

TAX INFORMATION

Bulletin

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YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents. Because we are keen to produce items that accurately and fairly reflect taxation legislation and are useful in practical situations, your input into the process, as a user of that legislation, is highly valued.

A list of the items we are currently inviting submissions on can be found at www.ird.govt.nz. 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
ED00156	Draft depreciation determination – Synthetic grass and Stabilised turf system matrix	This draft determination proposes to set general depreciation rates for surfaces used in sports stadiums.	15 May 2013
PUB0195	Income tax – Standard project agreement for a public-private partnership	This draft public ruling considers the key income tax implications of the standard form contract relating to public-private partnerships.	24 May 2013

IN SUMMARY

Binding rulings

Product ruling BR Prd 13/01: Mighty River Power Limited

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This product ruling applies to the transfer of shares in Mighty River Power Limited (which includes the loyalty bonus shares), by the Crown to New Zealand applicants under the Initial Public Offering of shares in the company. The ruling confirms that the New Zealand applicants will not derive income under section CC 3 of the Income Tax Act 2007 as a result of acquiring Loyalty Bonus Shares under the Mighty River Power Limited Initial Public Offering.

Legislation and determinations

Determination FDR 2013/01: A type of attributing interest in a foreign investment fund for which a person may use the fair dividend rate method

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Determination FDR 2013/01 was made on 27 March 2013 permitting certain portfolio investment entity funds managed by New Zealand Funds Management Limited to use the fair dividend rate method to calculate foreign investment fund income from Ospraie Commodity Fund Limited.

Foreign currency amounts – conversion to New Zealand dollars

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This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company and foreign investment fund rules for the 12 months ending 31 March 2013.

Items of interest

Revised IR 10 *Financial statements summary*

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The IR 10 *Accounts information* form has been through some significant changes. It's now known as the IR 10 *Financial statements summary* and comes into effect from the 2012–13 income year.

Legal decisions – case notes

Court of Appeal confirms OCN arrangement is tax avoidance

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The Court of Appeal has confirmed that the optional convertible notes ("OCNs") arrangement entered into by the Alesco group, to claim deductions for interest using Determination G22 and the financial arrangement rules, was a tax avoidance arrangement. The Court also held the "abusive tax position" shortfall penalties were correctly imposed.

BINDING RULINGS

This section of the *TIB* contains binding rulings that the Commissioner of Inland Revenue has issued recently. The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates their tax liability based on it.

For full details of how binding rulings work, see *Binding rulings: How to get certainty on the tax position of your transaction (IR 715)*. You can download this publication free from our website at www.ird.govt.nz

PRODUCT RULING BR PRD 13/01: MIGHTY RIVER POWER LIMITED

This is a product ruling made under section 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by the Minister of State Owned Enterprises and the Minister of Finance, in their capacity as holders of all of the issued shares in Mighty River Power Limited (MRP) on behalf of Her Majesty the Queen in Right of New Zealand (the Crown).

Taxation Law

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

This Ruling applies in respect of section CC 3.

This Ruling does not consider or rule on the tax consequences (if any) arising from the sale or disposition of any Shares acquired under the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is the transfer of fully paid ordinary shares in Mighty River Power Limited (the Shares, which include the IPO Shares and the Loyalty Bonus Shares each as defined below) by the Crown to New Zealand Applicants (as defined below) pursuant to a combined Investment Statement and Prospectus relating to the Initial Public Offering (IPO) of Ordinary Shares in MRP (the Offer Document).

Further details of the Arrangement are set out in the paragraphs below.

1. MRP is a New Zealand incorporated company. MRP commenced operations in 1999, when the Crown separated Electricity Corporation of New Zealand into three state-owned enterprises. MRP produces electricity, mainly from renewable sources, using its power station assets. MRP sells electricity to retail and business customers through multiple channels and retail brands.
2. All shares in MRP are currently held by the Crown. The Crown is intending to sell up to 49% of the ordinary Shares in MRP under the IPO.
3. The purchase price payable to the Crown for each Share under the IPO will be determined under an institutional book-build process. Application has been made to list all of the Shares in MRP on the Australian and New Zealand stock exchanges.
4. New Zealand Applicants under the General Offer will acquire Shares from the Crown under the IPO (the IPO Shares) on the date of completion of the IPO (the Allotment Date) pursuant to the terms of the IPO. New Zealand Applicants who continue to hold those IPO Shares in the same registered name for a period of 24 months will be entitled to be transferred additional MRP shares from the Crown (the Loyalty Bonus Shares) based upon a ratio of one Loyalty Bonus Share for every 25 IPO Shares held by that New Zealand Applicant, up to a maximum number of 200 Loyalty Bonus Shares for each New Zealand Applicant.
5. In submitting an application form for IPO Shares, New Zealand Applicants under the General Offer are automatically applying for Loyalty Bonus Shares to which they may become entitled under the terms of the Offer Document.
6. Participants under the MRP Employee Share Purchase Programme will not receive Loyalty Bonus Shares under the IPO in respect of shares purchased under that Programme.
7. The date upon which the Loyalty Bonus Shares will be allotted to eligible New Zealand Applicants is intended to be within 5 business days from 24 months after the Allotment Date (Measurement Date).
8. New Zealand Applicants pay the same amount per share as all other purchasers under the IPO. This amount (the Final Price) is payable on completion of the Offer. No further consideration (in addition to the price paid by New Zealand Applicants when applying for their Shares) is payable by New Zealand Applicants who receive Loyalty Bonus Shares. There is no partial refund to the New Zealand Applicants if they do not receive the Loyalty Bonus Shares.

