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TAX INFORMATION Bulletin

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Te Tari Taake

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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.

You can find a list of the items we are currently inviting submissions on as well as a list of expired items at **www.ird.govt.nz/public-consultation**

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 at **www.ird.govt.nz/public-consultation** to receive regular email updates when we publish new draft items for comment.

Correction – *Tax Information Bulletin* Vol 30 No 5 June 2018

The *Measures to encourage provision of IRD numbers* item, published in *Tax Information Bulletin* Vol 30 No 5, contained an error on page 34 under the heading *Joint investors IRD numbers*.

This section should have also included the following line:

"This does not apply to a joint investment made through an intermediary that is a company, trust or partnership. These investments should be treated as made by a single investor. A custodian may also adopt this treatment."

The *Increasing electronic filing* item published in *Tax Information Bulletin* Vol 30 No 5 contained an error on page 36 in the *Key features* section.

The text reads:

"An investment income payer who does provide their investment income information to the Commissioner electronically is subject to a penalty of $250, due and payable 30 days after the end of the month in which the payer was required to provide the information to the Commissioner electronically".

It should read:

"An investment income payer who does **not** provide their investment income information to the Commissioner electronically is subject to a penalty of $250, due and payable 30 days after the end of the month in which the payer was required to provide the information to the Commissioner electronically."

IN SUMMARY

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National average market values of specified livestock determination 2018 9

This determination sets the national average market values to apply to specified livestock on hand at the end of the 2017-2018 income year.

Determination: amount of a particular schedular payment (being per diem allowances paid in the screen production industry) that shall be regarded as expenditure incurred in production of payment 12

This Determination sets out the amount regarded as expenditure incurred in the production of particular schedular payments when those payments are per diem allowances paid to resident and non-resident contractors and resident and non-resident entertainers working in the screen production industry in New Zealand.

Legal decisions - case notes

Family Dispute Resolution Act Mediated Agreement Not Privileged/Confidential 14

The Appellant appealed the High Court judgment which found that an agreement produced through mediation ("the Mediated Agreement") under the Family Disputes Resolution Act 2013 was not privileged and/or confidential, and was therefore available for the Commissioner to use when making an assessment under the Child Support Act ("the CSA"). The Court of Appeal agreed with the High Court that the Mediated Agreement was not privileged or confidential, allowing the Commissioner to rely on that document as proof of parentage when making a CSA assessment.

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The Commissioner of Inland Revenue ("the Commissioner") failed in her application for 2B costs on a liquidation proceeding on the basis that the Commissioner had not incurred costs in the sense contemplated by part 14 of the High Court Rules 2016.

Court of Appeal Quashes Limited Order for Discovery 17

The Court of Appeal has quashed the limited order for discovery made in the High Court after the Appellant and Respondent came to an agreed resolution that Woolford J's decision in the High Court was wrong. Therefore the parties asked the Court of Appeal to make orders by consent allowing the appeal filed by the Commissioner of Inland Revenue.

NEW LEGISLATION

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

Order in Council

Taxation (new Due Date for New and Increased Assessments) Commencement Order 2018

The *Taxation (New Due Date for New and Increased Assessments) Commencement Order 2018* came into force on the 14th of May 2018. This commencement order sets 18 June 2018 as the date that section 142AB of the *Tax Administration Act 1994* comes into force for goods and services tax.

Application date

Section 142AB will come into force for goods and services tax on 18 June 2018.

Background

Section 142A of the Tax Administration Act 1994 sets different due dates for payment of an Electronic Default Assessment (EDA) and Non-electronic Default Assessment (NDA). There are also different treatments for any tax payable from a subsequent amendment to that default assessment. Section 142AB modifies that rule to align the due date for payment of tax for default assessments, whether these are made manually or electronically.

The amended rules will only apply when the default assessment relates to a tax type that has been migrated to Inland Revenue's new START technology system, and when incremental penalties do not apply to the particular tax type. Consequently, the commencement order only brings section 142AB into force for goods and services tax, which is the only tax type which currently meets those criteria.

The previous treatment

Section 142A sets different due dates for payment of an EDA and NDA.

For an EDA:

- The amount payable from the default assessment is due on the original due date for the tax type and period. This means that if the EDA is made after the original due date, as is always the case for GST, late payment penalties will be immediately applied, back-dated to the original due date.
- When the EDA is amended, a new due date will be set that is at least 30 days following the notice advising the taxpayer of the new amount to pay. Therefore, any late payment penalties applied to the EDA will be reversed, and the taxpayer will not be penalised further unless they do not pay any amount due by the new due date.

