,500,000 yen. The interest is sold in September 2011 for 10,000,000 yen. Using the comparative value method and applying section EX 57(2)(b), these amounts are converted as:

JPY 10,500,000 ÷ 63.5987 = $165,097.71

JPY 10,000,000 ÷ 63.5987 = $157,235.92

(In this example, the rolling 12-month rate for September 2011 has been applied to both calculations.)

Example 4

A CFC resident in Singapore was formed on 21 April 2011 and has a balance date of 30 September 2011. During the period 1 May 2011 to 30 September 2011, branch equivalent income of 500,000 Singaporean dollars was derived. For the conversion to New Zealand dollars the taxpayer chooses the method set out in section EX 21(4)(b).

1. Calculating the average monthly exchange rate for the complete months May–September 2011:

   0.9805 + 0.9986 + 1.0310 + 1.0004 + 1.0228 = 5.0333

   5.0333 ÷ 5 = 1.0067
2. Round exchange rate to four decimal places: 1.0067
3. Conversion to New Zealand currency:

   SGD 500,000 ÷ 1.0067 = $496,672.30

(In this example, the rates are from the table "Currency rates 6 months ending September 2011 – mid-month actual", from May to September 2011 inclusive for SGD.)

Currency rates 6 months ending 30 September 2011 – rolling 12-month average

Currency	Code	15/04/2011	15/05/2011	15/06/2011	15/07/2011	15/08/2011	15/09/2011
Australia Dollar	AUD	0.7778	0.7733	0.7696	0.7670	0.7672	0.7687
Bahrain Dinar	BHD	0.2800	0.2825	0.2859	0.2895	0.2935	0.2964
Britain Pound	GBH	0.4739	0.4738	0.4760	0.4803	0.4850	0.4894
Canada Dollar	CAD	0.7493	0.7519	0.7579	0.7620	0.7687	0.7737
China Yuan	CNY	4.9608	4.9850	5.0233	5.0658	5.1092	5.1367
Denmark Kroner	DKK	4.1575	4.1493	4.1518	4.1732	4.1876	4.2073
Euporean Community Euro	EUR	0.5580	0.5569	0.5570	0.5598	0.5618	0.5644
Fiji Dollar	FJD	1.3909	1.3920	1.3951	1.3999	1.4069	1.4126
French Polynesia Franc	XPF	66.5427	66.4175	66.4518	66.7837	67.0187	67.3307
Hong Kong Dollar	HKD	5.7745	5.8257	5.8956	5.9724	6.0558	6.1171
India Rupee	INR	33.8252	34.1045	34.4009	34.7007	35.0971	35.5351
Indonesia Rupiah	IDR	6,664.4867	6,687.9642	6,730.6333	6,782.5192	6,847.1458	6,904.0375
Japan Yen	JPY	63.0668	62.9183	63.0337	63.2974	63.5605	63.5987
Korea Won	KOR	851.6482	855.5396	856.9858	858.7420	863.6626	869.4030
Kuwait Dinar	KWD	0.2106	0.2116	0.2131	0.2149	0.2169	0.2182
Malaysia Ringit	MYR	2.3182	2.3271	2.3405	2.3578	2.3783	2.4005
Norway Krone	NOK	4.4129	4.4104	4.4129	4.4300	4.4416	4.4527
Pakistan Rupee	PKR	63.4211	64.0536	64.8506	65.6810	66.6257	67.4232
Phillipines Peso	PHP	32.9765	33.1519	33.3876	33.5943	33.8731	34.1519
PNG Kina	PGK	1.9811	1.9743	1.9646	1.9550	1.9507	1.9395
Singapore Dollar	SGD	0.9800	0.9799	0.9821	0.9845	0.9878	0.9915
Solomon Islands Dollar*	SBD	5.8130	5.8494	5.8758	5.9192	5.9755	6.0031
South Africa Rand	ZAR	5.2959	5.3117	5.3291	5.3550	5.4159	5.4906
Sri Lanka Rupee	LKR	83.0220	83.4854	84.2463	85.0753	86.0373	86.7825
Sweden Krona	SEK	5.1432	5.1065	5.0902	5.1059	5.1123	5.1322
Swiss Franc	CHF	0.7400	0.7318	0.7231	0.7172	0.7098	0.7084
Taiwan Dollar	TAI	22.6958	22.7105	22.7719	22.8525	22.9624	23.0611
Thailand Baht	THB	22.9604	23.0395	23.2050	23.3627	23.5580	23.7610
Tonga Pa'anga*	TOP	1.3853	1.3846	1.3867	1.3855	1.3818	1.3782
United States Dollar	USD	0.7427	0.7494	0.7584	0.7680	0.7786	0.7863
Vanuatu Vatu	VUV	72.3607	72.4041	72.4929	72.7303	73.1393	73.4138
West Samoan Tala*	WST	1.7613	1.7637	1.7669	1.7721	1.7816	1.7896

Notes to table:

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The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

