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TAX INFORMATION Bulletin

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Inland Revenue
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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
ED0155	Draft depreciation determination: Depreciation rate for printing machines (automated inkjet flatbed)	This draft depreciation determination proposes to add into the "Packaging (excluding plastic packaging)" and "Printing and photographic" industry categories, a new asset class for Printing machines (automated inkjet flatbed).	30 April 2013

IN SUMMARY

COMMISSIONER'S STATEMENT

These statements inform taxpayers of the Commissioner's position on a particular tax matter and how it will be treated.

CS 12/01: INCOME TAX TREATMENT OF ACCOMMODATION PAYMENTS, EMPLOYER-PROVIDED ACCOMMODATION AND ACCOMMODATION ALLOWANCES

Note

The purpose of a Commissioner's statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter. The statement is not a consultative document.

All legislative references are to the Income Tax Act 2007.

Introduction

We have been asked to set out the Commissioner's position on the existing income tax treatment of accommodation payments, employer-provided accommodation and accommodation allowances made by employers to employees.

In some circumstances an employer may fund the cost or provision of accommodation to employees. This can be arranged in various ways. This Statement covers the Commissioner's position on:

- the provision of accommodation or the payment of an accommodation allowance by an employer to an employee;
- payments made by an employer that relate to accommodation expenditure incurred by an employee (expenditure on account).

This Statement also sets out the Commissioner's approach to correcting tax positions taken by taxpayers prior to the release of this Statement.

Summary

In summary, the Commissioner considers that accommodation is generally treated as income of an employee and therefore subject to PAYE. This is the case whether it is paid for by an employer on behalf of an employee, paid through an allowance or directly provided by the employer. However, in certain circumstances, overnight and temporary accommodation related to an employee's job is not likely to be taxable.

The provision of accommodation or an accommodation allowance

Under section CE 1(1B), the *market value* of accommodation provided by an employer to an employee is income of the employee. Equally, the market value of an accommodation allowance paid by an employer to an employee is income of the employee. The employer must account for PAYE.

Issues arise most often in the situation of relocation or temporary accommodation arrangements.

Taxpayers have argued that where the employee is still maintaining a home in another location, employer-provided accommodation or accommodation allowances are not taxable. Taxpayers argue this is because there is no net benefit provided to the employee; the value of any accommodation or allowance received by the employee is nil as the employee continues to pay the cost of their own house.

The Commissioner does not agree with this view. The law does not support a net-benefit approach.

The Commissioner acknowledges there has been some uncertainty and inconsistent practice, by both Inland Revenue and taxpayers, regarding the taxation of employer-provided accommodation or accommodation allowances. The Inland Revenue Technical Rulings Manual paragraph 57.11 reflected a net-benefit approach to determining the value of employer-provided accommodation and accommodation allowances. However, taxpayers were advised in September 1998[1] that the Technical Rulings Manual was being discontinued and that Technical Rulings should not be relied upon as representing Inland Revenue's views or practice. In addition, the legislation has changed considerably since the relevant Technical Rulings chapter was written.

The Commissioner's position is that determining market value is a practical matter involving an objective valuation.

[1] Refer *Tax Information Bulletin* Vol 10, No 9 (September 1998): 10.

The market value of accommodation provided is the price that a willing provider would accept from a willing customer. The market value of an accommodation allowance is the actual amount of the allowance. It is irrelevant that a person may be maintaining a house in a different location.

Commissioner's operational approach

If you consider you have adopted a tax position for employer-provided accommodation or accommodation allowances that differs from the Commissioner's, we suggest you discuss the matter with your tax advisor, or us, and consider making a voluntary disclosure.

Taxpayers making such voluntary disclosures will only be required to account for PAYE for the **two year** period prior to the date of issue of this statement.

Given the previous uncertainty and inconsistency, taxpayers making voluntary disclosures will not be subject to use-of-money interest or shortfall penalties.

Where taxpayers, on the basis of explicit current advice given to them by Inland Revenue in writing, have incorrectly treated the provision of accommodation or an accommodation allowance as non-taxable, the Commissioner will not seek to adjust the treatment adopted by them in periods prior to the issuing of this statement. However, these taxpayers cannot rely on that advice in the future and should contact us to discuss their position.

Accommodation payments made by an employer relating to expenditure incurred by an employee (expenditure on account)

The Commissioner's position is that accommodation payments made by an employer that relate to expenditure on accommodation incurred by an employee (expenditure on account) are usually income of the employee under section CE 1(1)(b) and PAYE should be deducted. An example of expenditure on account is where a tenancy agreement is entered into and signed by the employee and the rental payments are then paid by the employer directly to the landlord (or property manager) on behalf of the employee.

Accommodation costs are usually considered private in nature, as everyone needs shelter of some form. Often accommodation is about the employee getting themselves into a position to work. There will be limited circumstances where an accommodation payment that is expenditure on account will be exempt from tax under section CW 17. For example, where an employee works away from their usual office at the direction of their employer and incurs hotel accommodation costs directly in their own name, where their employer pays the account directly to the hotel this would not be taxable.

Aside from the limited exemption in section CW 17, the Commissioner's position has always been that accommodation payments that are expenditure on account are generally subject to income tax. The Commissioner's position on this matter is unchanged.

We note that some taxpayers have attempted to extend the net-benefit approach to expenditure on account cases. However, the net-benefit approach, as reflected in the Technical Rulings Manual, never applied to expenditure on account cases.

We also note that reimbursements for employee accommodation costs are treated in the same manner as expenditure on account for income tax purposes.

Commissioner's operational approach

If you consider you have adopted a position for accommodation payments that are expenditure on account that differs from the Commissioner's, we suggest you discuss the matter with your tax advisor, or us, and consider making a voluntary disclosure.

In circumstances where PAYE should have been paid, the Commissioner is not prevented from adjusting those previous periods as no statute bar applies.

However, taxpayers making voluntary disclosures in this circumstance will only be required to account for PAYE for the **four year** period prior to the date of issue of this statement.

Incorrect tax positions taken will be subject to use of money interest and potentially shortfall penalties.

Overnight and temporary accommodation

The Commissioner considers that the provision of accommodation, the payment of an accommodation allowance, or accommodation payments that are expenditure on account, will not be taxable when they relate to overnight or other short-term stays by an employee in a location other than their home location in the performance of their employment duties. The cost of such temporary arrangements is not considered private in nature.

Similarly, the provision of accommodation, the payment of an accommodation allowance, or accommodation payments that are expenditure on account, may not be taxable when they relate to a temporary shift by an employee to another location. That is, where the employee has not relocated permanently but needs to be based in a different location for a temporary period as part of the performance of their current employment duties. However, this will depend on the facts of each case, including the duration of the temporary shift and the structure of the arrangement.

"Work-related relocation"

This Statement does not apply to accommodation related to a "work-related relocation" under section CW 17B. For example, an employee permanently relocates to another city and the employer funds the accommodation costs for three months.

Making a voluntary disclosure

When making a voluntary disclosure (and for the purposes of applying the correct tax treatment going forward), care must be taken in determining the facts of each case. Inland Revenue has seen a number of arrangements where the employment agreement has provided for the payment of an accommodation allowance to a particular employee. However, an examination of what has actually occurred has revealed that no allowance was paid but rather a payment was made by the employer on behalf of the employee (expenditure on account).

Guidelines for making a voluntary disclosure are contained in our booklet *Putting your tax returns right (IR 280)* and Standard Practice Statement 09/02: *Voluntary disclosures* (May 2009).

Any voluntary disclosures or case-specific queries can be sent to **accommodation@ird.govt.nz**

This statement was issued on 6 December 2012.

APPENDIX – COMMISSIONER'S OPERATIONAL APPROACH TO TEMPORARY SHIFTS

The following should be read with the Commissioner's Statement CS 12/01. It illustrates the treatment of temporary shifts, and the factors that need to be taken into account in determining when a shift is likely to be regarded as temporary.

The comments below are illustrative, but different factors may alter the tax treatment.

Generally, accommodation payments made by an employer or the value of accommodation provided by an employer are taxable in the hands of the employee. However, these payments or the value of the accommodation provided may not be taxable when they relate to a temporary shift for work purposes.[2] This is because expenditure related to this accommodation is unlikely to be of a private or domestic nature. A temporary shift for work purposes is where the employee, in the course of doing their job, is required to stay temporarily away from the place where they live (ie, their home base).

It is not unusual for an employee to work away from home on temporary assignment. In these situations the employer may provide or pay for accommodation for the period of the assignment. While the employee is physically absent from their residence or home base, generally they have not relocated. While it is a matter of fact in every case, it is expected that the place where they "live" for all practical purposes remains their home base. In the Commissioner's view, for the purposes of determining the tax treatment of accommodation, where a person lives is not determined solely by the location of the house or dwelling that they live in on any particular day. Rather it is determined on the basis of the person's circumstances. Clearly, if the location of the house or dwelling is also the centre of their domestic life and where their substantive employment is located, that location is the place where they live.