9. The Offer Document contains the following statement:

For the purposes of the financial arrangements rules, the Crown confirms that the Final Price is the lowest price it would have accepted for the Shares on the basis of payment in full on the Allotment Date.

10. No promise to hold the IPO Shares for the required period of time is given by the New Zealand Applicants; they are free to dispose of their IPO Shares at any time. The recipients of the Loyalty Bonus Shares are determined solely by reference to those of the New Zealand Applicants still on the MRP share register at the Measurement Date. The Crown promises to transfer Loyalty Bonus Shares to New Zealand Applicants on a future date if the New Zealand Applicants are on the MRP share register at the Measurement Date.
11. A New Zealand Applicant is defined in the Offer Document as an applicant who is in New Zealand and provides, in conjunction with their application to acquire Shares, a New Zealand IRD number, a New Zealand bank account, a New Zealand address, confirmation that the applicant is in New Zealand and is not acting for the account or benefit of a person in the United States, and a declaration that the applicant is:
- in the case of an individual, a New Zealand citizen or permanent resident; or
 - in the case of a New Zealand incorporated company, incorporated in New Zealand and the majority of its ultimate beneficial owners are New Zealand citizens or permanent residents; or
 - in the case of a trust, established in New Zealand and the majority of its ultimate beneficiaries are New Zealand citizens or permanent residents; or
 - in the case of any other legal entity, it is incorporated or established in New Zealand and the majority of its ultimate beneficial owners, beneficiaries or members are New Zealand citizens or permanent residents.
12. The document describing the Arrangement is the combined Investment Statement and Prospectus dated 5 April 2013.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The New Zealand Applicants will not derive income under section CC 3 as a result of acquiring Loyalty Bonus Shares under the Mighty River Power Limited Initial Public Offering.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 5 April 2013 and ending on 4 April 2016.

This Ruling is signed by me on the 5th day of April 2013.

Fiona Heiford
Director (Taxpayer Rulings)

LEGISLATION AND DETERMINATIONS

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

DETERMINATION FDR 2013/01: A TYPE OF ATTRIBUTING INTEREST IN A FOREIGN INVESTMENT FUND FOR WHICH A PERSON MAY USE THE FAIR DIVIDEND RATE METHOD

Reference

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

Discussion (which does not form part of the determination)

Shares in the Ospraie Commodity Fund Limited (“the Ospraie Fund”), to which this determination applies, are attributing interests in a foreign investment fund (“FIF”) for certain portfolio investment entity (“PIE”) funds (“the NZFM Funds”) managed by New Zealand Funds Management Limited.

The investments held by the Ospraie Fund are predominantly financial arrangements. In addition, the NZFM Funds hedge their attributing interests in the Ospraie Fund back to New Zealand dollars. Therefore, section EX 46(10)(cb) of the Income Tax Act 2007 could apply to prevent the NZFM Funds from using the fair dividend rate method in the absence of a determination under section 91AAO of the Tax Administration Act 1994.

Despite this, the overall arrangement (as described by the applicant) contains sufficient risk so that it is not akin to a New Zealand dollar-denominated debt instrument. Accordingly, I consider it is appropriate for the NZFM Funds to use the fair dividend rate method to calculate FIF income from an attributing interest in the Ospraie Fund.

Scope of determination

This determination applies to shares held by the NZFM Funds in the Ospraie Fund.

Shares in the Ospraie Fund are attributing interests in a FIF for the NZFM Funds.

The Ospraie Fund:

- is organised under the laws of the Cayman Islands as a limited liability company;

- issues shares, denominated in US dollars, to the NZFM Funds;
- invests in and trades in a global portfolio of commodities and commodity related derivative instruments, denominated in US dollars or effectively hedged to US dollars;
- uses a trading strategy based on active leveraged trading of the commodities and related derivatives.

The NZFM Funds hedge their attributing interests in the Ospraie Fund back to New Zealand dollars.

It is an additional condition of this determination that the investment in the Ospraie Fund is not part of an overall arrangement that seeks to provide the NZFM Funds with a return that is equivalent to an effective New Zealand dollar-denominated interest exposure.

Interpretation

In this determination unless the context otherwise requires:

“Ospraie Fund” means the issuer, Ospraie Commodity Fund Limited, which is incorporated as a company under the laws of the Cayman Islands;

“Fair dividend rate method” means the fair dividend rate method under section YA 1 of the Income Tax Act 2007;

“Financial arrangement” means financial arrangement under section EW 3 of the Income Tax Act 2007;

“Foreign investment fund” means foreign investment fund under section YA 1 of the Income Tax Act 2007;

“The NZFM Funds” means a Unit Trust organised under the laws of New Zealand and is a portfolio investment entity, managed by New Zealand Funds Management Limited;

“Portfolio investment entity” means a portfolio investment entity under section YA 1 of the Income Tax Act 2007.

Determination

This determination applies to an attributing interest in a FIF, being a direct income interest in the Ospraie Fund. This is a type of attributing interest for which the NZFM Funds may use the fair dividend rate method to calculate FIF income from the interest.

Application date

This determination applies for the 2012–13 and subsequent income years.

Dated at Christchurch this 27th day of March 2013.

John Trezise

Investigations Manager, Investigations and Advice

FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND DOLLARS

This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the 12 months ending 31 March 2013.