Currency rates 6 months ending 30 September 2011 – mid-month actual

Currency	Code	15/04/2011	15/05/2011	15/06/2011	15/07/2011	15/08/2011	15/09/2011
Australia Dollar	AUD	0.7566	0.7447	0.7627	0.7934	0.7927	0.7977
Bahrain Dinar	BHD	0.3014	0.2968	0.3040	0.3186	0.3140	0.3106
Britain Pound	GBH	0.4897	0.4860	0.4981	0.5237	0.5081	0.5214
Canada Dollar	CAD	0.7669	0.7629	0.7897	0.8062	0.8155	0.8104
China Yuan	CNY	5.2200	5.1200	5.2300	5.4600	5.3200	5.2600
Denmark Kroner	DKK	4.1323	4.1578	4.2438	4.4547	4.2953	4.4217
Euporean Community Euro	EUR	0.5541	0.5577	0.5689	0.5972	0.5766	0.5937
Fiji Dollar	FJD	1.4051	1.3902	1.4247	1.4813	1.4579	1.4590
French Polynesia Franc	XPF	66.1217	66.5970	67.9117	71.2747	68.8180	70.7960
Hong Kong Dollar	HKD	6.2155	6.1199	6.2841	6.5897	6.4874	6.4174
India Rupee	INR	35.4414	35.3224	36.0989	37.6141	37.7635	39.1794
Indonesia Rupiah	IDR	6922.7600	6736.9900	6892.5800	7218.2000	7110.0700	7239.8000
Japan Yen	JPY	66.4650	63.6180	65.3040	66.9150	63.9870	63.1880
Korea Won	KOR	870.5069	857.4841	876.6095	893.8417	898.5968	916.8085
Kuwait Dinar	KWD	0.2210	0.2170	0.2219	0.2317	0.2268	0.2266
Malaysia Ringit	MYR	2.4167	2.3639	2.4462	2.5427	2.4817	2.5458
Norway Krone	NOK	4.2953	4.3831	4.4792	4.6977	4.5265	4.5867
Pakistan Rupee	PKR	67.1141	67.1141	69.4444	72.4638	71.9424	72.4638
Phillipines Peso	PHP	34.5537	33.9624	35.1150	36.2410	35.3230	35.6899
PNG Kina	PGK	2.0125	1.8869	1.8530	1.9160	1.8678	1.8457
Singapore Dollar	SGD	0.9940	0.9805	0.9986	1.0310	1.0004	1.0228
Solomon Islands Dollar*	SBD	6.1474	6.0160	5.8156	6.2735	6.2288	6.1188
South Africa Rand	ZAR	5.4349	5.5276	5.5172	5.8205	5.8881	6.0924
Sri Lanka Rupee	LKR	88.4956	86.2069	88.4956	92.5926	90.9091	90.9091
Sweden Krona	SEK	4.9459	5.0297	5.2243	5.4882	5.3359	5.4228
Swiss Franc	CHF	0.7134	0.7027	0.6881	0.6885	0.6531	0.7163
Taiwan Dollar	TAI	23.2094	22.5487	23.2998	24.4122	23.8624	24.4444
Thailand Baht	THB	24.0926	23.8397	24.6355	25.4126	24.8613	24.9896
Tonga Pa'anga*	TOP	1.4183	1.3856	1.3739	1.3903	1.3424	1.3487
United States Dollar	USD	0.7995	0.7874	0.8066	0.8454	0.8328	0.8238
Vanuatu Vatu	VUV	74.0741	72.4638	73.5294	76.9231	76.3359	75.7576
West Samoan Tala*	WST	1.8031	1.7698	1.7948	1.8589	1.8548	1.8484

Notes to table:

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The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

Currency rates 6 months ending 30 September 2011 – month end

Currency	Code	30/04/2011	31/05/2011	30/06/2011	31/07/2011	31/08/2011	30/09/2011
Australia Dollar	AUD	0.7383	0.7720	0.7733	0.7990	0.7981	0.7883
Bahrain Dinar	BHD	0.3053	0.3105	0.3126	0.3316	0.3220	0.2872
Britain Pound	GBH	0.4848	0.5009	0.5165	0.5355	0.5256	0.4887
Canada Dollar	CAD	0.7654	0.7979	0.7988	0.8395	0.8351	0.7999
China Yuan	CNY	5.2600	5.3400	5.3600	5.6600	5.4500	4.8600
Denmark Kroner	DKK	4.0793	4.2655	4.2648	4.5510	4.4281	4.2328
Euporean Community Euro	EUR	0.5470	0.5723	0.5718	0.6102	0.5943	0.5688
Fiji Dollar	FJD	1.4102	1.4418	1.4480	1.5020	1.4780	1.3787
French Polynesia Franc	XPF	65.1384	68.3083	68.1508	73.0418	70.9581	67.8403
Hong Kong Dollar	HKD	6.2902	6.4071	6.4524	6.8539	6.6502	5.9280
India Rupee	INR	35.8147	37.1193	36.9982	38.8647	39.3694	37.2952
Indonesia Rupiah	IDR	6935.1400	7037.1000	7111.5100	7479.6500	7283.2100	6919.6000
Japan Yen	JPY	65.7520	67.1610	66.8030	67.5380	65.4750	58.6660
Korea Won	KOR	865.8048	887.8274	885.9429	926.4817	910.5444	901.5317
Kuwait Dinar	KWD	0.2222	0.2267	0.2276	0.2398	0.2328	0.2109
Malaysia Ringit	MYR	2.3985	2.4820	2.5038	2.6106	2.5382	2.4279
Norway Krone	NOK	4.2514	4.4324	4.4669	4.7281	4.5837	4.4665
Pakistan Rupee	PKR	68.4932	70.9220	71.4286	76.3359	74.6269	66.6667
Phillipines Peso	PHP	34.6682	35.5702	35.9054	37.0443	36.0936	33.5621
PNG Kina	PGK	1.9794	1.9376	1.8920	1.9784	1.9125	1.6985
Singapore Dollar	SGD	0.9916	1.0161	1.0186	1.0588	1.0287	0.9954
Solomon Islands Dollar*	SBD	6.1498	6.3622	6.2153	6.5618	6.3907	5.6577
South Africa Rand	ZAR	5.3201	5.6050	5.6077	5.8811	5.9715	6.1644
Sri Lanka Rupee	LKR	89.2857	90.0901	90.9091	96.1538	93.4579	84.0336
Sweden Krona	SEK	4.8942	5.0839	5.2473	5.5241	5.4185	5.2338
Swiss Franc	CHF	0.7009	0.7035	0.6969	0.6909	0.6884	0.6915
Taiwan Dollar	TAI	23.2334	23.6012	23.9228	25.3726	24.7842	23.3293
Thailand Baht	THB	24.1998	24.9762	25.4798	26.1672	25.5725	23.7503
Tonga Pa'anga*	TOP	1.4113	1.4115	1.4112	1.3884	1.3692	1.2989
United States Dollar	USD	0.8099	0.8239	0.8292	0.8793	0.8541	0.7614
Vanuatu Vatu	VUV	72.9927	75.1880	75.7576	78.7402	77.5194	72.4638
West Samoan Tala*	WST	1.8022	1.8333	1.8394	1.8975	1.8665	1.7794

Notes to table:

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The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

NEW LEGISLATION

This section of the *TIB* covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council.