Example

Horribear Ltd the maker of zombie teddy bears is due to file its GST return for the period ending 31 March 2017 on 28 April 2017. Because of an increasing demand for the new Demon Teddy range, Horribear forgets to file the return in its attempts to produce more Demon bears.

Because the return is unfiled, the Inland Revenue computer system automatically applies an EDA of $1,000 on 14 May 2017. The due date for the EDA is 28 April 2017, so immediately retrospective penalties are applied on the amount of the EDA, with effect from the day after the original due date.

Horribear then files the return on 30 May 2017, and the information from that return is used to replace the EDA with a new assessment of $1,500 to pay.

The taxpayer is given at least 30 days – until 30 June 2017, to pay the $1,500 assessment. There are no back-dated penalties unless they do not pay by the new due date.

For an NDA:

- The amount payable from the default assessment is due at least 30 days from the notice of assessment.
- If the assessment is subsequently amended, then the taxpayer is only given a new due date for any amount payable that is greater than the amount previously payable from the NDA. This new due date will also be at least 30 days after the notice advising the taxpayer of the additional tax to pay.

Example

Dream Liner Ltd, a manufacturer of scented industrial bin liners, is due to file its GST return for the period ending 31 March 2017 on 28 April 2017.

An Inland Revenue investigator decides to make a Commissioner's assessment of $1,000 on 14 May 2017 due to Dream Liner not having filed a number of returns, including this one. Dream Liner is given a due date to pay the $1,000 on 15 June 2017.

The taxpayer then files its return, and the information from the return is accepted as an amendment to the NDA on 30 June 2017, with the resulting assessment being $1,500 to pay.

The $1,000 from the NDA is still due as of 15 June 2017, and the taxpayer is given a new due date of 30 July 2017 to pay the additional $500 of the increased assessment.

The new treatment

Section 142AB will apply to set a new due date for certain assessments. Section 142AB will not apply to assessments made in the absence of a return and to which section 106(1) applies. Section 106 deals with the issue of default assessments, both electronic and non-electronic.

Section 142A applies to tax types that proposed section 142AB does not apply to. It also applies to assessments other than EDAs made in the absence of a return and to which section 106(2) applies, which relates to EDAs only. Section 142AB removes this distinction entirely so that no new due date is set for any default assessment, manual or automatic.

In addition, proposed section 142AB does not set a new due date for an increased assessment from a default assessment. This will mean that any subsequent amendments to a default assessment will be due at the original due date. This change reflects the fact that no return was originally filed and removes a benefit to those who do not file compared with those who do file returns and pay tax on time.

Example

Using the facts in the Dream Liner Ltd example above, Dream Liner is due to file its GST return for the period ending 31 March 2019 on 28 April 2019.

An Inland Revenue investigator decides to make a Commissioner's assessment of $1,000 on 14 May 2019 due to Dream Liner not having filed a number of returns. Although section 142AB applies to this situation it will not apply to give this default assessment a new due date and the tax will be due on the original due date of 28 April 2019.

The taxpayer then files its return, and the information from the return is accepted as an amendment to the NDA on 30 June 2019, with the resulting assessment being $1,500 to pay.

Again, section 142AB will not apply as the reassessment relates to the reassessment of a default assessment and thus the $1,500 from the reassessment is still due on the original due date for the tax, 28 April 2019.

Example

Carrying on from the Horribear Ltd example above, in the 2019 year Horribear has a GST review performed by Inland Revenue on its GST return for the period ended 31 March 2019.

Inland Revenue discovers that Horribear has understated its GST output tax for the period by $500. The investigator issues a reassessment for the period to reflect the increase in GST payable.

Section 142AB will apply to the reassessment as it is not a reassessment of a default assessment and therefore a new due date can be set for the payment of the extra GST. The due date for the tax is set for at least 30 days after the reassessment.

QUESTIONS WE'VE BEEN ASKED

This section of the *TIB* sets out the answers to some day-to-day questions people have asked. They are published here as they may be of general interest to readers.

QB 18/09: Income tax – can sharemilkers and contract milkers deduct farmhouse expenditure using the approach in IS 17/02?

The Commissioner's view on the appropriate treatment of farmhouse expenses in different circumstances is set out in the interpretation statement "IS 17/02: Income tax – deductibility of farmhouse expenses", *Tax Information Bulletin* Vol 29, No 4 (May 2017): 82. This Question We've Been Asked (QWBA) clarifies the approach for sharemilkers and contract milkers.