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

- actual rate for the day for each transaction (including close of trading spot exchange rate on the day), or
- rolling 12-month average rate for a 12-month accounting period or income year (see the table **Currency rates 12 months ending 31 March 2013 – rolling 12-month average**), or
- mid-month actual rate as the basis of the rolling average for accounting periods or income years greater or lesser than 12 months (see the table **Currency rates 12 months ending 31 March 2013 – mid-month actual**).

The 2007 Act sets out specific currency conversion rules and also permits the Commissioner to set currency rates and approve methods of calculating exchange rates (sections YF 1 and 2). The Commissioner can set rates for general use by taxpayers or for specific taxpayers. The Commissioner’s ability to set rates and approve methods applies in all circumstances, ie, where the Act does not contain a specific currency conversion rule (sections YF 1(5) and (6)), or in circumstances where the Act provides a rate or method for currency conversion (section YF 2).

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

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

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown. Round the exchange rate calculations to four decimal places wherever possible.

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

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

Actual rate for the day for each transaction

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

- Where the 2007 Act does not provide a specific currency conversion rule, then foreign currency amounts can be converted by applying the close of trading spot exchange rate on the date that the transaction which is required to be measured or calculated occurs (section YF 1(2)).
- Where a person chooses to use the actual rate for the day of the transaction when calculating their FIF income or loss when applying either: the comparative value method, fair dividend rate method, deemed rate of return method or the cost method (section EX 57(2)(a)).
- Where a person chooses to use the close of trading spot exchange rate to convert foreign income tax paid by a CFC (section LK 3(a)) or a FIF for which they use the attributable FIF income method (section EX 50(9)).

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

The table **Currency rates 12 months ending 31 March 2013 – month end** provides exchange rates for the last day of the month. These are provided for convenience to assist taxpayers who may need exchange rates on those days.

Currency rates 12 months ending 31 March 2013 – rolling 12-month average table

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

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

- FIF income or loss calculated under the comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57(2)(b))
- attributed CFC income or loss and FIF income or loss (where the attributable FIF income method is adopted) calculated under the CFC and FIF rules (section EX 21(4)) for accounting periods of 12 months
- foreign tax credits calculated where a taxpayer derives attributed CFC income (section CQ 1) or where the taxpayer derives FIF income (section CQ 4) and applies the attributable FIF income method. Section LK 3(b) applies to attributed CFC income and FIF income (section EX 50(9)) for accounting periods of 12 months.

Currency rates 12 months ending 31 March 2013 – mid-month actual table

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

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

- attributed CFC income or loss and FIF income or loss (where the attributable FIF income method is adopted) calculated under the CFC and FIF rules (section EX 21(4)) for accounting periods of less than or greater than 12 months
- a person's FIF income or loss under: the comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57(2)(b)) for accounting periods or income years of less than or greater than 12 months
- foreign tax credits calculated where a taxpayer derives attributed CFC income (section CQ 1) or where the taxpayer derives FIF income (section CQ 4) and applies the attributable FIF income method. Section LK 3(b) applies to attributed CFC income and FIF income (section EX 50(9)) for accounting periods of less than or greater than 12 months.

Example 1

A taxpayer with a 30 September balance date purchases shares in a Philippine company (which is a FIF) on 7 September 2012. Its opening market value on 1 October 2012 or its closing market value on 30 September 2012 is PHP 350,000. Using the comparative value method and applying the actual rate for the day (section EX 57(2)(a)), the opening market value is converted as follows:

$$\text{PHP } 350,000 \div 34.8141 = \$10,053.40$$

(In this example, the rate selected is the month-end rate for September 2012 for PHP. Refer to the table "Currency rates 12 months ending 31 March 2013 – month end".)

Example 2

A CFC resident in Hong Kong has an accounting period ending on 31 December 2012. Attributed CFC income for the period 1 January 2012 to 31 December 2012 is 200,000 Hong Kong dollars (HKD), which converts to:

$$\text{HKD } 200,000 \div 6.2921 = \$31,785.89$$

(In this example, the rate selected is the rolling 12-month average rate for December 2012 for HKD. Refer to the table "Currency rates 12 months ending March 2013 – rolling 12-month average".)

Example 3

A resident individual with a 31 October 2012 accounting period acquires a FIF interest in a Japanese company on 1 November 2011 for 10,500,000 yen. The interest is sold in October 2012 for 10,000,000 yen. Using the comparative value method and applying section EX 57(2)(b), these amounts are converted as:

$$\text{JPY } 10,500,000 \div 63.2866 = \$165,911.89$$

$$\text{JPY } 10,000,000 \div 63.2866 = \$158,011.33$$

(In this example, the rolling 12-month rate for October 2012 has been applied to both calculations. Refer to the table "Currency rates 12 months ending March 2013 – rolling 12-month average".)

Example 4

A CFC resident in Singapore was formed on 20 April 2012 and has a balance date of 30 September 2012. During the period 1 May 2012 to 30 September 2012, attributed CFC income of 500,000 Singaporean dollars was derived. For the conversion to New Zealand dollars the taxpayer chooses the method set out in section EX 21(4)(b).

1. Calculating the average monthly exchange rate for the complete months May–September 2012:

$$0.9706 + 1.0014 + 1.0077 + 1.0085 + 1.0115 = 4.9997$$

$$4.9997 \div 5 = 0.99994$$
2. Round exchange rate to four decimal places: 0.9999
3. Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 0.9999 = \$500,050.00$$

(In this example, the rates are from the table "Currency rates 12 months ending March 2013 – mid-month actual", from May to September 2012 inclusive for SGD.)