ORDERS IN COUNCIL

FAMILY TAX CREDIT RAISED FOR UNDER 16s

Family tax credits for children aged under 16 have been raised.

Background

The Income Tax (Family Tax Credit) Order 2011, made on 31 October 2011, increases for inflation the three prescribed family tax credit amounts for children under 16 in sections MD 3(4)(a)(i) and (b)(i) and (ii) of the Income Tax Act 2007 from 1 April 2012.

Key features

The family tax credit amounts per year before and after the increase are provided below.

Qualifying child	Current amount	New amount
First child if under 16	$4,578	**$4,822**
First child if 16 or over	$5,303	$5,303
Second child if under 13	**$3,182**	**$3,351**
Second child if 13 to 15	**$3,629**	**$3,822**
Second child if 16 or over	$4,745	$4,745

The two family tax credit amounts for children 16 or over in sections MD 3(4)(a)(ii) and (b)(iii) are not increased for inflation in accordance with section MF 7(1)(a) of the Income Tax Act 2007. Inflation increases for these children will resume when family tax credit amounts for children under 16 or aged between 13 and 15 reach the amounts for children aged 16 and over.

Together with this order, section 5(1) of the Taxation (Annual Rates and Budget Measures) Act 2011 comes into force on 1 April 2012. This section is legislated to come into effect when the family tax credit amounts are increased in accordance with section MF 7 of the Income Tax Act 2007.

Section 5(1) of the Taxation (Annual Rates and Budget Measures) Act 2011 amends the Working for Families abatement rate and the abatement threshold in section MD 13(3)(a) of the Income Tax Act 2007. The abatement rate will increase from 20 cents to 21.25 cents. The abatement threshold will decrease from $36,827 to $36,350.

Application date

The new prescribed family tax credit amounts will apply for the 2012–13 and later tax years.

Income Tax (Family Tax Credit) Order 2011 (SR 2011/403)

MINIMUM FAMILY TAX CREDIT RAISED

The minimum family tax credit has been raised.

Background

The Income Tax (Minimum Family Tax Credit) Order 2011, made on 31 October 2011, increases the net income level guaranteed by the minimum family tax credit. The net income level will rise from $22,204 to $22,568 a year from 1 April 2012.

Key features

The order increases the prescribed amount in the definition in the formula for calculating the minimum family tax credit, in section ME 1(3)(a) of the Income Tax Act 2007.

The order revokes the Income Tax (Family Tax Credit) Order 2007 and the Income Tax (Minimum Family Tax Credit) Order 2008 as they are now spent. It also amends the Income Tax (Minimum Family Tax Credit) Order 2010.

Application date

The increase applies for the 2012–13 and later tax years.

Income Tax (Minimum Family Tax Credit) Order 2011 (SR 2011/404)

CANTERBURY EARTHQUAKE – INFORMATION SHARING

Temporary information-sharing measures introduced to help support those affected by the Canterbury earthquakes have been extended for a further 12 months.

Background

To help facilitate prompt and efficient government responses, assistance and services to people in Canterbury following the September Canterbury earthquake, Inland Revenue was given the ability to share certain information with other government agencies via the Canterbury Earthquake (Tax Administration Act) Order 2011.

Sharing information with other departments helped to ensure that social assistance, business subsidies, grant applications and other government services could continue to be delivered in a timely way. Typically, the information might include a person's contact details and their family, financial and employment status.

The information was only shared if doing so supported the restoration of the social, economic, cultural and environmental well-being of the greater Canterbury communities.

Key features

Under the original Order in Council, Inland Revenue's ability to share information was due to expire on 31 October 2011.

Given the continued difficult situation in Christchurch and the surrounding area, and the ongoing need for support, the Canterbury Earthquake (Tax Administration Act) Order (No 2) 2011 will extend Inland Revenue's information-sharing ability until 31 October 2012. This order is made under section 71 of the Canterbury Earthquake Recovery Act 2011.

The order contains two safeguards:

- First, that the Commissioner of Inland Revenue retains a discretion to refuse to disclose information if the Commissioner considers it is undesirable to disclose that information.
- Second, the order requires a government agency and officers, employees and agents of the government agency with access to information that is communicated under this order to maintain the secrecy of that information and to not communicate that information to any person except as authorised by the Commissioner.

Application date

The order came into effect on 1 November 2011 and expires on 31 October 2012.

Canterbury Earthquake (Tax Administration Act) Order (No 2) 2011 (SR 2011/375)

CANTERBURY EARTHQUAKE – REMISSION OF USE-OF-MONEY INTEREST

Inland Revenue's ability to remit use-of-money interest charged when a person has been physically prevented from making a payment due to the Canterbury earthquake has been extended for a further 12 months.

Background

Section 183ABA of the Tax Administration Act 1994 enables use-of-money interest to be remitted when an Order in Council has declared an event to be an emergency event, the emergency event physically prevents the taxpayer from making a payment by the due date, and the Commissioner is satisfied that:

- it is equitable that the interest be remitted;
- the taxpayer asked for the relief as soon as practicable; and
- the taxpayer made the payment as soon as practicable.