The Commissioner considers that the appropriate test for determining whether an employee has temporarily shifted to another location (or alternatively whether they have relocated), is to determine whether they live in their home base or in the new location.

Determining where a person lives involves a weighing of all the factors.

Factors to consider when determining whether a current employee has made a temporary shift include:

- Has the employee relocated and established that they are living in a new location?
- Does the employee retain their substantive employment position in the original location, or has the employee relocated to take up new employment?
- What is the duration of the transfer? The shorter the transfer period the more likely it is that the transfer is temporary. Equally, the longer a transfer the more likely it is that the transfer is more than temporary.
- Does the original location (where their substantive job is) remain the centre of the person's domestic life?
- Is the payment from the employer effectively paying the employee's mortgage for a property at the new location? The acquisition of property in the new location suggests a more than temporary move.
- Has the employee retained a home (either owned or rented by them) in their old location which is available to

[2] This tax treatment can result from applying a number of sections in the Income Tax Act 2007 (ie, sections CE 1, CE 5, CW 17, CW 17B and CX 20) depending on the particular circumstances.

them? This is relevant not because of the costs incurred but rather what it suggests about the nature of the arrangement. Along with other factors, the retention of a home can sometimes suggest an intention to return and may imply that the arrangement is temporary and work related rather than personal. However this factor alone is not determinative.

When an employee shifts to take up a new job with a new employer this is not considered to be a temporary shift. This is because they have not shifted in the course of doing their job. Rather, they have shifted to enable them to take up new employment. This new employment may be on a temporary or permanent basis. Any accommodation or accommodation payment they receive from their new employer will be subject to tax unless the exemption in section CW 17B for work-related relocations applies.

Examples

The following examples are intended to demonstrate the application of the above factors. The examples do not cover the way in which the accommodation to the employee is provided or paid, which can affect the tax treatment of the accommodation.

A works for a firm of accountants. The accountants have two offices—one in Auckland and a smaller office in Dunedin. A's job is based in Auckland, where he lives with his parents.

1) A is sent to Dunedin to assist with an audit. He is away from Auckland for three nights, and stays in a hotel in Dunedin. After the audit, he returns to Auckland.

   A is staying short-term away from his home location in the performance of his employment duties. Therefore, the cost of his hotel is not taxable.

2) When one of the accountants in the Dunedin office falls ill, and is required to be away from work for six weeks, A is asked to fill-in for that six-week period. A agrees with his employer that he will come back to Auckland for a three-day weekend after three weeks, but otherwise will stay in Dunedin for the whole period. His employer will put him up in a motel for the whole period (including the period he is back in Auckland).

   A is undertaking the work in Dunedin at the request of his employer. The duration of the work in Dunedin clearly indicates that this is a temporary shift. His job remains open in Auckland and he is staying in a motel while he is in Dunedin. Therefore, it is considered that A has not relocated to Dunedin. The cost of his motel is not taxable as this is a temporary shift to another location as part of the performance of his current employment duties.

3) Due to unforeseen circumstances, it turns out that the Dunedin staff member cannot return to work. The staff member's position is being advertised, but A has agreed to extend his stay in Dunedin for an additional 10 weeks (four months in total). Other than a couple of long weekends in Auckland during the extended period, A will stay in Dunedin (and the motel paid for by his employer) for the whole time. A has made it clear to his employer that he is not staying in Dunedin and will be returning to Auckland at the end of four months.

   The job in Auckland remains available to A and the intention of the parties is that he will return to Auckland at the end of the four-month period. While the duration of his stay is longer than the original six weeks, it still indicates a shift which is temporary in nature because it is of a limited duration. It is considered that A has not changed the place where he lives. Rather, it suggests that this shift is temporary in nature and therefore the cost of his motel is not taxable as the shift occurred as part of the performance of his current employment duties.

4) A's circumstances change as he has established a new relationship in Dunedin and wants to live in Dunedin permanently. He applied for the vacant Dunedin position, and has been appointed, becoming a permanent staff member in Dunedin at the end of the four-month period. However, the firm has agreed to pay for a further six weeks in the motel, after which he will be expected to find (and pay for) his own accommodation.

   As A has now become a permanent staff member in Dunedin it is considered that he has relocated to Dunedin. The additional six weeks in the motel will be taxable to A, unless the requirements in the relocation exemption in section CW 17B are met.[3]

5) Some time later, A is now settled in Dunedin. He is married, has a mortgage, and a young child. His employer asks him to temporarily manage the firm's Auckland office and he agrees to be the temporary manager there for three months. He travels from Dunedin to Auckland each Monday morning, returning on Friday evening. During this time the firm brings in a contractor to cover A's job in the Dunedin office.

[3] For guidance refer to Determination 09/04: *Eligible relocation expenses.*

Although A is now working in Auckland on a temporary basis, as his wife and family and the home that they own remain in Dunedin, the centre of his domestic life is Dunedin. The shift to Auckland is intended to be temporary in nature and it is envisaged that he is able to return to his substantive job in Dunedin at the end of the three-month period.

A has not changed the place where he lives and therefore it is considered that this is a temporary shift undertaken at the request of the employer. As such, the cost of the hotel accommodation in Auckland is not taxable to A.

6) The job in Auckland turns out to be bigger than expected, and is extended for a further three months (making six months in total). Commuting is becoming too difficult, so A's family joins him in Auckland for the period, and they all move into a serviced apartment, which the firm pays for. He keeps his house in Dunedin, where it remains empty. The contractor covering A's job in Dunedin has their contract extended indefinitely.

The total period for A's temporary shift is now six months and for the final three months the family is now based in the apartment in Auckland. This could be seen as suggesting a more than temporary shift.

However, A's job in Dunedin remains available to him. In addition, his house in Dunedin remains empty. A and family are clearly living in temporary accommodation. The total duration of six months could still be seen as temporary. The intention of the parties is that the arrangement is temporary.

After an evaluation of these factors, it is considered that this is still likely to be a temporary shift and that the cost of the serviced apartment is not taxable to A.

7) The job in Auckland is extended for a further nine months. A and his family move into a rented house in Auckland that the firm pays for. A rents out his house in Dunedin for a nine-month lease.

A has moved the family to Auckland and they are living in rented accommodation in Auckland. The Dunedin house has been rented out. It is considered that the centre of A's domestic life has moved to Auckland. The duration of the arrangement, being a further nine months, also tends to suggest that A may have relocated where he lives to Auckland.

While A's job in Dunedin remains open and he continues to own a house in Dunedin, it is considered based on an evaluation of all the factors that A has now relocated the place where he lives to Auckland. As such, the shift is more than temporary in nature and the accommodation payment received is taxable to A.

8) A agrees to continue in his job in Auckland permanently and A and his family continue to live in the house rented by his employer. The employer pays market rent of $500 a week but as part of A's new contract, A will pay $200 per week to the employer as a contribution to the rental.

As A has permanently relocated, this is no longer a temporary shift and the accommodation is taxable. As the employer is providing A with subsidised rental accommodation, A is taxable on the market value of the subsidised accommodation A is receiving, which is $300 per week.

9) A's employer is seeking to appoint a new partner to the firm. B, formerly employed in Sydney, takes up the new partnership position in the firm and shifts to Auckland. B retains her house in Sydney and leaves her adult children living in the Sydney house. As part of B's contract, her new employer agrees to pay B an accommodation payment of $100,000 annually.

As B has relocated to Auckland to take up a job with her new employer, the accommodation payment will be taxable, unless the requirements in the relocation exemption in section CW 17B are met.

10) C, a Dunedin-based employee of a national firm is asked to work in Christchurch as part of the rebuild for nine months. C's employer owns an apartment in Christchurch which is provided to C during the period he is working in Christchurch. C's temporary secondment to Christchurch is extended to 12 months. C commutes to Christchurch every week on Monday and returns to Dunedin on Friday evenings. Throughout this period C's family remains in the family home in Dunedin.

The total period of C's temporary work shift is 12 months and this could be seen as strongly suggesting a more than temporary shift.

However, C's job in Dunedin remains available to C and the intention of the parties is that C will return to Dunedin at the end of the 12-month period. C's family remains in the family home in Dunedin. C commutes back from Christchurch to Dunedin every weekend.

After an evaluation of these factors, it is considered that, on balance, this is still likely to be a temporary shift and that the accommodation provided to C is not taxable to C.

The Commissioner considers that a shift of between 6 and 12 months could potentially be a temporary shift but that a shift of over 12 months is likely to be more than a temporary shift unless exceptional circumstances exist.

11) D is an engineer in a national firm, based in Auckland. He is offered a development opportunity by the firm to manage the firm's engineering work in Christchurch for the length of the Christchurch rebuild. This involves living in Christchurch and it is anticipated that this will continue for several years. His wife and children remain in Auckland and continue to live in the family home. D travels home most weekends to see his family. While in Christchurch, D lives in an apartment paid for by the firm.

    It is considered that in spite of the fact that D's family remains in Auckland and the fact that ultimately the Christchurch rebuild will have a finite life, the length of time involved indicates that the work arrangement that has been entered into is more than temporary. Where D works is now Christchurch. Effectively D has relocated for work purposes and is taxable on the market value of the accommodation provided, unless the requirements in the relocation exemption in section CW 17B are met.