Currency rates 12 months ending 31 March 2013 – rolling 12-month average

Currency	Code	15/04/12	15/05/12	15/06/12	15/07/12	15/08/12	15/09/12	15/10/12	15/11/12	15/12/12	15/01/13	15/02/13	15/03/13
Australia Dollar	AUD	0.7756	0.7781	0.7797	0.7784	0.7764	0.7754	0.7771	0.7792	0.7827	0.7847	0.7882	0.7895
Bahrain Dinar	BHD	0.3046	0.3040	0.3035	0.3019	0.3011	0.3013	0.3017	0.3030	0.3060	0.3074	0.3078	0.3080
Britain Pound	GBH	0.5092	0.5087	0.5090	0.5080	0.5085	0.5076	0.5077	0.5095	0.5127	0.5130	0.5141	0.5163
Canada Dollar	CAD	0.8039	0.8049	0.8061	0.8062	0.8048	0.8044	0.8035	0.8054	0.8100	0.8111	0.8126	0.8151
China Yuan	CNY	5.1558	5.1342	5.1158	5.0850	5.0700	5.0683	5.0683	5.0808	5.1217	5.1383	5.1400	5.1358
Denmark Kroner	DKK	4.4310	4.4588	4.4909	4.5226	4.5720	4.5957	4.6286	4.6688	4.7101	4.7142	4.7124	4.7177
Euporean Community Euro	EUR	0.5952	0.5991	0.6037	0.6081	0.6147	0.6179	0.6222	0.6275	0.6329	0.6332	0.6328	0.6333
Fiji Dollar	FJD	1.4377	1.4398	1.4437	1.4420	1.4408	1.4410	1.4426	1.4454	1.4535	1.4577	1.4605	1.4625
French Polynesia Franc	XPF	71.0343	71.4931	72.0247	72.5540	73.3537	73.7380	74.2503	74.8837	75.5236	75.5579	75.5055	75.5851
Hong Kong Dollar	HKD	6.2833	6.2713	6.2572	6.2229	6.2041	6.2048	6.2116	6.2340	6.2921	6.3203	6.3282	6.3336
India Rupee	INR	39.2575	39.7906	40.4181	40.9194	41.5069	42.0172	42.3330	42.7739	43.2236	43.6459	44.0361	44.3089
Indonesia Rupiah	IDR	7,166.2517	7,202.1850	7,245.6300	7,268.2742	7,313.9642	7,372.6458	7,432.1333	7,505.8692	7,614.6558	7,697.8075	7,756.7042	7,798.5850
Japan Yen	JPY	63.7342	63.5731	63.2988	62.9743	62.9550	63.1043	63.2866	63.8088	64.8109	65.9263	67.0660	67.9310
Korea Won	KOR	901.8493	904.4890	907.9774	909.6772	910.9124	911.6502	909.8253	910.7319	913.9274	911.6999	909.7746	909.5983
Kuwait Dinar	KWD	0.2234	0.2232	0.2231	0.2225	0.2226	0.2231	0.2238	0.2251	0.2274	0.2286	0.2292	0.2297
Malaysia Ringit	MYR	2.4821	2.4844	2.4879	2.4864	2.4895	2.4890	2.4866	2.4917	2.5061	2.5105	2.5174	2.5240
Norway Krone	NOK	4.6027	4.6221	4.6398	4.6531	4.6759	4.6864	4.7027	4.7215	4.7416	4.7299	4.7189	4.7213
Pakistan Rupee	PKR	71.2495	71.4842	71.8700	72.0970	72.4631	72.9349	73.6178	74.4849	75.7413	76.5767	77.1506	77.7068
Phillipines Peso	PHP	34.9008	34.8319	34.6743	34.4262	34.3162	34.2220	34.1326	34.1313	34.2484	34.2066	34.1001	33.9626
PNG Kina	PGK	1.7647	1.7386	1.7182	1.6942	1.6771	1.6656	1.6592	1.6607	1.6726	1.6786	1.6831	1.6895
Singapore Dollar	SGD	1.0146	1.0138	1.0141	1.0121	1.0128	1.0118	1.0103	1.0097	1.0136	1.0138	1.0132	1.0130
Solomon Islands Dollar*	SBD	5.9179	5.8704	5.8460	5.7928	5.7523	5.7313	5.7155	5.7139	5.7586	5.7739	5.7813	5.3079
South Africa Rand	ZAR	6.1256	6.1976	6.2864	6.3497	6.4133	6.4725	6.5471	6.6239	6.7030	6.7815	6.8669	6.9794
Sri Lanka Rupee	LKR	92.1124	93.1793	94.4852	95.6344	96.9239	98.5057	99.9030	101.6127	103.5482	104.9059	105.6157	105.7928
Sweden Krona	SEK	5.3809	5.4217	5.4458	5.4550	5.4596	5.4606	5.4724	5.4956	5.5284	5.5203	5.4988	5.4761

Currency	Code	15/04/12	15/05/12	15/06/12	15/07/12	15/08/12	15/09/12	15/10/12	15/11/12	15/12/12	15/01/13	15/02/13	15/03/13
Swiss Franc	CHF	0.7183	0.7202	0.7251	0.7328	0.7441	0.7484	0.7522	0.7569	0.7627	0.7648	0.7656	0.7673
Taiwan Dollar	TAI	23.8392	23.8570	23.8773	23.8304	23.8594	23.8497	23.8097	23.8233	23.9691	24.0088	24.0449	24.0790
Thailand Baht	THB	24.7847	24.8076	24.8230	24.8003	24.8494	24.8931	24.9230	25.0156	25.2015	25.1905	25.1550	25.0937
Tonga Pa'anga*	TOP	1.3554	1.3508	1.3506	1.3491	1.3522	1.3570	1.3602	1.3633	1.3767	1.3844	1.3897	1.3932
United States Dollar	USD	0.8080	0.8065	0.8049	0.8008	0.7986	0.7991	0.8002	0.8033	0.8111	0.8148	0.8158	0.8165
Vanuatu Vatu	VUV	74.9061	74.9501	75.1358	75.0387	74.8963	74.9445	75.0401	75.3067	75.8297	76.0744	76.1746	76.2235
West Samoan Tala*	WST	1.8184	1.8180	1.8188	1.8149	1.8116	1.8111	1.8113	1.8152	1.8245	1.8348	1.8370	1.8378