The Canterbury earthquake and its aftershocks were declared to be an emergency event for the purposes of this provision by the *Tax Administration (Emergency Event – Canterbury Earthquake) Order 2010* (SR 2010/307). This order expired on 31 March 2011, but that expiry date was extended to 30 September 2011 by the *Tax Administration (Emergency Event – Canterbury Earthquake) Amendment Order 2011* (SR 2011/29).

Key features

The *Tax Administration (Emergency Event – Canterbury Earthquake) Amendment Order (No 2) 2011* (SR 2011/376) extends the expiry date of the original order for a further 12 months, until 30 September 2012.

This means that the Commissioner will continue to be able to remit use-of-money interest for claims made until 30 September 2012, when those claims meet the other statutory criteria. This extension is necessary because interest is not charged until the return for the relevant period has been filed and assessed, which may not be for some time after the original payment date.

Application date

This order came into effect on 10 October 2011 and expires on 30 September 2012.

Tax Administration (Emergency Event – Canterbury Earthquake) Amendment Order (No 2) 2011 (SR 2011/376)

STUDENT LOAN SCHEME – VOLUNTEER EXEMPTION

The Student Loan Scheme (Charitable Organisations) Regulations 2011 re-enact the current list of charitable organisations specified for the purposes of the Student Loan Scheme Act 1992 under the Student Loan Scheme Act 2011. The effect of being listed is that student loan borrowers working overseas as a volunteer, or for a token payment, for such an organisation may be treated, for a period of up to two years, as if they were based in New Zealand. Borrowers who are based in New Zealand qualify for an interest-free loan.

The following organisations have been added to the list of specified organisations for the purposes of section 25(1)(b) of the Student Loans Scheme Act 2011, with effect from 1 April 2012:

- Servants to Asia's Urban Poor Incorporated;
- Engineers Without Borders New Zealand Incorporated;
- New Zealand Church Missionary Society Trust Board;
- Marist Mission Ranong;
- Aziza's Place;
- WEC International; and
- International Care Ministries Limited.

The order also updates the names of certain listed organisations that have changed since the regulations were introduced in 2006. They are:

- Alay Buhay Foundation Trust, now known as Livelihood International Foundation Trust;
- Student Partnership Worldwide, now known as Restless Development; and
- Christian Blind Mission International, now known as CBM International.

Under the provisions, borrowers must be engaged in one or more of the following activities in order to qualify for the exemption:

- work to relieve poverty, hunger, sickness, or the ravages of war or natural disaster; or
- work to improve the economy of a developing country; or
- work to raise the educational standards of a developing country.

Student loan borrowers seeking the exemption should contact their local Inland Revenue office.

Student Loan Scheme (Charitable Organisations) Regulations 2011 (SR 2011/355)

QUESTIONS WE'VE BEEN ASKED

QB 11/03: INCOME TAX – LOOK-THROUGH COMPANIES AND INTEREST DEDUCTIBILITY

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This QWBA considers ss DB 6 and HB 1.

Question

1. We have been asked whether interest will still be deductible where a loss-attributing qualifying company (LAQC) becomes a look-through company (LTC) if:
   - a person had previously sold their family home to an LAQC as a rental asset, to be rented to a third party on an arm's length basis;
   - the person owned 100% of the shares in the LAQC;
   - the sale was at market value;
   - the LAQC borrowed from a bank to fund the purchase;
   - the person then used the funds raised from the sale to purchase a new family home;
   - the LAQC becomes an LTC.

Answer

2. If all that has changed is that the LAQC has become an LTC, then interest deductions previously allowed will continue to be allowed, subject to the limitations on deductions in ss HB 11 and HB 12 that apply to LTCs.
3. The position would be the same where a person sells their family home at market value directly to an LTC and the LTC holds it as a rental asset and rents it to a third party on an arm's length basis. (See paragraph 23 and example 2 of this item.)

Explanation

Background

4. The Commissioner has received inquiries from taxpayers asking whether previously allowed interest deductions made by an LAQC will continue to be allowed where an LAQC becomes an LTC.
5. The issue has arisen because some taxpayers have interpreted "look-through" to mean that you simply ignore all transactions between the LTC and the owner of an effective look-through interest in the LTC ("the owner"). This would mean that you look through the LTC (essentially ignoring it and disregarding the use to which the LTC put the borrowed funds) to look at the owner's use of the funds. On the facts outlined in the question above, the owner would be considered to have used the funds to acquire a private asset (the new family home), not for deriving assessable income. The result of this interpretation is that the test for interest deductibility would not be satisfied.
6. The Commissioner considers the above interpretation to be incorrect. The Commissioner's view is that the owner's use of the funds received on the sale of the rental asset to the LAQC is not relevant to the issue of interest deductibility on the borrowing by the LAQC (and later the LTC). The correct interpretation is outlined below.

Discussion

Interest deductibility

7. Usually a company would be entitled to an automatic interest deduction under s DB 7. However, neither LAQCs nor LTCs qualify for the deduction under s DB 7.
8. A deduction for interest incurred may be made under s DB 6. Section DB 6 allows a deduction for interest incurred provided the general permission in s DA 1 is satisfied. Section DA 1 allows a deduction for interest incurred by a taxpayer in deriving their assessable income or incurred by them in the course of carrying on a business for the purpose of deriving their assessable income.
9. The Commissioner's view is that the interest deductibility test is satisfied where a sufficient connection exists between the interest incurred and the assessable income. Where borrowed funds are used to acquire an income-earning asset (such as a rental property) and the property continues to be used as an income-earning asset, then that would establish a sufficient connection.
10. In terms of the LTC regime, s HB 11 operates to limit the deductions that a person with an effective look-through interest can deduct in an income year. This is known as the loss limitation rule and applies to all deductions, including interest. Section HB 12 applies to allow a person with an effective look-through interest to carry forward any limited deductions into future years, subject to the loss limitation rule in s HB 11. Broadly speaking, the loss limitation rule ensures an owner can offset losses only to the extent these reflect their economic losses.