12) E is employed by a multinational firm. E has been sent to Auckland from her home in Sydney on a two-year contract assisting the firm's New Zealand operations. The firm has provided E with a serviced apartment to live in when in Auckland. E's family remains in Sydney and E travels to visit them regularly. However, E spends most of her time (including weekends) in Auckland.

    Although E's family remains in Sydney it is considered that E lives, for the duration of the contract, in Auckland. Auckland is where her work is and where she spends most of her time. In addition, the length of the contract strongly suggests the arrangement is more than temporary. E is taxable on the market value of the serviced apartment, unless the requirements in the relocation exemption in section CW 17B are met.

Operational application

If an employee, while working for their current employer, shifts to a new location for work-related purposes for a period of less than six months (and it was always intended that the shift be less than six months), the Commissioner generally considers that the shift is likely to be temporary in nature and, therefore, the accommodation payments or the value of the accommodation provided is not taxable. In these circumstances, the Commissioner has decided, pursuant to the Commissioner's care and management powers, that Inland Revenue will not be devoting any resources to investigate such arrangements that are less than six months in duration. This approach does not apply if the person has shifted to take up a new job with a new employer.

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.

SPS 13/01: RETENTION OF BUSINESS RECORDS IN ELECTRONIC FORMAT, APPLICATION TO STORE RECORDS OFFSHORE AND APPLICATION TO KEEP RECORDS IN MĀORI

Introduction

1. This Standard Practice Statement ("SPS") provides guidelines on the retention of business records in electronic format and sets out the Commissioner of Inland Revenue's ("the Commissioner") practice when considering an application to store business records offshore.
2. Also included in this SPS is the Commissioner's practice when considering an application to keep records in Māori.

Application

3. This SPS applies from 11 March 2013. It applies to taxpayers who are required to keep business and other records under the Inland Revenue Acts and other third parties that hold business records for taxpayers offshore.
4. This SPS replaces SPS GNL-430 *Retention of business records by electronic means* (December 2003) and SPS INV-470 *Applications to keep records in Māori* (May 1998).
5. Unless otherwise specified, the legislative references in this SPS are to the Tax Administration Act 1994.

Summary

6. The Tax Administration Act 1994 ("TAA") and the Goods and Services Tax Act 1985 ("GSTA") require taxpayers to keep business and GST records in New Zealand and in the English language. The Commissioner has the discretion to authorise the offshore storage of records or to authorise records being kept in another language. Recent changes to the TAA allow applications to be made by a third party data storage provider, such as a cloud service provider, to store records offshore for their clients.
7. Records stored electronically, both inside and outside of New Zealand, and either on the taxpayer's own electronic storage system or on an outsourced system, must meet the requirements of the Electronic Transactions Act 2002 ("ETA") that:
   - the integrity of the information contained in the records is to be maintained; and
   - the information is readily accessible so as to be usable for subsequent reference.
8. Further conditions for legal requirements to retain records under the Inland Revenue Acts are provided in schedule 1, clause 4 of the Electronic Transactions Regulations 2003 ("ETR").
9. It is the Commissioner's view that the requirements in the ETA and the conditions in the ETR are met if the practices in paragraphs 41 to 51 of this SPS are followed.
10. The Commissioner may authorise a taxpayer to store records offshore or a third party to hold records offshore for multiple taxpayers, if the storage of those records offshore does not impede the Commissioner's compliance activities. In particular, the records stored offshore remain accessible by the Commissioner. An applicant may be required to demonstrate that the manner in which the records are to be stored offshore will meet the requirements of the ETA and the ETR. Each application will be considered on a case by case basis having regard to the merits of the case, including the compliance history of the applicant.
11. For a third-party application, the Commissioner will also consider whether the third party carries on business in, or through, an establishment in New Zealand; and the procedure that the third party has for dealing with client data should the third party no longer hold records for the client.
12. The Commissioner may impose conditions on an authorisation to store records offshore. The need to impose such conditions is determined on a case by case basis
13. The Commissioner may withdraw an authorisation, either upon request by the party to which the authorisation applies or by giving reasonable notice of the withdrawal.
14. An authorisation given to a third party does not replace a taxpayer's responsibility to meet the record keeping requirements as per the Inland Revenue Acts. The authorisation merely enables a taxpayer to store records offshore without being in breach of their obligations.

15. The Commissioner can request information from any person, including a third party, pursuant to section 17. Generally, the records of a specific taxpayer will be obtained from that individual taxpayer in the first instance. The Commissioner may request this information from a third party if it is necessary in the particular circumstances of the case.
16. The Commissioner will follow the standard practice for protecting taxpayers' rights to non-disclosure of tax advice documents and documents that are legally privileged when requesting information. Refer to SPS 05/07: *Non-disclosure right for tax advice documents*.
17. The Commissioner may authorise records to be kept in a language other than English. The Commissioner recognises that Māori is an official language of New Zealand and those persons who wish to keep their records in Māori may apply to the Commissioner, in writing, to do so. The Commissioner will generally approve applications to keep records in Māori provided that the taxpayer uses certain English phrases specifically required by the GSTA and that numbers are recorded using Arabic numerals.
18. Applications to keep records in other languages may be approved only in limited circumstances where there are compelling reasons to do so. These applications will be considered on the facts of each case.

Background

19. The TAA requires persons who carry on a business or other income-earning activities to keep, in New Zealand and in English, sufficient records to enable the Commissioner to readily ascertain the amounts of tax payable by that person.
20. The Commissioner has the discretion to allow a person to keep their records offshore and also the discretion to allow a person to keep records in a language other than English.
21. Technological advances have seen records now being transferred to electronic form or originating in electronic form. The ETA provides a framework to support people who elect to conduct their business electronically. They will also have the option to use technology to store information from source-paper documents or other non-electronic records. The ETA also removes the requirement to retain the source-paper or non-electronic records where anyone who uses technology to store business records can ensure the integrity of the information transferred from source-paper or other non-electronic records.
22. A growing number of taxpayers are using new technologies for their businesses, such as cloud-based computing technology. Cloud computing technology utilises the internet to deliver IT products or services to businesses, such as computer operating systems, networks and applications. While IT products and services are accessed from devices such as a computer or a smartphone in New Zealand, any data or documents generated from them are not stored on the device but in data centres operated by a cloud service provider. Many cloud service providers operate data centres that are located outside of New Zealand. This means the data of the clients of a cloud service provider, which may include the business records of a New Zealand taxpayer, could be stored offshore.
23. As well as authorising a person to store their own business records offshore, the Commissioner now has the discretion to authorise a third party, such as a cloud service provider, to hold multiple taxpayers' business records offshore for the taxpayers.
24. There is a wide variety of cloud computing services on offer, ranging from online accounting packages to a full IT infrastructure of a business. Not all cloud computing services use offshore data centres and not all taxpayers who are using a third-party provider will need authorisation. It depends on the service provider, the service that the taxpayer is using and also the taxpayer's own record keeping practice.
25. A taxpayer has the responsibility to ensure that their business records are retained in New Zealand or agreement has been sought from the Commissioner to hold the records offshore. The taxpayer has the ultimate obligation to keep the documents as required to be kept by tax law.
26. It is an offence against the TAA if a person does not keep the documents required to be kept or does not provide information when requested by an authorised Inland Revenue officer.
27. While it is a requirement that records must be kept in English, the Commissioner has the discretion to allow a person to keep records in another language. Inland Revenue recognises that Māori is an official language of New Zealand and that it is reasonable for a person whose business dealings are conducted in Māori to be able to hold their business records in Māori. However, the implications for other parties who may receive invoices, receipts and the like also need to be considered. Appendix A to this SPS sets out the factors that the Commissioner will consider when a person applies to keep their records in Māori.
28. Taxpayers who wish to keep their records in a language other than English or Māori may apply to the Commissioner to keep their records in that other language. However, the Commissioner would only

agree to such a request in limited circumstances where there are compelling reasons for the taxpayer to do so. The Commissioner will also need to take into account the resources required to translate records kept in another language.

Standard practice

Taxpayer obligation to keep business and other records

29. Section 22 requires a person who carries on a business in New Zealand (including those who do business via the Internet) to keep sufficient business records to enable the Commissioner to readily ascertain the amount of tax payable by the business and all other tax matters relating to that business.

30. "Records" include, but are not limited to:
    - books of accounts that record receipts or payments or income or expenditure;
    - vouchers, bank statements, invoices, receipts, and other documents to verify entries in the books of accounts;
    - other accounts and documents specifically required to be maintained and kept.

31. Section 22(1) requires that the records to be kept in relation to a business must contain certain information. This includes:
    - a record of the assets and liabilities of the business; and
    - a record of all entries from day to day of all sums of money received and expended in relation to the business; and
    - all records and invoices relating to trading stock or the provision of services, depending on the type of business; and
    - charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year.

32. Business records must be retained in English and at a place in New Zealand (unless the Commissioner has approved otherwise), and they must be retained for the full retention period required by the TAA, currently 7 years unless extended to 10 years by the Commissioner for specific case situations.