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

The currencies marked with an asterisk* are not published on Bloomberg in NZD terms. However, these currencies are expressed in USD terms and therefore the equivalent NZD terms have been generated as a function of the foreign currency USD cross-rate converted to NZD terms at the NZDUSD rate provided.

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

Source: Bloomberg CMPN BGN

Currency rates 12 months ending 31 March 2013 – mid-month actual

Currency	Code	15/04/12	15/05/12	15/06/12	15/07/12	15/08/12	15/09/12	15/10/12	15/11/12	15/12/12	15/01/13	15/02/13	15/03/13
Australia Dollar	AUD	0.7935	0.7742	0.7818	0.7787	0.7684	0.7859	0.7984	0.7831	0.8009	0.7948	0.8200	0.7948
Bahrain Dinar	BHD	0.3103	0.2900	0.2972	0.3002	0.3044	0.3125	0.3086	0.3061	0.3201	0.3166	0.3187	0.3119
Britain Pound	GBH	0.5193	0.4810	0.5013	0.5111	0.5147	0.5111	0.5093	0.5099	0.5233	0.5227	0.5445	0.5474
Canada Dollar	CAD	0.8226	0.7749	0.8048	0.8073	0.7985	0.8054	0.8029	0.8101	0.8342	0.8265	0.8510	0.8434
China Yuan	CNY	5.1800	4.8600	5.0100	5.0900	5.1400	5.2400	5.1400	5.0500	5.2900	5.2200	5.2700	5.1400
Denmark Kroner	DKK	4.6811	4.4912	4.6298	4.8353	4.8877	4.7057	4.7154	4.7224	4.7973	4.7096	4.7178	4.7187
Euporean Community Euro	EUR	0.6292	0.6044	0.6233	0.6500	0.6568	0.6314	0.6322	0.6332	0.6429	0.6311	0.6323	0.6327
Fiji Dollar	FJD	1.4577	1.4144	1.4719	1.4611	1.4432	1.4611	1.4624	1.4422	1.4846	1.4780	1.4943	1.4786
French Polynesia Franc	XPF	75.1069	72.1033	74.2906	77.6260	78.4152	75.4066	75.4022	75.6227	76.7683	75.2718	75.4164	75.5915
Hong Kong Dollar	HKD	6.3844	5.9763	6.1151	6.1781	6.2610	6.4265	6.3446	6.2729	6.5589	6.5093	6.5530	6.4228
India Rupee	INR	42.6255	41.7231	43.6433	43.6514	44.8064	45.2998	43.2684	44.3754	45.8119	46.0261	46.0847	44.3906
Indonesia Rupiah	IDR	7601.6100	7168.1900	7413.9200	7489.9300	7658.3500	7943.9800	7840.8500	7822.3600	8161.9400	8280.3600	8231.9300	7969.6000
Japan Yen	JPY	66.5880	61.6850	62.0120	63.0220	63.7550	64.9790	64.3800	65.6800	70.6770	74.5560	79.0080	78.8300
Korea Won	KOR	934.0644	889.1610	918.4702	914.2394	913.4198	925.6619	908.8231	881.0776	910.0859	888.2092	913.1396	918.8279
Kuwait Dinar	KWD	0.2292	0.2147	0.2207	0.2243	0.2282	0.2326	0.2301	0.2284	0.2380	0.2366	0.2385	0.2352
Malaysia Ringit	MYR	2.5325	2.3908	2.4883	2.5254	2.5180	2.5401	2.4922	2.4914	2.5735	2.5380	2.6326	2.5647
Norway Krone	NOK	4.7600	4.6165	4.6916	4.8569	4.7998	4.7130	4.6746	4.6603	4.7575	4.6761	4.6851	4.7646
Pakistan Rupee	PKR	74.6269	69.9301	74.0741	75.1880	76.3359	78.1250	78.1250	77.5194	82.6446	81.9672	82.6446	81.3008
Phillipines Peso	PHP	35.3460	33.1359	33.2237	33.2637	34.0033	34.5590	33.7652	33.5160	34.5936	34.2173	34.5707	33.3564
PNG Kina	PGK	1.6884	1.5743	1.6078	1.6280	1.6628	1.7079	1.6888	1.6671	1.7542	1.7488	1.7774	1.7688
Singapore Dollar	SGD	1.0272	0.9706	1.0014	1.0077	1.0085	1.0115	1.0001	0.9902	1.0319	1.0296	1.0455	1.0322
Solomon Islands Dollar*	SBD	5.9058	5.4461	5.5228	5.6344	5.7436	5.8665	5.7944	5.7282	5.9987	5.9541	5.9827	0.1169
South Africa Rand	ZAR	6.5400	6.3911	6.5824	6.5802	6.6511	6.8031	7.2028	7.2242	7.2927	7.4028	7.4838	7.5986
Sri Lanka Rupee	LKR	106.3830	99.0099	104.1667	106.3830	106.3830	109.8901	105.2632	105.2632	108.6957	106.3830	107.5269	104.1667
Sweden Krona	SEK	5.5889	5.5190	5.5140	5.5986	5.3909	5.4345	5.4522	5.4752	5.6504	5.4586	5.3431	5.2872