Look-through companies and tax transparency

11. LTCs are generally transparent for income tax purposes. Tax transparency is achieved by s HB 1(4). The effect of s HB 1(4) is that the LTC's income, expenses, tax credits, gains and losses are passed on to its owners in proportion to their effective look-through interest. Some taxpayers have expressed concern that the effect of these provisions is that interest, in the circumstances set out in the question, will be treated as private and non-deductible. The Commissioner does not agree with this interpretation.

12. Section HB 1(1) states:

> **HB 1 Look-through companies are transparent**
>
> *When this section applies*
>
> (1) This section applies for the purposes of this Act, other than the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, and the RSCT rules, for a person in their capacity of owner of an effective look-through interest for a look-through company (the LTC), for an income year, if—
>
> (a) for the LTC, an LTC election described in section HB 13(1) and (2) has been received by the Commissioner under section HB 13(3) and (4) for the income year; and
>
> (b) the LTC meets the requirements in the definition of "look-through company" at all times in the income year; and
>
> (c) the election has not been revoked for the income year by an owner of a look-through interest for the LTC by notice received by the Commissioner before the start of the income year.

13. Section HB 1(4) states:

> *Look-through for effective look-through interest*
>
> (4) For a person, unless the context requires otherwise,—
>
> (a) the person is treated as carrying on an activity carried on by the LTC, and having a status, intention, and purpose of the LTC, and the LTC is treated as not carrying on the activity or having the status, intention, or purpose:
>
> (b) the person is treated as holding property that the LTC holds, in proportion to the person's effective look-through interest, and the LTC is treated as not holding the property:
>
> (c) the person is treated as being party to an arrangement to which the LTC is a party, in proportion to the person's effective look-through interest, and the LTC is treated as not being a party to the arrangement:
>
> (d) the person is treated as doing a thing and being entitled to a thing that the LTC does or is entitled to, in proportion to the person's effective look-through interest, and the LTC is treated as not doing the thing or being entitled to the thing.

14. Section HB 1(4) attributes the actions of the LTC to its owners. This means that the owners are treated as carrying on the activities of the LTC; having the same status, intention and purpose as the LTC; holding property that the LTC holds; being party to any transactions entered into by the LTC; and doing a thing that the LTC does. The LTC is treated as not doing those things or having that status, intention or purpose.

15. The Commissioner is of the view that the use to which the LTC puts the borrowed funds is "a thing" under s HB 1(4)(d).

16. The effect of s HB 1(4) is to treat the LTC's actions as being those of the owner for income tax purposes. Section HB 1(4) does not work in reverse (ie, the LTC regime does not operate to substitute the owner's actions for those of the LTC). Legislative support for this position can be found in s HB 1(1), which refers to "a person in their capacity of owner of an effective look-through interest". This implies that an owner can have more than one capacity. It is the use of the borrowed funds by the LTC, attributed under s HB 1(4)(d) to the person (in their capacity as owner) that is relevant to the issue of interest deductibility, not the use of the funds by the person in their personal capacity.

Application to the question

17. The LAQC borrowed funds to acquire the rental property. The LAQC used this property to derive assessable income. Interest incurred on the borrowed funds was deductible for income tax purposes.

18. When the LAQC becomes an LTC, interest previously deductible will remain so. The rental property becomes an income-earning asset of the LTC. The LTC's use of the borrowed funds is the same as that of the LAQC—to fund an income-earning asset. It is important to remember that by becoming an LTC the company itself does not change; it remains the same company as before, but it is now taxed differently.

19. Section HB 1(4) then operates to treat the LTC's actions as being those of the owner, in that person's capacity as owner of the effective look-through interest. The provision does not apply to treat the owner's use of the funds in their personal capacity (in this case, to purchase a new family home) as the LTC's use.

20. Therefore, the interest on the borrowed funds is incurred by the LTC in funding an income-earning asset. The person, in their capacity as owner of an effective look-through interest, is treated as having incurred the interest for the same use. Accordingly, the interest deductibility test will be satisfied and the interest will be deductible under s DB 6, subject to the limitations in ss HB 11 and HB 12.
21. The deductibility of interest by the LTC is determined by considering the use made by the LTC of the borrowed funds. The fact the person sold the family home and received a non-taxable amount does not result in the denial of deductibility. The extra amount over and above what the person originally bought the property for reflects an increase in the market value of the property.
22. This interpretation would also apply where a qualifying company becomes an LTC in the same circumstances.
23. Further, the position would be the same where a person sells their family home at market value directly to an LTC, which holds it as a rental asset and rents it to a third party on an arm's length basis.
24. This answer applies to the facts set out above. The Commissioner is satisfied that in these circumstances, interest would be deductible. If the facts were to vary materially from those in the question, then the Commissioner may need to consider the matter further and a different outcome might apply.