Key references

"IS 17/02: Income tax – deductibility of farmhouse expenses" *Tax Information Bulletin* Vol 29, No 4 (May 2017) called "IS 17/02" in this QWBA.

Question

Can sharemilkers and contract milkers use the approach in IS 17/02 and claim a 20% deduction for farmhouse expenditure?

Answer

Yes – sharemilkers and contract milkers may use the approach in IS 17/02 to claim a 20% deduction for farmhouse expenditure (for example, power and insurance bills) without calculating actual business use of the farmhouse, if:

- they carry on a sharemilking or contract-milking business as sole traders or a partnership independent from the farm owner's business;
- the business is of sufficient scale to require its own home office and centre of operations in the sharemilker's or contract milker's farmhouse; and
- the sharemilker or contract milker's farmhouse is used in a similar manner to and to a similar extent as other farmhouses on type 1 farms.

Key terms

Type 1 farm: a farm where the cost or value of the farmhouse is less than 20% of the cost or value of the farm. IS 17/02 allows sole traders and partnerships on type 1 farms to claim an automatic 20% of certain farmhouse expenditure. All other farms are type 2 farms and have to do a home office calculation.

Sharemilker: a person working on a dairy farm under a sharemilking agreement who is entitled to receive a share of the profits from the dairy farming operations.

Contract milker: a person carrying on a business like a "sharemilker" except they operate under a contract milking agreement and are paid on the basis of production instead of a profit share.

Explanation

1. IS 17/02 concerns deductions for farmhouse expenditure where that expenditure has both private and business elements. A deduction is available only to the extent that the expense is incurred in carrying on the farming business. IS 17/02 draws a distinction between how type 1 and type 2 farms calculate business use. The Commissioner allows sole traders and partnerships on type 1 farms to claim automatic deductions for farmhouse expenditure at fixed rates (although they can do a calculation if they wish). Type 2 farms must do a home office calculation, or use the formula in s DB 18AA of the Income Tax Act 2007, to calculate actual business use.
2. Sharemilkers and contract milkers who live on the farm are likely to incur farmhouse expenditure that has some nexus with their business. The Commissioner has been asked to clarify whether sharemilkers and contract milkers can claim a 20% deduction of farmhouse expenditure following the type 1 approach.

Scope of this QWBA

3. "Sharemilking" is the arrangement where a farm owner supplies the dairy farm and the sharemilker provides the labour and resources to run the farm. The sharemilker runs the milking shed, oversees milk production, is responsible for herd management and manages some aspects of the farm (this will vary depending on the terms of the sharemilking agreement). Herd owning sharemilkers usually provide the herd and commonly receive around a 50% share of the dairy company pay-out.

Variable order sharemilkers usually work with a herd belonging to the farm owner (although they may also own cows) and receive 20-29% of the pay-out. Contract milking is very similar to sharemilking in terms of the contractual obligations, but they are primarily paid based on a set number of cents per kilo of milk solids, instead of a share of the profits. For both sharemilkers and contract milkers a direct correlation exists between the level of milk production achieved and their income.

4. A sharemilker undertakes to perform the work of a dairy farmer under a sharemilking agreement and is entitled under the agreement to receive a share of the returns or profits from the dairy farming operation. This definition of "sharemilker" is consistent with s 2 of the Sharemilking Agreements Act 1937 and the similar definition in the schedule of the Sharemilking Agreements Order 2011.
5. In this QWBA, a "contract milker" carries out the same role on a dairy farm and performs the same tasks as a sharemilker. The difference is that they operate under a contract milking agreement (rather than a sharemilking agreement) and are paid based on production rather than receiving a share of the profits.
6. This QWBA applies only to sharemilkers and contract milkers who are operating as sole traders or as partners in a partnership and are provided with a farmhouse on the farm. Where a sharemilker or contract milker is operating through a company or trust they should refer to the principles in IS 17/02 to determine deductibility.
7. This QWBA applies only to sharemilking and contract milking where the scale of the business requires the sharemilker's or contract milker's farmhouse to be used as an integral part of their business. As well as carrying out administrative tasks and business planning from the farmhouse, the business will often have employees and employee meetings will be held there. The farmhouse is often used to store farm equipment owned by the sharemilker or contract milker as part of their business.
8. This QWBA does not apply to employees or other farm contractors. For guidance in determining whether a person is an employee, see the interpretation guideline IG 16/01: "Determining employment status for tax purposes (employee or independent contractor?)", *Tax Information Bulletin* Vol 28, No 3 (April 2016): 97.