Currency	Code	15/04/12	15/05/12	15/06/12	15/07/12	15/08/12	15/09/12	15/10/12	15/11/12	15/12/12	15/01/13	15/02/13	15/03/13
Swiss Franc	CHF	0.7564	0.7258	0.7474	0.7807	0.7887	0.7677	0.7639	0.7623	0.7766	0.7825	0.7787	0.7768
Taiwan Dollar	TAI	24.2840	22.7625	23.5439	23.8488	24.2106	24.3278	23.9139	23.4945	24.5975	24.3185	25.0442	24.6021
Thailand Baht	THB	25.3177	24.1145	24.8204	25.1398	25.4504	25.5146	25.1470	24.8797	25.9142	25.1444	25.2382	24.4439
Tonga Pa'anga*	TOP	1.3755	1.3312	1.3706	1.3727	1.3799	1.4065	1.3923	1.3545	1.4501	1.4381	1.4384	1.4081
United States Dollar	USD	0.8228	0.7693	0.7881	0.7959	0.8071	0.8290	0.8185	0.8092	0.8463	0.8397	0.8451	0.8273
Vanuatu Vatu	VUV	76.3359	72.9927	75.7576	75.7576	74.6269	76.3359	76.3359	74.6269	78.7402	78.1250	78.1250	76.9231
West Samoan Tala*	WST	1.8338	1.7649	1.8051	1.8117	1.8153	1.8426	1.8369	1.8180	1.8748	1.9295	1.8713	1.8499

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

The currencies marked with an asterisk* are not published on Bloomberg in NZD terms. However, these currencies are expressed in USD terms and therefore the equivalent NZD terms have been generated as a function of the foreign currency USD cross-rate converted to NZD terms at the NZDUSD rate provided.

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

Source: Bloomberg CMPN BGN

Currency rates 12 months ending 31 March 2013 – month end

Currency	Code	30/04/12	31/05/12	30/06/12	31/07/12	31/08/12	30/09/12	31/10/12	30/11/12	31/12/12	31/01/13	28/02/13	31/03/13
Australia Dollar	AUD	0.7847	0.7741	0.7826	0.7699	0.7781	0.8001	0.7927	0.7867	0.7971	0.8047	0.8074	0.8034
Bahrain Dinar	BHD	0.3086	0.2839	0.3020	0.3049	0.3029	0.3130	0.3101	0.3107	0.3124	0.3160	0.3109	0.3156
Britain Pound	GBH	0.5042	0.4891	0.5101	0.5158	0.5063	0.5134	0.5099	0.5123	0.5099	0.5291	0.5439	0.5507
Canada Dollar	CAD	0.8081	0.7783	0.8147	0.8112	0.7925	0.8167	0.8220	0.8158	0.8218	0.8365	0.8501	0.8518
China Yuan	CNY	5.1400	4.8000	5.0900	5.1500	5.1000	5.2200	5.1300	5.1100	5.1600	5.2200	5.1300	5.2000
Denmark Kroner	DKK	4.5994	4.5295	4.7024	4.8908	4.7592	4.8127	4.7338	4.7129	4.6846	4.6091	4.7103	4.8700
Euporean Community Euro	EUR	0.6182	0.6092	0.6329	0.6573	0.6388	0.6457	0.6346	0.6318	0.6280	0.6178	0.6317	0.6531
Fiji Dollar	FJD	1.4514	1.4031	1.4577	1.4436	1.4391	1.4715	1.4661	1.4524	1.4806	1.4808	1.4771	1.4868
French Polynesia Franc	XPF	73.7838	72.6862	75.5392	78.4307	76.2208	77.1030	75.7314	75.2311	74.9034	73.7171	75.3822	77.8538
Hong Kong Dollar	HKD	6.3500	5.8492	6.2164	6.2707	6.2316	6.4369	6.3743	6.3588	6.4219	6.5052	6.3959	6.4993
India Rupee	INR	43.2424	42.3621	44.4714	45.0147	44.5779	43.9706	44.2660	44.5639	45.1982	44.5870	45.2023	45.4772
Indonesia Rupiah	IDR	7534.5800	7172.0500	7532.4600	7662.8600	7650.6600	7999.0200	7912.6000	7897.5200	7997.3800	8145.7800	8042.6800	8141.3800
Japan Yen	JPY	65.3220	59.0310	63.9460	63.1710	62.9750	64.7120	65.6080	67.6670	71.8740	76.9330	76.3390	78.8630
Korea Won	KOR	925.2053	889.7652	914.5292	914.2890	911.0318	923.9166	896.9198	887.3868	881.5812	913.1425	895.5556	931.1399
Kuwait Dinar	KWD	0.2274	0.2115	0.2243	0.2280	0.2265	0.2333	0.2313	0.2310	0.2332	0.2359	0.2338	0.2388
Malaysia Ringit	MYR	2.4854	2.4019	2.5366	2.5340	2.4988	2.5514	2.5055	2.4955	2.5155	2.5963	2.5705	2.5872
Norway Krone	NOK	4.6831	4.6091	4.7763	4.8788	4.6588	4.7541	4.6909	4.6548	4.6116	4.5849	4.7325	4.8956
Pakistan Rupee	PKR	74.6269	70.4225	75.7576	76.3359	75.7576	78.7402	78.7402	79.3651	80.6452	81.9672	81.3008	82.6446
Phillipines Peso	PHP	34.6439	32.8518	33.6545	33.8000	33.6705	34.8141	33.8411	33.4969	33.6923	33.9980	33.8231	34.0668
PNG Kina	PGK	1.6727	1.5405	1.6355	1.6643	1.6516	1.7095	1.6951	1.6984	1.7138	1.7570	1.7392	1.8004
Singapore Dollar	SGD	1.0126	0.9713	1.0140	1.0067	1.0022	1.0188	1.0035	1.0011	1.0121	1.0380	1.0215	1.0383
Solomon Islands Dollar*	SBD	5.7922	5.2880	5.6726	5.7250	5.6875	5.9248	5.8134	5.8079	5.8769	6.0239	5.8383	5.9030
South Africa Rand	ZAR	6.3655	6.4264	6.5423	6.6787	6.7493	6.9034	7.1340	7.3088	6.9962	7.5124	7.4429	7.7318
Sri Lanka Rupee	LKR	106.3830	99.0099	106.3830	106.3830	106.3830	107.5269	107.5269	106.3830	106.3830	106.3830	105.2632	106.3830
Sweden Krona	SEK	5.5025	5.4774	5.5473	5.4987	5.3239	5.4499	5.4575	5.4650	5.3870	5.3365	5.3331	5.4645