Examples

Example 1

25. The facts of example 1 are as follows:
    - In June 2003, Jamie bought his house, Ivy Cottage, for $400,000 with a loan from the bank for $350,000. The loan was secured by a mortgage over Ivy Cottage. The remainder of the purchase price was funded from his savings.
    - In May 2009, Jamie decided to rent Ivy Cottage and purchase a new family home, Rose Cottage.
    - After taking advice, Jamie sold Ivy Cottage at its fair market value of $500,000 to an LAQC for use as a rental property. Jamie owned 100% of the shares in the LAQC.
    - The bank lent the LAQC $450,000, partially secured by a mortgage over Ivy Cottage. The LAQC contributed the remaining amount of $50,000 from its own funds. Jamie also provided a personal guarantee as further security for the loan.
    - Jamie repaid the balance of the $350,000 mortgage to the bank from the proceeds of the sale of Ivy Cottage to the LAQC. Jamie then borrowed a further $250,000 from the bank to purchase Rose Cottage.
    - Jamie is now living in his new private residence, Rose Cottage. The LAQC owns Ivy Cottage, and it is being used as a rental property, rented to a third party on an arm's length basis, to derive assessable income.
    - In April 2012, the LAQC becomes an LTC. Is the interest that the LTC pays to the bank deductible for tax purposes?
26. Interest that was previously deductible when Ivy Cottage was owned by the LAQC will remain deductible after the LAQC becomes an LTC, subject to ss HB 11 and HB 12.
27. The LAQC borrowed the funds to acquire Ivy Cottage as a rental property. When the LAQC becomes an LTC the use of the funds does not change. The only thing that changes is how the company is taxed.
28. Under the LTC provisions, Jamie, in his capacity as owner of an effective look-through interest, is treated as doing a thing that the LTC does. The LTC continues to use the amounts borrowed to fund Ivy Cottage as a rental asset to derive assessable income. Section HB 1(4)(d) treats Jamie as using the funds in the same way. As a result, interest incurred by the LTC on the borrowed funds is deductible.
29. It is irrelevant that Jamie used some of the funds that the LAQC paid him on the sale of Ivy Cottage to purchase his private residence, Rose Cottage.
30. The fact the market value price the LAQC paid for Ivy Cottage was higher than the market value price Jamie paid when he first bought the property does not make a difference to the question of interest deductibility.

Example 2

31. Example 2 concerns the situation where a person sells their family home directly to an LTC.

32. The facts in example 2 are as follows:

- In March 2002, Anne purchased her family home, Seaview Lodge, for $300,000. The bank loaned Anne $200,000, secured by a mortgage over Seaview Lodge, and she funded the remainder of the purchase price from her savings.
- In August 2011, Anne decided to sell Seaview Lodge directly to an LTC at its fair market value of $400,000 for use as a rental property.
- Anne is the 100% owner of all the shares in the LTC.
- Anne purchases a new family home, Mountain Lodge.
- The bank lends the LTC $350,000 to fund the purchase secured by a mortgage over Seaview Lodge. The remaining purchase price is funded from the LTC's funds.
- Anne repays the balance of the $200,000 mortgage to the bank and borrows a further $300,000 to purchase Mountain Lodge.
- Anne now lives at Mountain Lodge, and the LTC owns Seaview Lodge. Seaview Lodge is being used as a rental property and is rented to a third party on an arm's length basis. Is the interest the LTC pays to the bank deductible for tax purposes?

33. The fact Anne sold Seaview Lodge directly to the LTC does not affect interest deductibility. The interest incurred by the LTC is deductible, for the same reasons as given in example 1. The LTC has borrowed the funds to acquire a rental property. Anne, in her capacity as owner of an effective look-through interest, is treated as having incurred the interest for the same use. The use to which Anne puts the sales proceeds does not affect the connection with the assessable income. The LTC's actions are attributed to Anne and not the other way around.

References

Subject references

Look-through companies, interest deductibility

Legislative references

Income Tax Act 2007, ss DA 1, DB 6, DB 7, HB 1, HB 11, HB 12, HB 13

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.

COMMISSIONER'S DECISION TO DECLINE INSTALMENT ARRANGEMENT UPHELD

Case	Priscilla Anne Kea v Commissioner of Inland Revenue
Decision date	3 October 2011
Act(s)	Judicature Amendment Act 1972, Tax Administration Act 1994
Keywords	Judicial review, instalment arrangement, Court's discretion

Summary

The Court held that it would have been wrong for it to grant a remedy to the plaintiff (even if a reviewable error had been made) because the plaintiff misrepresented her position and the facts upon which the instalment arrangement proposal relied were no longer applicable. The Court further held that the Commissioner had taken into account relevant factors and that his decision to decline the plaintiff's instalment arrangement proposal was not unreasonable or irrational.

Impact of decision

This case considers the limits of the Commissioner's discretion under section 177B(2) of the Tax Administration Act 1994 ("TAA") and the relationship of the relief provisions with sections 6 and 6A of the TAA.

Facts

The plaintiff made an application for judicial review of the Commissioner's decision to decline her instalment arrangement proposal of 17 December 2010. The plaintiff had already made a number of earlier proposals and those proposals had been declined.

The plaintiff had received a total income of $791,932 over an eight-year period from 31 March 2003 to 31 March 2010. During that period she filed tax returns. However, she only paid a total amount of tax of $2,303.

On 24 November 2010 the Court issued a bankruptcy notice to the plaintiff and by 13 December 2010 the plaintiff had committed an act of bankruptcy. The bankruptcy proceedings were adjourned until the outcome of the judicial review proceeding.

Decision

Court's discretion to refuse relief

Justice Ronald Young held that two factors identified by the Commissioner overwhelmingly establish that it would have been wrong for the Court to grant a remedy to the plaintiff even if a reviewable error had been made:

- Firstly, the plaintiff did not mention in her proposal or in response to any of the Commissioner's enquiries that her December 2010 contract (upon which her proposal to pay instalments was based) was for two months only. His Honour held that this was a material misrepresentation.
- Secondly, the provision of relief would not serve a useful purpose because the facts upon which the plaintiff's 17 December 2010 proposal was made were no longer applicable.

Considering irrelevant matters

His Honour held that the factors which the Commissioner took into account in his decision-making were relevant, authorised by the TAA and despite submissions by the plaintiff to the contrary, came within the broad ground set out in section 177B(2)(a) of the TAA. In particular, his Honour held that the Commissioner was entitled to conclude that agreeing to the plaintiff's proposal would not "maximise the recovery of outstanding tax" as the plaintiff could not be relied upon to make good her promises to pay the instalments.