33. Similar record keeping requirements are contained in section 75 of the GSTA for the retention of records specified in that section for GST purposes.

34. Records may be kept in paper form or electronic form. There must be sufficient detail to ensure a complete audit trail that allows tracing the retained records to and from accounting records and to tax returns.

35. Section 25 of the ETA provides the option of using technology to store source paper documents by electronic means. The legal requirement to retain a document that is in paper form, is met by retaining an electronic form of the information if:
    - the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and
    - the information is readily accessible so as to be usable for subsequent reference.

36. Subject to section 27 of the ETA, section 26 of the same Act sets the standard for retaining information in electronic form. The legal requirement to retain information that is in electronic form is met by retaining the information:
    - in paper or non-electronic form if the form provides a reliable means of assuring the maintenance of the integrity of the information; and
    - the information is readily accessible so as to be usable for subsequent reference.

37. Section 27 of the ETA provides for extra conditions for electronic communications. If a person is required to retain information that is contained in an electronic communication, the person must also retain information that can identify the origin, destination, and the time when the electronic communication was sent. This information must be readily accessible and usable for subsequent reference.

38. Schedule 1, clause 4 of the ETR provides conditions for legal requirements to retain records under the Inland Revenue Acts:
    - A record that is initially in paper or other non-electronic form may be retained in electronic form if the record is readily able to be produced in paper form and that the paper form is a duplicate image of the original paper or other non-electronic form.
    - If annotations, indexing references or other additional information are included in the electronic form of the record, they must not obscure any of the original information contained in the record and must be distinguishable as additions to the original record.
    - A record that is generated in electronic form and is provided to another person in paper or other non-electronic form may be retained in its electronic form only.
    - If a record is received from a person in both non-electronic form and electronic form, the record may be retained in its electronic form only.

Retention of records in electronic form

39. The main requirements for keeping records in electronic form under the ETA, whether the records were originally in paper form or in electronic form, are that:
    - the integrity of the information contained in the records is to be maintained; and
    - the information is readily accessible so as to be usable for subsequent reference.

40. The Commissioner considers that the information will meet the requirements of the ETA and the ETR if the practices in paragraphs 41 to 51 are followed. The same standards of record keeping practice applies to records stored both inside and outside of New Zealand, and either on the taxpayer's own electronic storage system or on an outsourced system.

Originally in paper form

41. Paper records transferred to electronic form must be copied completely and accurately, for example, the use of imaging to provide information in a format identical in all respects to the source-paper document. A black and white scan of a coloured document is acceptable, unless the colours in the original document are material to understanding the information. The addition of information such as index referencing is also acceptable, provided the additional information does not obscure the original information and the additional information must be distinguishable as additions to the original record.

42. The electronic copy must be readily accessible and capable of being retrieved on legible hard copy (printouts) or supplied in an electronic form able to be read by Inland Revenue staff.

43. Source-paper documents or other non-electronic records from which the complete information is transferred and stored in electronic form, may be destroyed after transfer to the electronic form.

44. As an example, where a taxpayer electronically transmits to the Commissioner information contained in any return in a prescribed form, section 36 requires the taxpayer to retain a hard-copy transcript of their information, and for a period of 7 years as required under section 23. The Commissioner considers that the requirement to keep the hard-copy transcript is met if the practices in paragraphs 41 and 42 are followed.

Originally in electronic form

45. Internal controls must be adequate to ensure that all business transactions executed electronically, including those executed through the Internet, are completely and accurately captured.

46. People should be able to demonstrate that their electronic records systems are secure from both unauthorised access and data alterations. This usually involves developing and documenting a security program that:
    - establishes controls to ensure that only authorised personnel have access to electronic records;
    - provides for backup and recovery of records;
    - ensures that personnel are trained to safeguard sensitive or classified electronic records; and
    - minimises the risk of unauthorised alteration, addition or erasure.

47. The charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used, must be retained and produced (if required) to an Inland Revenue officer.

48. Those who engage in the electronic transfer of tax invoices, credit notes or debit notes must retain electronic records that have an adequate level of detail to meet the requirements of the GSTA. This may require the taxpayer to keep other records such as the underlying contracts, price lists, price changes, product code descriptions.

E-mails

49. An e-mail that contains information required to be kept by the Inland Revenue Acts may be regarded as a record. Where e-mails are considered to be records, section 27 of the ETA requires the origin, destination and time of electronic communications to be retained and accessible so it can be used for subsequent references.

Backup

50. Backup and recovery procedures must be sufficient to ensure the availability of electronic records for the required record retention period.

Hardware/software changes

51. In the event of hardware/software changes:
    - facilities for retrieving electronic records that have been stored on the former system must be retained; or
    - the electronic records must be converted to a compatible system and both sets of files retained complete with documentation showing the method of transfer and controls in place to ensure the transfer was complete and accurate.

The Commissioner's discretion to authorise offshore record keeping

52. Section 22(2BA)(b) requires a taxpayer to keep their business records in New Zealand, unless the Commissioner has authorised under section 22(8) that the records may be kept offshore. This applies to business records in both paper form and electronic form.

53. Authorisation may be given to an individual taxpayer to hold their own records offshore or to a person (a third party) to hold records for multiple taxpayers offshore.

54. An individual taxpayer who wants to store their business records offshore should apply to the Commissioner for authorisation to do so before sending their records outside of New Zealand. However, if either a backup of the business records is retained in New Zealand, or if the records to be stored offshore are merely a backup of the records held in New Zealand, the Commissioner considers that the requirement to store the records in New Zealand is satisfied and an authorisation is not necessary.

55. A third party may include a cloud service provider or other data storage providers that hold records for multiple taxpayers.

56. It may be necessary for a tax agent to make a third party application if that tax agent is storing their clients' records for their clients outside New Zealand, ie, where the clients of the tax agent have outsourced the storage of records to the tax agent and the clients are not holding their own records.

57. If an authorisation is granted to a third party, the individual taxpayers for whom the third party holds records for would not need a separate authorisation from the Commissioner.

58. An application to store records offshore must be made in writing. Third-party applications should be sent to the Customer Services Manager, Large Enterprises at:

    Inland Revenue
    5 Osterley Way
    Manukau
    PO Box 5542
    Auckland 1141

    Individual applications may be sent to your local Inland Revenue office.

The Commissioner's consideration

59. The Commissioner may agree to a taxpayer storing their business records offshore if the Commissioner is satisfied that the offshore storage would not impede Inland Revenue's compliance activities. In particular, the information stored offshore remains accessible by the Commissioner.

60. There are inherent risks to accessing information stored offshore as New Zealand laws may not apply to information that is physically stored in another jurisdiction (electronically or otherwise). The Commissioner must rely on the cooperation of taxpayers or third parties to access information stored offshore. Furthermore, the Commissioner's access could be jeopardised if the third party who is providing the storage services has no presence in New Zealand.

61. Therefore, in order to ensure the records held offshore by a third party remain accessible by the Commissioner, the Commissioner will have regard to the following when considering an application by a third party:
    - whether the third party has a place of business in New Zealand or carries on its business through an establishment in New Zealand; and
    - how the clients' data will be dealt with should the third party no longer hold records for clients or for a particular client (for example, the contractual relationship ends between a client and the third party or the third party ceases to exist).

62. Each application will be considered on the merits of the case and may include the compliance history of the applicant.

63. In terms of an authorisation to a third party, section 22(8)(b) provides that in addition to the Commissioner authorising the third party to hold records for taxpayers outside New Zealand, the Commissioner also has the discretion to require the records to be kept in a particular form and to be accessible by the Commissioner in a way approved by the Commissioner. The need to impose such terms on an authorisation to a third party will depend on the circumstances of the third party and will be considered on a case by case basis.

64. An application to store records offshore should address the above factors. If the storage of records offshore is by electronic means, the applicant may be required to provide information that demonstrates the manner in which the records are to be stored will meet the requirements of the ETA and ETR as discussed in paragraphs 39 to 51 above. The information supplied in support of the application may include the following:
    - documentation that describes the operation of the systems in which the records are stored;
    - explanation as to how the records are stored offshore and how they can be accessed by the Commissioner should it be required;

- standard terms and conditions for services of data storage provided by the third party to their customers;
- any Code of Practice disclosure statements applicable to a third party. For example, the New Zealand code of practice for cloud computing which a New Zealand-based cloud provider can voluntarily adhere to. Certain information about the cloud provider and its services are disclosed under the code of practice.

Conditions of an authorisation

65. The Commissioner may impose conditions on an authorisation to store records offshore, as provided for in section 22(9).

66. All authorisations to store records offshore would be subject to the taxpayer or third party providing an undertaking that the records would be provided to Inland Revenue on request, in a usable format, and at no cost to Inland Revenue in obtaining the information.