Currency	Code	30/04/12	31/05/12	30/06/12	31/07/12	31/08/12	30/09/12	31/10/12	30/11/12	31/12/12	31/01/13	28/02/13	31/03/13
Swiss Franc	CHF	0.7427	0.7321	0.7602	0.7897	0.7676	0.7799	0.7662	0.7616	0.7585	0.7634	0.7726	0.7948
Taiwan Dollar	TAI	23.8691	22.4920	23.8964	24.2240	24.0304	24.3427	24.0455	23.8464	24.0671	24.7843	24.4785	24.9766
Thailand Baht	THB	25.1551	23.9864	25.2913	25.4934	25.1375	25.5975	25.2534	25.1947	25.3470	25.0428	24.5596	24.4982
Tonga Pa'anga *	TOP	1.3698	1.3232	1.3928	1.3702	1.3675	1.4124	1.4018	1.4103	1.4416	1.4302	1.4021	1.4248
United States Dollar	USD	0.8185	0.7537	0.8013	0.8087	0.8034	0.8301	0.8225	0.8204	0.8288	0.8388	0.8247	0.8371
Vanuatu Vatu	VUV	75.7576	74.0741	75.1880	74.6269	75.1880	77.5194	75.7576	76.3359	77.5194	77.5194	76.9231	78.1250
West Samoan Tala*	WST	1.8266	1.7560	1.8302	1.8165	1.8176	1.8476	1.9132	1.8329	1.8545	1.9390	1.8487	1.8594

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

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

Source: Bloomberg CMPN BGN

ITEMS OF INTEREST

REVISED IR 10 FINANCIAL STATEMENTS SUMMARY

The IR 10 *Accounts information* form has been through some significant changes. It's now known as the IR 10 *Financial statements summary* and comes into effect from the 2012–13 income year.

Background

The IR 10 *Accounts information* form was designed as a short form of financial statement so taxpayers would not have to file a full set of financial accounts with Inland Revenue. Inland Revenue uses information from the IR 10 for analytical purposes (such as tax compliance risk, policy and strategic research).

It also has an ancillary purpose of capturing useful business information, which is used by Statistics New Zealand for the Annual Enterprise Survey. This data set helps support whole-of-Government decision-making (for example, the Budget and interest rates-setting) and provides crucial economic indicators for use by wider Government and other researchers (such as the Treasury and the Reserve Bank). If IR 10 information were not available, Statistics New Zealand would have to survey an additional 30,000 businesses to gather this information.

The form was developed in the early 1990s and has not been updated since. It is primarily completed as an attachment to a number of mandatory tax returns (which have business income), but the IR 10 form itself is not mandatory, and taxpayers can choose to send in financial statements instead. It is Inland Revenue's preference that an IR 10 is filed rather than sending in financial statements.

It is widely accepted throughout the tax community (including Inland Revenue) that there have been numerous problems with the old IR 10 forms. It was out-dated, sometimes unclear and ill-suited for analytical purposes, both for Inland Revenue and external stakeholders. The changes being introduced seek to address these problems for taxpayers, their agents and Inland Revenue.

Key features

The major changes in the IR 10 form include:

- aligning the form with the taxpayer's financial statements so there is greater consistency between the two. This will make it easier for taxpayers, tax agents and accountants to translate their own or their clients' financial statements into an IR 10 form
- discarding boxes that are not fit-for-purpose, and replacing them with boxes that contain more useful variables (from a statistical and risk analytics sense) that are not currently captured in the IR 10 form
- re-labelling some boxes so the scope of the information requested provides more useful information. For example, the previous balance sheet item "Land and buildings" has been split under the new IR 10 into separate items "Land" and "Buildings".

The new IR 10 form also includes boxes that allow a more accurate disclosure of income not previously accommodated in the old IR 10 form, for example, Box 26: *Exceptional items* and Box 53: *Untaxed realised gains/receipts*.

A revised and improved IR 10 guide

The IR 10 *guide* has also been updated to underscore the importance of the information being gathered, the purpose of the IR 10 form, and to ensure that it is clear what information is required of taxpayers and their agents.

The following tables summarise the changes.