In any event, his Honour rejected the plaintiff's submission that section 177B(2) is a code and that the Commissioner can only reject a proposal for an instalment arrangement on the four grounds identified. His Honour held that the language of section 177B(2) is empowering rather than restrictive or prohibiting. It provides that the Commissioner

"may decline to enter into an instalment arrangement if … to do so would not maximise the recovery of outstanding tax from the taxpayer". Accordingly, his Honour held that the broader taxation obligations on the Commissioner pursuant to sections 6 and 6A were still relevant and should not be set aside.

Unreasonableness

His Honour rejected the plaintiff's claim that the decision of the Commissioner was unreasonable or irrational. His Honour noted that the Commissioner had accurately marshalled the relevant facts and that the conclusions reached were open on those facts. In particular, the plaintiff's history provided ample evidence upon which the Commissioner was entitled to reject the plaintiff's proposal because it would not maximise the recovery of outstanding tax where the plaintiff was not reliable and her proposal was unlikely to be realised. Furthermore, his Honour held that it was a relevant factor for the Commissioner to take into account the need to promote voluntary compliance with tax obligations. His Honour held that the plaintiff had flouted her tax obligations and continued to do so.

Factual errors

His Honour also rejected the plaintiff's criticisms that the Commissioner had made certain factual errors which the plaintiff alleged were "symptomatic" of the Commissioner's approach when dealing with her. Rather, his Honour held that the Commissioner had been extremely patient in giving the plaintiff years of opportunity to pay her tax.

CALDERBANK OFFER AND COSTS

Case	Junior Farms Ltd v Commissioner of Inland Revenue
Decision date	5 October 2011
Act(s)	High Court Rules
Keywords	Calderbank offer

Summary

A taxpayer's application for increased costs based on its Calderbank offer failed because its rejection was justified.

Impact of decision

It reaffirms the principle that a successful Calderbank offer does not in itself give rise to increased costs but is dependent on rule 14.6, namely whether there is reasonable justification in rejecting the offer.

Facts

Following from the judgment of Justice Brewer J in *Junior Farms Ltd v Commissioner of Inland Revenue* on 22 July 2011, Junior Farms Ltd ("Junior Farms") applied to recall the judgment to address the issue on costs.

The Commissioner did not object to the recall but opposed Junior Farms's application to increase costs.

Decision

At the time of the Calderbank offer, the Commissioner's position had been confirmed in a comprehensive assessment through an adjudication process. It was therefore reasonable justification for the Commissioner to reject the offer based at 5% of the income tax claimed.

The Judge confirmed the costs awarded on a 2B basis.

VOTING INTEREST REQUIRES REGISTERED SHAREHOLDING

Case	BHL v Commissioner of Inland Revenue
Decision date	7 October 2011
Act(s)	Income Tax Act 1994, Income Tax Act 2004
Keywords	Group of companies, loss offsets

Summary

The group loss offset provisions require that for a person to have a voting interest, their shares must be registered on the company's share register.

Impact of decision

The decision has clarified the law as to what is required for parties to hold shares for the purposes of ascertaining whether a group of companies exists for the loss offset provisions.

Facts

BHL challenged the Commissioner's assessments for the 2005, 2006 and 2007 years in terms whereof the Commissioner disallowed loss offsets claimed by BHL from BIJ under the group offset provisions of the relevant Income Tax Act ("ITA").

Prior to 2000, BHL had operated two businesses; a professional practice and a car restoration business. The professional practice was profitable and the car restoration business was not. Mr B owned 396,000 shares in BHL and his wife, Mrs B, owned 4000. In 2000, BHL transferred the car restoration business to BIJ which was owned in equal shares by Mr and Mrs B.

Once the accumulated losses in BHL had been used up, BHL attempted to offset losses in BIJ against its profits. However, to offset losses there must be a group of persons whose common voting interest in each company in aggregate is equal to or greater than 66%. The aggregate of Mr and Mrs B's voting interest in the two companies was for the relevant periods only 51%.

After this came to the attention of BHL, it alleged that in October 2000 Mr B had signed a share transfer form transferring 196,000 of his shares in BHL to Mrs B. It was alleged that the form had been lost and the share transfer had therefore not been effected.

Steps were then taken to rectify the problem. In October 2006, BHL's share register was amended to reflect Mrs B as holding 50% of its shares. However, because the matrimonial property agreement transferring the shares was not executed until November 2006, the Commissioner did not accept the share transfer was effective until then.

Next, Mr and Mrs B resolved that the share register be retrospectively rectified to show the transfer of shares to Mrs B as effective from October 2000. The Commissioner did not accept this.

Finally in January 2009, Mr and Mrs B obtained a Family Court declaration that between 2000 and 2006 the 400,000 shares in BHL were "relationship property" and equally owned by them. The Commissioner refused to accept that he was bound by the order.

Decision

In dismissing BHL's challenge, the Court found that the group loss offset provisions require that for a person to have a voting interest their shares must be registered on the company's share register.

The Court held further that the fact that the shares were relationship property did not mean they were jointly owned. Mrs B is not presumed to be a 50% owner of the shares in BHL for the purpose of the group loss offset provisions.

As well, the Court was not satisfied that the Family Court had the power to make an order with retrospective effect. Even if it did, the order did not bind the Commissioner in the circumstances of the case. The Commissioner had not been a party to the Family Court proceeding.

Finally, the Court held that it would have made no difference if the share transfer form had been completed and was lost. This was because Mrs B could only acquire ownership of the shares for the purposes of the ITA by being recorded in BHL's share register as the owner. In any event, the evidence did not establish that any steps were taken in 2000 to effect a change to BHL's shareholding. The Court was satisfied that the share transfer form was not completed.