67. In order to ensure the information stored offshore continues to be accessible, the Commissioner may impose additional conditions that are considered necessary and reasonable in the circumstances of the case. As an example, to ensure that the Commissioner's access to information is not compromised where the relationship between the taxpayer and a third party ends, a reasonable condition imposed by the Commissioner on a third party could be that at the end of the service agreement between the taxpayer and the third party, the third party will return the data to the taxpayer in a format that is meaningful to the taxpayer or in a format can be readily exported into a meaningful format that the taxpayer can understand and can be used for subsequent reference.

68. Conditions may be varied as circumstances of the taxpayer or the third party applicant change.

Withdrawal of an authorisation

69. No period of validity would be prescribed on an authorisation. However, the Commissioner may withdraw an authorisation, either upon request by the taxpayer or the third party to which the authorisation applies or by giving reasonable notice of the withdrawal. Circumstances where an authorisation may be withdrawn include:
    - non-compliance to the conditions of an authorisation or to an information request;
    - the taxpayer or third party no longer keeps records offshore.

Public notice of an authorisation or withdrawal

70. A public notice of an authorisation given to a third party or the withdrawal of that authorisation will be published on Inland Revenue's website.

Taxpayer has ultimate obligation

71. An authorisation given to a third party does not replace a taxpayer's responsibility to meet the record keeping requirements as per the Inland Revenue Acts. The authorisation merely enables a taxpayer to store records offshore without being in breach of their obligations. A taxpayer still has the responsibility to ensure that the records being kept offshore are sufficient to satisfy the record keeping requirements.

72. Furthermore, an authorisation to a third party should not be relied upon as an approval of the third party as a service provider in general. The individual taxpayer should carry out their own assessment of the third party to ensure that they are satisfied that services offered by the third party meet the taxpayer's business needs. The authorisation provided by the Commissioner merely relates to the offshore storage of records.

Providing information to Inland Revenue

73. The Commissioner can request information from any person pursuant to section 17. Any person, when required under section 17, must produce for inspection any documents that the Commissioner considers necessary or relevant for a purpose under an Inland Revenue Act. The failure to produce information that is in the person's knowledge, possession or control when requested, is an offence under the TAA.

74. A third party may be required to provide information that is in their possession when requested under section 17. The request may include any logs of entries, alterations and deletions of transactions that a third party may keep.

75. Generally, a section 17 request will be made to the taxpayer in the first instance. On occasion, the Commissioner may request this information from a third party. Factors that may influence the Commissioner's decision to request information from a third party include whether the documents required may be at risk, and where there has been non-compliance or cooperation with previous requests for information.

76. Section 17 notices (including those issued to a third party other than the taxpayer) will be issued following the practice set out in SPS 05/08: *Section 17 notices* (or any subsequent replacements of that SPS). Also refer to SPS 10/02: *Imaging electronic storage*

media for the Commissioner's standard practice for imaging electronic information when exercising the information gathering powers under section 16.

77. Inland Revenue's Compliance Technology and Audit Unit specialises in downloading electronically stored information. The preferred media for receiving electronic information is on CD, DVD or USB drive. However, other mutually agreeable transfer methods may be negotiated as required.

78. Electronic information supplied to Inland Revenue should be in a tab or comma delimited or fixed record length format, in EBCDIC or ASCII. It should be encrypted or password protected with the password/passphrase or any other information required to access the information supplied to Inland Revenue separately. The electronic information should be copied to media, not a proprietary back up. Documentation should be supplied with the media showing the record layout, record length, and number of records.

Assistance to Inland Revenue officers

79. Where necessary, adequate viewing and printing facilities should be made available free of charge to Inland Revenue officers. If requested, persons must locate selected records that have been stored and print any items selected, free of charge to Inland Revenue officers.

80. Someone must be available to explain the operation of their computer system to Inland Revenue officers. This is the case whether the system is owned and operated by the person or outsourced to a third party.

Non-disclosure of tax advice document and legal privilege

81. Sections 20 to 20G provide taxpayers with the right to non-disclosure of documents that are tax advice documents or documents that are legally privileged. The Commissioner will follow the standard practice for protecting these taxpayer rights when requesting information.

82. There is a possibility that information relating to a particular taxpayer obtained from a third party may contain documents that may be subject to these non-disclosure rights. Where a request for information is made to a person other than the taxpayer pursuant to section 17, the recipient of the request may contact the taxpayer to confirm whether the taxpayer wishes to claim non-disclosure right for tax advice documents or legal privilege over documents required to be disclosed. This is outlined in SPS 05/08: *Section 17 notices*.

83. The Commissioner will attempt to deal with the claim of legal privilege or tax advice status of information with the person making the claim. If the claim of legal privilege or the non-disclosure of tax advice documents cannot be resolved between the Commissioner and the person making the claim, the Commissioner may apply to a District Court Judge for orders under 20(5) as to whether the claim for legal privilege is valid or under section 20G as to whether the document is a tax advice document.

84. Refer to SPS 05/07: *Non-disclosure right for tax advice documents* (or any subsequent replacements of that SPS) for more information on what constitutes tax advice documents and the process for claiming non-disclosure right for these documents.

This Standard Practice Statement is signed on 11 March 2013.

Rob Falk

LTS Manager, Technical Standards (Acting)

APPENDIX A – APPLICATIONS TO KEEP RECORDS IN MĀORI

Background

Sections 22, 26 (records to be kept for resident withholding tax purposes) and 32 (records of specified charitable, benevolent, philanthropic, or cultural bodies) and section 75 of the GSTA require taxpayers to keep sufficient records in the English language to enable the Commissioner to readily ascertain the taxpayer's liability to tax.

The reason for the requirement to keep records in English is administrative convenience. It allows the Commissioner to readily ascertain a taxpayer's liability. However, Inland Revenue recognises that Māori is an official language of New Zealand and that the choice of language for business dealings is not a matter for the Commissioner to determine. It is reasonable for a person whose business is conducted in Māori to expect that Inland Revenue will be able to accommodate their language preference.

Each of sections 22, 26 and 32 and section 75 of the GSTA provides discretion to the Commissioner to allow records to be kept in an alternative language, following a written application. Therefore, those taxpayers who wish to keep their records in Māori may apply to the Commissioner to do so.

The tax law obligations of other parties, such as the recipient of a tax invoice, must also be considered. When base records, such as invoices and receipts, are maintained in Māori there may be some inconvenience to other persons. GST tax invoices and debit and credit notes raise a specific issue. They are necessary for ascertaining the tax liability of the issuer and of that other party. They are, therefore, records covered by section 75(3) of the GSTA that must be maintained in English, unless the Commissioner gives permission to use another language.

There are explicit requirements under sections 24, 24BA and 25 of the GSTA for specific English phrases to be used in a GST tax invoice or debit and credit notes. These phrases are:

- "tax invoice";
- "copy only" – on copy of lost tax invoice, credit or debit note;
- "buyer created tax invoice – IRD approved";
- "modified tax invoice – IRD approved"; and
- "credit note" or "debit note" – on credit or debit notes.

There is no discretion to allow the use of expressions in Māori (or any other language) to satisfy the requirements imposed in sections 24, 24BA and 25 of the GSTA.

Standard practice

Applications

A person may apply in writing to keep records (eg, invoices, receipts, cash books, and journals) in Māori for tax purposes. The application should specify which records the taxpayer wishes to keep in Māori.

A taxpayer may seek approval to keep only some of their records in Māori. In addition, where approval to keep certain records in Māori has been obtained, there is nothing to stop a person continuing to keep all or some of those records in English. This would extend to having an individual document completed partly in Māori and partly in English.

The Commissioner's consideration

The Commissioner will generally approve applications to keep records in Māori, provided that:

- the taxpayer complies with the requirements of sections 24, 24BA and 25 of the GSTA; and
- numbers are recorded using Arabic numerals (ie, 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9) in order to accommodate the needs of other parties.

In any case, the taxpayer's records must be sufficient to allow the Commissioner to readily ascertain the taxpayer's tax liabilities.

The approval is not a relaxation in the standard of record keeping as required by the Inland Revenue Acts. Nor does the approval necessarily mean Inland Revenue will communicate with taxpayers in Māori.

Impact on other parties

A recipient of a record that has been completed in Māori, such as an invoice or receipt that will be used by that other party to ascertain their tax liability, need not also apply for approval to keep records in Māori.

The balance of commercial convenience between buyers and sellers will determine what language is used in any particular case. Over time, the usual Māori expressions will become known within the community. Interpretation will, therefore, become less difficult.

Returns completed in Māori

The law is silent on the language to be used in completing any returns that a person may be required to provide to the Commissioner. The Commissioner will accept returns in the prescribed format, completed in the Māori language with numbers entered using Arabic numerals.