Boxes removed (old IR 10)	New boxes (new IR 10)
14 Entertainment	13 Accounting depreciation and amortisation
15 Fringe benefit tax	21 Related-party remuneration
25 Travel and accommodation	26 Exceptional items
26 Vehicle (excluding depreciation)	27 Net profit/loss before tax
33 Total current assets	28 Tax adjustments
39 Total fixed assets	37 Buildings
41 Preference shares	44 Provisions
58 Are your accounts GST-exclusive?	54 Additions to fixed assets
59 Are your accounts for a period of 12 months?	55 Disposals of fixed assets

Relabelled boxes	
2011–12 income year and earlier years (old IR 10)	2012–13 income year onwards (new IR 10)
8 Dividends	8 Dividends received
9 Rental and lease payments	9 Rental, lease and licence income
12 Bad debts (written off)	12 Bad debts
13 Depreciation	52 Tax depreciation
17 Interest expenses	15 Interest expense
18 Legal expenses	16 Professional and consulting fees
20 Rental and lease payments	18 Rental, lease and licence payments
23 Salaries and wages	22 Salaries and wages paid to employees
24 Sub-contractor payments	23 Contractor and sub-contractor payments
31 Bank accounts	31 Cash and deposits
37 Land and buildings	36 Land
42 Shares and debentures	40 Shares/ownership interests
47 Bank accounts	46 Current loans
50 Term liabilities	49 Non-current liabilities
53 Current account closing balance	58 Current account year-end balances
54 Total proprietor or shareholder funds	51 Owners' equity
55 Deductible loss on disposal of fixed assets	59 Tax-deductible loss on disposal of fixed assets
56 Capital gain on disposal of fixed assets	53 Untaxed realised gains/receipts

Application date

The new IR 10 form applies for returns filed from the 2012–13 income year and onwards. The old IR 10 form will continue to apply for returns filed for the 2011–12 income year and earlier.

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.

COURT OF APPEAL CONFIRMS OCN ARRANGEMENT IS TAX AVOIDANCE

Case	Alesco New Zealand Ltd and Others v Commissioner of Inland Revenue
Decision date	5 March 2013
Act(s)	Income Tax Act 1994, Income Tax Act 2004
Keywords	Tax avoidance, economic cost, abusive tax position

Summary

The Court of Appeal has confirmed that the optional convertible notes (“OCNs”) arrangement entered into by the Alesco group, to claim deductions for interest using Determination G22 and the financial arrangement rules, was a tax avoidance arrangement. The Court also held the “abusive tax position” shortfall penalties were correctly imposed.

Impact of decision

This is an important judgment for the Commissioner. Other taxpayers have entered into similar arrangements. This case will most probably influence the outcome of those cases. The total amount of tax across all OCN cases is over \$300 million including use-of-money interest.

Facts

Alesco New Zealand Ltd (“Alesco NZ”) and certain subsidiaries appealed against the High Court’s decision (*Alesco New Zealand Ltd v Commissioner of Inland Revenue* [2012] 2 NZLR 252 (HC)) that upheld the Commissioner’s assessments declaring the arrangement void as a tax avoidance arrangement. The assessments disallowed interest deductions and loss offset elections and imposed “abusive tax position” shortfall penalties.

Alesco NZ is a wholly owned subsidiary of Alesco Corporation (“the Corporation”), an Australian company. The arrangement involved the use of OCNs in an intra-group situation to finance the acquisition of two businesses in New Zealand.

Alesco NZ issued OCNs to the Corporation in return for advances totalling \$78 million for a term of 10 years. At maturity, the Corporation had the option of being repaid the \$78 million or converting the OCNs into shares in Alesco NZ. No interest was payable on the OCNs.

At the relevant times, the Commissioner’s Determination G22 applied. The application of Determination G22 to the terms of the OCN resulted in deemed interest deductions for Alesco NZ in the 2003 to 2008 years (inclusive).

Decision

The Court of Appeal unanimously dismissed Alesco NZ’s appeal, essentially on the same grounds as the High Court dismissed its challenge.

Alesco NZ advanced a threshold argument. It argued that tax avoidance can only be determined by having regard to the tax position hypothetically obtainable under other business or funding structures (a counterfactual). The Court disagreed and held the question is whether the particular arrangement had the effect of avoiding tax. The definition provisions in the Income Tax Act do not allow for a hypothetical point of reference. In any event, Alesco NZ did not establish an evidential foundation for a counterfactual position.

The Court held that a question that lay at the heart of the appeal was whether Alesco NZ suffered an economic cost commensurate with its claimed deductions. If Alesco NZ did not incur an economic cost, the question became whether its use of the financial arrangement rules and Determination G22 to claim deductions for expenditure incurred fell outside Parliament’s contemplation.

The Court held that Alesco NZ did not actually pay interest but obtained a reduction in tax liability as if it had. Alesco NZ failed to prove that its use of the financial arrangement rules and Determination G22 to claim deductions were within Parliament's contemplation. It had engaged in tax avoidance.

On the issue of reconstruction, the Court held that the Commissioner has broad discretion. The Commissioner may have regard to an alternative funding arrangement but she is not obliged to, and should not, where the tax advantage can be counteracted simply by disallowing the impermissible deductions.

On the issue of shortfall penalties, the Court held that it is required to view the arrangement objectively and not have regard to Alesco NZ's intentions in taking its tax position. The Court held that there was no purpose for the arrangement except to secure a tax advantage. Accordingly, Alesco NZ entered into the arrangement for the dominant purpose of avoiding tax and was liable for a shortfall penalty for taking an "abusive tax position".

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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