WHETHER SALE OF PROPERTY WAS OF TENANTED PROPERTY OR SHARES

Case	Tepe Holdings Ltd v Commissioner of Inland Revenue
Decision date	21 October 2011
Act(s)	Goods and Services Tax Act 1985
Keywords	Going concern

Summary

The Court of Appeal rejected an appeal against the decision of the High Court that the sale of the property by the taxpayer was a sale of shares.

Impact of decision

The case reaffirmed the cases of *CIR v Gulf Harbour Development Ltd* [2005] 2 NZLR 162 and *Marac Life Assurance Ltd v CIR* [1986] 1 NZLR 694, as authorities for the proposition that the true nature of a transaction is ascertained by careful consideration of the legal arrangements.

Facts

Tepe Holdings Ltd ("THL") acquired a right of occupation of the fourth floor in the building known as "Central House" at 26 Brandon Street, Wellington which was let to two tenants on a monthly tenancy basis. THL acquired the right of occupation through the shares it held in Central House Ltd ("CHL").

On 2 March 2007, THL entered into an agreement with Okato Management Ltd ("OML") to sell the property described as: "exclusive occupation rights to the Fourth Floor of the building known as Central House, 26 Brandon Street, Wellington being Group E of the shareholding in Central House Limited being 19,750 shares …".

In May 2007, THL filed its goods and services tax (GST) return for the period ending 31 March 2007, claiming the supply in the sale was of tenanted property and therefore to be zero rated, being a sale of a going concern.

The Commissioner disagreed that it was a sale of tenanted property and imposed GST of $28,821.64 (core tax) on the grounds that it was a sale of shares of a company.

At the High Court, it was held that the supply was a sale of shares in CHL. Accordingly clause 13.1 of the agreement relating to a sale of tenanted property as a going concern did not apply and that meant the requirements of section 11(1)(m) of the Goods and Services Tax Act 1985 were not met.

The taxpayer appealed against the decision of the High Court.

Decision

At the Court of Appeal the taxpayer's counsel advanced two arguments that the sale was for tenanted property:

1. As the sale agreement mentioned the partitions and chattels, it was a sale of tenanted property as well as shares.
2. There was a transfer of tenancies to suggest that the sale was converted to a sale of tenanted properties.

The Court of Appeal held on the two points:

1. There was no evidence to say the partitions and chattels were separate items from the shares because no monetary value was ascribed to them.
2. There was no transfer of tenancies because at the time of settlement of the sale, THL had surrendered its lease to CHL.

The Court of Appeal upheld the decision of the High Court.

NO DEEMED ACCEPTANCE OF A LATE NOPA

Case	Heather Anne Jacobs-Maxwell v Commissioner of Inland Revenue
Decision date	25 October 2011
Act(s)	Income Tax Act 1994, Income Tax Act 2004, Income Tax Act 2007 and Tax Administration Act 1994
Keywords	Notice of proposed adjustment, deemed acceptance, ultra vires

Summary

The usual dispute resolution procedures under Part 4A of the Tax Administration Act 1994 ("TAA") (including deemed acceptance under section 89H(2)) do not apply to a late Notice of Proposed Adjustment (NOPA) where no "exceptional circumstance" is raised in accordance with section 89K.

Impact of decision

This decision confirms that a valid timely NOPA is a prerequisite to deemed acceptance under section 89H(2). Deemed acceptance does not occur if the Commissioner fails to reject an invalid late NOPA with a compliant Notice of Response (NOR) within the applicable response period. Nevertheless, the Taxation (Tax Administration and Remedial Matters) Act 2011 has now amended the TAA and the new section 89K provides that a taxpayer may challenge the Commissioner's decision to refuse to issue a notice in favour of the taxpayer under the new section 89K(1) by filing proceedings within two months of the notice's issue.

Facts

The taxpayer appealed against the decision of the Taxation Review Authority (TRA) which was delivered on 11 April 2011. The TRA held that the Commissioner's failure to respond to the taxpayer's late NOPA with a compliant NOR did not amount to a deemed acceptance of her proposed adjustment.

In February 2004, the taxpayer's accountant had sought deductions for a company owned by the taxpayer. The effect of such deductions would have been to reduce the taxpayer's income. That request was declined by the Commissioner. Debt collection proceedings commenced and a meeting between the taxpayer and Inland Revenue was held on 27 November 2009.

The taxpayer claimed that she was invited by the Commissioner to file an out-of-time NOPA at the 27 November 2009 meeting. The taxpayer subsequently filed her late NOPA on 3 December 2009. No application for exceptional circumstances was made by the taxpayer.

On 4 December 2009, the Commissioner issued a letter rejecting the taxpayer's late NOPA on the grounds that it was outside the applicable response period. It was not contended that the Commissioner's letter constituted a compliant NOR.

Decision

Justice Heath upheld the decision of the TRA and rejected the taxpayer's appeal. His Honour held that section 89K of the TAA is a discrete code designed to deal with late NOPAs and that the usual disputes resolution procedures under Part 4A do not otherwise apply to late NOPAs.

His Honour held that it is only if the Commissioner considers that there has been an exceptional circumstance preventing a taxpayer from providing a NOPA within the applicable response period and the taxpayer sends a late NOPA, that under section 89K(1)(d), the latter is "treated for all purposes under this Part as if it had been given within the applicable response period".

His Honour held that the usual dispute resolution procedures under Part 4A of the TAA (including deemed acceptance under section 89H(2)) did not apply to the taxpayer's late NOPA as no application for exceptional circumstances had been made by the taxpayer.

His Honour also held (consistently with section 138E(1)(e)(iv) of the TAA) that the Commissioner's decision to decline to receive a late NOPA is not subject to challenge.

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