APPENDIX B – LEGISLATION

Tax Administration Act 1994

Section 22 Keeping of business and other records

(1) Without limiting the generality of subsection (7), the records required to be kept and retained under subsection (2) in respect of any business carried on during any income year by any person, shall contain—

(a) a record of the assets and liabilities of the person (in relation to that business); and

(b) a record of all entries from day to day of all sums of money received and expended by the person (in relation to that business) and the matters in respect of which the receipt and expenditure takes place; and

(c) where that business involves dealing in goods—

(i) a record of all goods purchased, and of all goods sold in the carrying on of that business (except those sold in the course of cash retail trading customarily conducted in a business of the kind of which that business is one) showing the goods, and the sellers and buyers or, as the case may be, the agents of the sellers and buyers in sufficient detail to enable the goods, and the sellers and buyers, and those agents, to be readily identified by the Commissioner; and all invoices relating to the goods; and

(ii) statements (including quantities and values) of trading stock held by the person at the end of each such tax year, and all records of stocktakings from which any such statement of trading stock has been, or is to be, prepared; and

(iii) a taxpayer, other than a low-turnover trader, must retain all accounting records relating to the calculation of the value of closing stock (as defined in section YA 1 of the Income Tax Act 2007); and

(iv) a low-turnover trader (as defined in section YA 1 of the Income Tax Act 2007) must retain records of the valuation methods and their application in calculating the value of closing stock, except if the methods and their application are not materially different from the previous income year; and

(v) the taxpayer must comply with section E 22(4) of the Income Tax Act 2007; and

(d) where that business involves the provision of services, records of the services provided and all invoices relating to them; and

(e) the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the carrying on of that business.

(2) Subject to subsections (2BA), (2B), (3), (4), and (6), every person who—

(a) carries on any business in New Zealand:

(b) carries on any other activity (not being the carrying on of employment as an employee) in New Zealand for the purpose of deriving assessable income:

(c) is a person to whom the ESCT rules apply and who makes an employer's superannuation cash contribution to a superannuation fund:

(cb) is a person to whom the RSCT rules apply and who makes a retirement scheme contribution to a retirement savings scheme:

(d) makes, holds, or disposes of, for the purpose of deriving assessable income, any investment:

(e) is an employer to whom the FBT rules apply or is a person who provides any fringe benefit to any person who, in relation to any employer to whom the FBT rules apply, is an employee:

(eb) has a tax credit under section LH 2 of the Income Tax Act 2007:

(ec) is a listed research provider under section LH 15 of that Act:

(ed) is an employer to whom section RD 13B of that Act applies in relation to the treatment of a tax credit for a payroll donation:

(f) is a company that is an ICA company, a FDPA company, a BETA person, a PCA company, or a PCA person:

(fb) is a resident foreign trustee of a foreign trust in any income year,—

shall keep sufficient records to enable the ascertainment readily by the Commissioner, or any officer authorised by the Commissioner in that behalf, of—

(g) the assessable income derived by that person from the carrying on of that business, or the carrying on of that other activity, or the making or holding or disposing of that investment; and

(h) the deductions of that person in the carrying on of that business, or the carrying on of that other activity, or the making or holding or disposing of that investment; and

(i) every fringe benefit, and the taxable value of every fringe benefit, provided by the person to any person in relation to whom the person is an employer, and every fringe benefit provided by the person to any person who in relation to another person is an employee, those records to include (without limiting the generality of the preceding provisions of this paragraph) details of the recipient of the fringe benefit, the occasion of the providing of it, and the amount (if any) paid or payable by the employee for the receipt or enjoyment of it; and

(j) *[Repealed]*

(k) every credit and debit to the person's memorandum accounts (other than an ASC account), and the amount of a credit attached to a dividend or distribution paid by the person:

(kb) *[Repealed]*

(kc) the amount of the person's tax credit under section LH 2 of the Income Tax Act 2007; and

(kd) the person's compliance with section LH 15(1) of that Act, if the person is a listed research provider under section LH 15 of that Act, to show—

(i) they meet the start-up requirements and the other continuing requirements; and

(ii) the amounts derived and incurred by them in performing the research and development activities on behalf of other persons; and

(ke) the transfer under section 24Q of an amount of an employee's payroll donation to the recipient of the donation; and

(l) every employer's superannuation cash contribution, and the taxable value of that contribution, made by the person to any superannuation fund, those records to include (without limiting the generality of the preceding provisions of this paragraph) details of the recipient of the employer's superannuation cash contribution, the occasion of making it, and any related tax credit under section MK 1(2) of the Income Tax Act 2007; and

(lb) every retirement scheme contribution, and the taxable value of that contribution, made by the person to any retirement savings scheme, those records to include, without limiting the generality of the preceding provisions of this paragraph, details of the recipient of the retirement scheme contribution and the occasion of making it; and

(m) the financial position of the foreign trust,—

and shall retain all such records for a period of at least 7 years after the end of the income year, or (for paragraph (k)) the tax or income year (as applicable), to which they relate:

(2BA) A taxpayer required by subsection (2) to keep and retain a record must keep and retain the record—

(a) in English, or in a language in which the Commissioner authorises the taxpayer under subsection (8) to keep the record or the type of record; and

(b) at a place in New Zealand, or at a place outside New Zealand where—

(i) the Commissioner authorises the taxpayer under subsection (8) to keep the record or the type of record:

(ii) the record is kept by a person authorised by the Commissioner under subsection (8) to keep records for taxpayers that include the taxpayer.

(2B) A taxpayer referred to in subsection (2)(e) who is required by subsection (2) to retain records is not required to retain those records for a period of more than 7 years after the end of the income year to which the records relate.

(2C) If there are more than 1 resident foreign trustee of a foreign trust, the resident foreign trustees may appoint one of themselves as an agent for the purposes of keeping the records required by subsection (2).

(3) A taxpayer who meets the requirements of section 33AA(1), or is issued an income statement or required to request or be issued an income statement, and who is required by subsection (2) to retain records of income of that taxpayer from which tax has been withheld or deducted at source need retain those records only until the expiry of 12 months after the end of the income year in which the income was received by the taxpayer.

(4) This section shall not require the retention of any records—

(a) in respect of which the Commissioner has given notice that retention is not required:

(b) of a company which has been liquidated:

(c) by a partner of a partnership, if the partnership retains the records that the partner would be required to retain but for this paragraph.

(5) The Commissioner may, by notice given before the expiry of the 7-year retention period specified in subsection (2) or (2B), require a taxpayer to retain all or any of the records specified in that subsection for a further period not exceeding 3 years following the expiry of the 7-year period where—

(a) the affairs of the taxpayer are or have been under audit or investigation by the Commissioner; or

(b) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.

(6) The Commissioner may, by notice published in the *Gazette*, dispense any class of taxpayers from the need to retain the records, or any class of records, specified in subsection (2) or (2B), for more than 12 months following the end of the income year or tax year to which they relate where—

(a) the taxpayers are not provisional taxpayers; and

(b) the records relate to payments from which tax has been withheld or deducted at source.

(7) In this section, **records** includes—

(a) books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure:

(b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to in paragraph (a):

(c) accounts (whether contained in a manual, mechanical, or electronic format) to be maintained under the imputation rules, the FDP rules, or section OA 3 for accounts under subparts OE and OJ, of the Income Tax Act 2007, and any statement to be retained under section 31 or 71 of this Act:

(d) in the case of a foreign trust, other than for the period for which section 59B(3) applies,—

(i) documents that evidence the creation and constitution of the foreign trust; and

(ii) particulars of settlements made on, and distributions made by, the foreign trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution; and

(iii) a record of—

(A) the assets and liabilities of the foreign trust; and

(B) all entries from day to day of all sums of money received and expended by the trustee in relation to the foreign trust and the matters in respect of which the receipt and expenditure takes place; and

(C) if the trust carries on a business, the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the administration of the trust:

(e) for the purposes of subsection (2)(kc), other documents evidencing research and development activities.

(8) The Commissioner may, upon application in writing by the taxpayer or person, authorise for the purposes of subsection (2BA),—

(a) a taxpayer to keep and retain a record or type of record—

(i) in a language other than English:

(ii) at a place outside New Zealand:

(b) a person to hold, for taxpayers, records—

(i) at places outside New Zealand; and

(ii) in a form approved by the Commissioner; and

(iii) accessible by the Commissioner in a way approved by the Commissioner.

(9) The Commissioner may, for an authorisation under subsection (8) of a person,—

(a) impose reasonable conditions on the authorisation:

(b) reasonably vary the conditions on the authorisation:

(c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal:

(d) give public notice of an action under subsection (8)(b) or this subsection, in a publication chosen by the Commissioner.

Electronic Transactions Act 2002

Section 25 Legal requirement to retain document or information that is in paper or other non-electronic form

(1) A legal requirement to retain information that is in paper or other non-electronic form is met by retaining an electronic form of the information if—

(a) the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and

(b) the information is readily accessible so as to be usable for subsequent reference.

(2) Subsection (1) applies to information that is a public record within the meaning of the Public Records Act 2005 only if the Chief Archivist has approved the retention of that information in electronic form.

(3) To avoid doubt, if information is retained in electronic form in accordance with subsection (1), the paper or other non-electronic form of that information need not be retained.

Section 26 Legal requirement to retain information that is in electronic form

Subject to section 27, a legal requirement to retain information that is in electronic form is met by retaining the information—

(a) in paper or other non-electronic form if the form provides a reliable means of assuring the maintenance of the integrity of the information; or

(b) in electronic form if—

(i) the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and

(ii) the information is readily accessible so as to be usable for subsequent reference.

Section 27 Extra conditions for electronic communications

In addition to the conditions specified in section 26, if a person is required to retain information that is contained in an electronic communication,—

(a) the person must also retain such information obtained by that person as enables the identification of—

(i) the origin of the electronic communication; and

(ii) the destination of the electronic communication; and

(iii) the time when the electronic communication was sent and the time when it was received; and

(b) the information referred to in paragraph (a) must be readily accessible so as to be usable for subsequent reference.

Electronic Transactions Regulations 2003

Schedule 1, Clause 4 Conditions for legal requirements to retain records under Inland Revenue Acts

(1) A legal requirement under the Inland Revenue Acts to retain a record that is initially in paper or other non-electronic form may be met by retaining an electronic form of the record, only if—

(a) the record is readily able to be produced in paper form; and

(b) that paper form is a duplicate image of the original paper or other non-electronic form.

(2) For the purposes of subclause (1), it does not matter that annotations, indexing references, or other additional information are included in the record retained in electronic form, provided that they—

(a) do not obscure any of the original information contained in the record; and

(b) are distinguishable as additions to the original record.

(3) A legal requirement under the Inland Revenue Acts to retain a record that is generated in electronic form and is provided to another person in paper or other non-electronic form (for example, an invoice generated electronically and printed for sending to a customer) may be met by retaining the record in its electronic form only.

(4) Despite subclause (1), if a record is received from a person in both paper or other non-electronic form and in electronic form (for example, a bank statement sent by a bank in paper form, and also provided in electronic form), a legal requirement to retain the record may be met by retaining the record in its electronic form only.

(5) In this clause, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.

Goods and Services Tax Act 1985

Section 75 Keeping of records

(1) For the purposes of this section, the term records includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account.

(2) Without limiting the generality of subsection (1), the records required to be kept and retained, pursuant to subsection (3), shall contain—

(a) a record of all goods and services supplied by or to that registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers, or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, and debit notes relating thereto; and

(b) the charts and codes of account, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each taxable period in the supply of goods and services; and

(c) any list required to be prepared in accordance with section 19B(3) or section 78B(7).

(3) Subject to subsections (4) and (5), every registered person who supplies in New Zealand goods and services shall keep in New Zealand copies of records issued by that registered person, and sufficient records in the English language to enable ready ascertainment by the Commissioner or any officer authorised by the Commissioner in that behalf, of that person's liability to tax and shall retain in New Zealand all such records for a period of at least 7 years after the end of the taxable period to which they relate:

provided that the Commissioner may, in the Commissioner's discretion, on application in writing being made to the Commissioner in that behalf, authorise any such registered person, by notification in writing, to keep and retain outside New Zealand or, as the case may be, in a language other than the English language, such of those records as the Commissioner determines.

(3B) For the purposes of section 11(1)(mb), the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:

(a) the name and address of the recipient; and

(b) the registration number of the recipient; and

(c) a description of the land; and

(d) the consideration for the supply.

(3C) Subsections (3D) and (3E) apply when a supply that wholly or partly consists of land is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal.

(3D) The requirements of subsection (3B)(a) and (b) are met if the supplier maintains sufficient records to enable the particulars of the name, and address, and registration number or tax file number as applicable of the agent to be ascertained.

(3E) The agent must maintain sufficient records in relation to the undisclosed principal to enable the name, address, and, if the principal is a registered person or expects to be a registered person, the registration number of the principal to be ascertained.

(4) This section shall not require the retention of any records—

(a) in respect of which the Commissioner has given notice in writing that retention is not required:

(b) of a company which has been liquidated.

(5) The Commissioner may, by notice in writing given before the expiry of the 7-year retention period specified in subsection (3), require a registered person to retain the records specified in that subsection for a further period not exceeding 3 years following the expiry of the 7-year period where—

(a) the affairs of the registered person are or have been under audit or investigation by the Commissioner; or

(b) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.

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.

2013 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR24

Introduction

Section 61 of the Tax Administration Act 1994 ("TAA") requires taxpayers to disclose interests in foreign entities.

Section 61(1) of the TAA states that a person who has a control or income interest in a foreign company or an attributing interest in a foreign investment fund ("FIF") at any time during the income year must disclose the interest held.[1] However, section 61(2) of the TAA allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined in section YA 1) contained in the Income Tax Act 2007 ("the ITA").

To balance the revenue forecasting and risk assessment needs of the Commissioner with the compliance costs of taxpayers providing the information, the Commissioner has issued an international tax disclosure exemption under section 61(2) of the TAA that applies for the income year corresponding to the tax year ended 31 March 2013. This exemption may be cited as "International Tax Disclosure Exemption ITR24" ("the 2013 disclosure exemption") and the full text appears at the end of this item.

Scope of exemption

The scope of the 2013 disclosure exemption is the same as the 2012 disclosure exemption.

Application date

This exemption applies for the income year corresponding to the tax year ended 31 March 2013.

Summary

In summary, the 2013 disclosure exemption **removes** the requirement of a resident to disclose:

- an interest of less than 10% in a foreign company if it is not an attributing interest in a FIF or if it falls within the $50,000 de minimis exemption (see section CQ 5(1)(d) and section DN 6(1)(d) of the ITA). The de minimis exemption does not apply to a person that has opted out of the de minimis threshold by including in the income tax return for the income year a FIF income or loss.

  Please note that a person opting out of the de minimis threshold needs to include FIF income or loss in any of the four subsequent income years even if the total cost of all attributing interests is $50,000 or less.
- if the resident **is not** a widely-held entity, an attributing interest in a FIF that is an income interest of less than 10%, if the foreign entity is incorporated (in the case of a company) or otherwise tax resident in a treaty country or territory, and the fair dividend rate or comparative value method of calculation is used.
- if the resident **is** a widely-held entity, an attributing interest in a FIF that is an income interest of less than 10% if the fair dividend rate or comparative value method is used for the interest. The resident is instead required to disclose the end-of-year New Zealand dollar market value of all such investments split by the jurisdiction in which the attributing interest in a FIF is held or listed.

The 2013 disclosure exemption also removes the requirement for a non-resident or transitional resident to disclose interests held in foreign companies and FIFs.

Commentary

Generally, residents who hold an income interest or a control interest in a foreign company, or an attributing interest in a FIF are required to disclose these interests to the Commissioner. These interests are considered in further detail below.

Attributing interest in a FIF

A resident is required to disclose an attributing interest in a FIF if FIF income or a FIF loss arises through the use of one of the following calculation methods:

- attributable FIF income, deemed rate of return or cost methods; or
- fair dividend rate or comparative value methods, if the resident is a "widely-held entity"; or
- fair dividend rate or comparative value methods, if the resident is not a widely-held entity and the country in which the attributing interest is incorporated or otherwise tax resident in is a country or territory

[1] In the case of partnerships, disclosure needs to be made by the individual partners in the partnership. The partnership itself is not required to disclose.

with which New Zealand **does not** have a double tax agreement[2] in force as at 31 March 2013.

The 37 countries or territories that New Zealand does have a double tax agreement in force as at 31 March 2013 are listed below.

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

No disclosure is required by non-widely-held taxpayers for attributing interests in FIFs that are income interests of less than 10% and are incorporated or otherwise tax resident in a tax treaty country or territory, if the fair dividend rate or comparative value methods of calculation are used.

A "widely-held entity" for the purposes of this disclosure is an entity which is a:

- portfolio investment entity (this includes a portfolio investment-linked life fund); or
- widely-held company; or
- widely-held superannuation fund; or
- widely-held group investment fund ("GIF").

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

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

FIF interests

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

- rights in a foreign company or anything deemed to be a company for the purposes of the ITA (eg, a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in schedule 25, part A of the ITA (no entities were listed when this issue of the *Tax Information Bulletin* went to press).

However, the following interests are exempt (under sections EX 31 to EX 43 of the ITA) from being an attributing interest in a FIF and do not have to be disclosed:

- an income interest of 10% or more in a CFC (although separate disclosure is required of this as an interest in a foreign company)
- certain interests in Australian resident companies listed on an approved index of the Australian Stock Exchange and required to maintain a franking account (refer to the IR 871 form that can be found on Inland Revenue's website **www.ird.govt.nz** (keywords: other exemptions or IR871))
- an interest in an Australian unit trust that has an RWT proxy with either a high turnover or high distributions
- an interest of 10% or more in a foreign company that is treated as resident, and subject to tax, in Australia (although separate disclosure is required of this as an interest in a foreign company)
- an interest in a superannuation scheme that qualifies for the new resident's accrued superannuation entitlement exemption
- certain foreign pensions or annuities (see Inland Revenue's guide *Overseas pensions and annuity schemes (IR 257)* for more information)
- an interest in certain venture capital investments in New Zealand resident start-up companies that migrate to a grey-list country
- an interest in certain grey-list companies owning New Zealand venture capital companies

[2] For the avoidance of doubt, the term "double tax agreement" does not include tax information exchange agreements or collection agreements and is limited to the double tax agreements negotiated with the 37 countries or territories listed in this 2013 disclosure exemption.

- an interest in certain grey-list companies resulting from shares acquired under a venture investment agreement
- an interest in certain grey-list companies resulting from the acquisition of shares under an employee share scheme
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency.

De minimis

Interests in foreign entities held by a natural person not acting as a trustee also do not have to be disclosed if the total cost of the interests remains under $50,000 at all times during the income year. This disclosure exemption is made because no FIF income under section CQ 5 of the ITA or FIF loss under section DN 6 arises in respect of these interests. This de minimis exemption does not apply to a person who has opted out of the de minimis threshold by including in the income tax return for the year a FIF income or loss. Please note that a person opting out of the de minimis threshold needs to include FIF income or loss in any of the four subsequent income years even if the total cost of all attributing interests is $50,000 or less.

Format of disclosure

The forms for the disclosure of FIF interests are as follows:

- IR 443 form for the deemed rate of return method
- IR 445 form for the fair dividend rate method (for widely-held entities)
- IR 446 form for the comparative value method (for widely-held entities)
- IR 447 form for the fair dividend rate method (for individuals or non-widely-held entities)
- IR 448 form for the comparative value method (for individuals or non-widely-held entities)
- IR 449 form for the cost method
- IR 458 electronic form for the attributable FIF income method (this form can also be used to make electronic disclosures for all other methods).

It is now possible to download a spreadsheet as a working paper or complete the disclosures online. If you're downloading the spreadsheet you will be able to save it as a working paper on your computer and when completed submit the form by using Inland Revenue's online services.

You will still be able to complete the disclosure online without downloading a spreadsheet by directly entering the disclosure online.

The IR 445 and IR 446 forms, which reflect the disclosure for fair dividend rate and comparative value for *widely-held entities*, must be completed online. As discussed above this disclosure is by country rather than by individual investment as is the general requirement of section 61. In order to be exempt from the general requirements, the alternative disclosure must be made electronically.

The IR 447, IR 448 and IR 449 forms, applying to the fair dividend rate and comparative value methods for *individuals or non widely-held entities* as well as the cost method for all taxpayers, may be completed online.

As noted above, all of the above disclosures can now be filed using the IR 458 electronic disclosure.

The online forms can be found at **www.ird.govt.nz** "Get it done online", "Foreign investment fund disclosure".

Income interest of 10% or more in a foreign company

A resident is required to disclose an income interest of 10% or more in a foreign company. This obligation to disclose applies to all foreign companies regardless of the country of residence. For this purpose, the following interests need to be considered:

a) an income interest held directly in a foreign company

b) an income interest held indirectly through any interposed foreign company

c) an income interest held by an associated person (not being a controlled foreign company) as defined by subpart YB of the ITA.

To determine whether a resident has an income interest of 10% or more for CFCs, sections EX 14 to EX 17 of the ITA should be applied. To determine whether a resident has an income interest of 10% or more in any entity that is not a CFC, for the purposes of this exemption, sections EX 14 to EX 17 should be applied to the foreign company as if it were a CFC.

Format of disclosure

Disclosure of all interests in a controlled foreign company is required using a *Controlled foreign companies disclosure (IR 458)* form. This form, which involves uploading a prescribed spreadsheet, can cater for up to 500 individual disclosures.

The IR 458 form must be completed online at **www.ird.govt.nz** (keyword: ir458). Please note that electronic filing is a mandatory requirement for CFC disclosure.

Overlap of interests

It is possible that a resident may be required to disclose an interest in a foreign company which also constitutes an attributing interest in a FIF. For example, a person with an income interest of 10% or greater in a foreign company that is not a CFC is strictly required to disclose both an interest held in a foreign company and an attributing interest in a FIF.

To meet disclosure requirements, only one form of disclosure is required for each interest. If the interest is an attributing interest in a FIF, then the appropriate disclosure for the calculation method, as discussed previously, must be made.

In all other cases, where the interest in a foreign company is not an attributing interest in a FIF, the IR 458 for controlled foreign companies must be filed.

Interests held by non-residents and transitional residents

Interests held by non-residents and transitional residents in foreign companies and FIFs do not need to be disclosed.

This would apply for example to an overseas company operating in New Zealand (through a branch) in respect of its interests in foreign companies and FIFs; or to a transitional resident with interests in a foreign company or an attributing interest in a FIF.

Under the international tax rules, non-residents and transitional residents are not required to calculate or attribute income under either the CFC or FIF rules. Therefore disclosure of non-residents' or transitional residents' holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules and so an exemption is made for this group.

PERSONS NOT REQUIRED TO COMPLY WITH SECTION 61 OF THE TAX ADMINISTRATION ACT 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR24".

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies and attributing interests in FIFs in relation to which any person is not required to comply with the requirements in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ended 31 March 2013.

2. Interpretation

For the purpose of this disclosure exemption:

- to determine an income interest of 10% or more, sections EX 14 to EX 17 of the Income Tax Act 2007 apply for interests in controlled foreign companies. In the case of attributing interests in FIFs, those sections are to be applied as if the FIF were a CFC, and
- double tax agreement means a double tax agreement in force as at 31 March 2013 in one of the 37 countries or territories as set out in the commentary.

The relevant definition of "associated persons" is contained in subpart YB of the Income Tax Act 2007.

Otherwise, unless the context requires, expressions used have the same meaning as in section YA 1 of the Income Tax Act 2007.

3. Exemption

i) Any person who holds an income interest of less than 10% in a foreign company, including interests held by associated persons, that is not an attributing interest in a FIF, or that is an attributing interest in a FIF in respect of which no FIF income or loss arises under either section CQ 5(1)(d) or section DN 6(1)(d) of the Income Tax Act 2007, is not required to comply with section 61(1) of the Tax Administration Act 1994 for that interest and that income year.

ii) Any person who is a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct interest of 10% or more in a foreign company that is not a foreign PIE equivalent, and uses the fair dividend rate or comparative value calculation method for that interest, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, if the person discloses the end-of-year New Zealand dollar market value of investments, in an electronic format prescribed by the Commissioner, split by the jurisdiction in which the attributing interest in a FIF is held or listed.

iii) Any person who is not a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct income interest of 10% or more, and uses the fair dividend rate or comparative value calculation method is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, to the extent that the FIF is incorporated or tax resident in a country or territory with which New Zealand has a double tax agreement in force at 31 March 2013.

iv) Any non-resident person or transitional resident who has an income interest or a control interest in a foreign company or an attributing interest in a FIF in the income year corresponding to the tax year ending 31 March 2013, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:

- no attributed CFC income or loss arises in respect of that interest in that foreign company under sections CQ 2(1)(d) or DN 2(1)(d) of the Income Tax Act 2007; and/or
- no FIF income or loss arises in respect of that interest in that FIF under sections CQ 5(1)(f) or DN 6(1)(f) of the Income Tax Act 2007.

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

This exemption is signed on the 11th of March 2013.

Peter Loerscher
Principal Advisor (International Tax)

LEGAL DECISIONS – CASE NOTES

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

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

TAX CHARGES LAID UNDER SECTION 148 OF THE TAX ADMINISTRATION ACT 1994

Case	Craig Reece Ross v the District Court
Decision date	13 February 2013
Act(s)	Tax Administration Act 1994, Crimes Act 1961
Keywords	Section 147, section 148, period in which to lay charges

Summary

Tax charges can be laid either under section 147 or section 148 of the Tax Administration Act 1994 ("TAA").

Impact of decision

The decision upholds the Commissioner's interpretation of sections 150A and 150(4)(b) of the TAA. It is a useful authority regarding the 10-year period in which to lay informations under section 147(1).

Facts

The application for Judicial Review was in respect of Her Honour Judge Aitken's decision declining an application for discharge under section 347 of the Crimes Act 1961 in respect of charges laid under section 147 of the TAA.

The Commissioner commenced proceedings against Mr Ross's companies alleging they had committed offences against section 143A(1)(d) of the TAA. In July 2010, the Commissioner laid informations against Mr Ross charging him under section 148 of the TAA. In June 2011, the Crown Solicitor filed the indictment charging Mr Ross under section 143A(1)(d) and section 147 of the TAA.

At the trial, Mr Ross made an application pursuant to section 347 of the Crimes Act 1961 for discharge on the basis that a six-month time limit applies to information for an offence under section 147 of the TAA and that the informations were filed out of time and therefore the indictment was a nullity.

Her Honour Judge Aitken dismissed the application for discharge under section 347 of the Crimes Act 1961 in respect of charges laid under section 147 of the TAA. Aitken J's reasoning was that the six-month time limit in section 14 of the Summary Proceedings Act 1957 applied but the broad scope of sections 345 and 329 of the Crimes Act permitted the Crown to file the indictment.

Decision

The Honourable Justice Peters rejected submissions on behalf of Mr Ross and found that section 150(4)(b) is clear and is as the Crown submitted.

Peters J found that the Court of Appeal in *Evans v Commissioner of Inland Revenue* [2009] NZCA 240 was not required to address the same issue and there was no indication that section 150(4)(b) was brought to the attention of the Court.

The application was dismissed.

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 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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