Deductibility of farmhouse expenses

9. For an expense to be deductible under s DA 1 of the Income Tax Act 2007, a sufficient relationship (nexus) must exist between the expense incurred by the taxpayer and the deriving of assessable income or the carrying on of a business for the purpose of deriving assessable income. Also, a deduction is not available under s DA 1 to the extent the general limitations in s DA 2 apply, including in this context, a limitation on private expenses.
10. Whether an expense is deductible will depend on the particular facts of each case. In the context of farmhouse expenses, it will be necessary to determine who has incurred the expense and in what capacity. The farmhouse expenditure incurred by sharemilkers and contract milkers is likely to be relatively modest and include gas, power and insurance. Where sharemilkers and contract milkers incur this type of expenditure, s DA 1 will usually be satisfied. However, s DA 1 is only satisfied to the extent that the farmhouse is used for business purposes. To the extent that the farmhouse is used for private purposes, s DA 1 is unlikely to be satisfied, and s DA 2 will prohibit the deduction for private expenditure.

Whether sharemilkers and contract milkers may be treated as farmers on a type 1 farm and claim a 20% deduction for farmhouse expenditure

11. Usually, taxpayers would do a home office calculation to ascertain business use of a private residence. However, using IS 17/02 some farmers operating as sole traders or partnerships can adopt a practical approach. This approach balances the strict application of the law with the associated compliance cost of doing so, while maintaining equity between taxpayers and protecting the integrity of the tax system. Farmers on a type 1 farm are allowed an automatic 20% deduction for farmhouse expenses and 100% deductions for rates and interest (rates and interest will be incurred by the farm owner rather than the sharemilker or contract milker).
12. Type 1 farms are those where the value of the farmhouse is less than 20% of the total value of the farm. The Commissioner accepts that sharemilkers and contract milkers will operate only on type 1 farms, because of the scale of operations carried out on dairy farms. Because of the amount of land required, the milking shed and plant, barns, stand-off and run-off pads and other assets, the farm's value is usually quite significant, so the type 1 farm definition is met.
13. In terms of business use, the 20% deduction is intended to be a reasonable approximation of business use of the farmhouses on all type 1 farms across the country. It will not be correct in every instance (and farmers may still do their own calculation if they wish). For sharemilkers and contract milkers, actual business use of the farmhouse will depend on their particular circumstances. This is no different to other type 1 farms where the use of the farmhouse varies from farm to farm.

14. Although use of the farmhouse will vary from dairy farm to dairy farm the Commissioner accepts that sharemilkers and contract milkers (as described in this QWBA) will generally use the farmhouse for staff meetings, preparing food, feeding staff and farm visitors, business meetings, administration, record keeping, storing equipment, business planning and office work, completing regulatory requirements and so on. On this basis, the use of the farmhouse occupied by the sharemilker or contract milker is equivalent to that on other type 1 farms.
15. As sharemilkers and contract milkers are on type 1 farms and using the farmhouse they occupy in an equivalent way to other type 1 farmers they are permitted to use the approach in IS 17/02 to claim a 20% deduction for farmhouse expenditure.
16. The following examples are included to assist in explaining the application of the law.

Examples

Example 1 – Sharemilkers

Luke and Betty are herd owning sharemilkers in Taranaki operating as a partnership. They have just signed a sharemilking agreement and will take their herd of 300 cows to Justin's farm. The agreement provides for a 50:50 split of proceeds from the dairy company.

Under the sharemilking agreement, Luke and Betty are provided with land on the farm for their cows and a farmhouse for their family. They are responsible for providing equipment, working dogs and farm labour. In terms of farmhouse expenditure Luke and Betty pay for gas, power and contents insurance. Justin pays the rates, interest on loans and buildings insurance.

As sharemilkers on a type 1 farm Luke and Betty can use the approach for farmers on type 1 farms in IS 17/02. They may claim a deduction of 20% for their gas, electricity and insurance expenses without having to calculate actual business use.

Example 2 – Contract milkers

Marion and Barry are contract milkers in the Wairarapa operating as a partnership. They have a year-to-year contract milking agreement with the farm owner Ted. Ted has spent the last few years building up a beef and lamb farm with his son in another district. Ted lives on the beef and lamb farm but intends to return to his own farm in a couple of years. Ted owns the herd of 440 cows, and Marion and Barry milk and manage the herd. Ted is "hands off" but he deals with the dairy company and visits regularly to check on things such as the amount of feed on hand and the health of the cows.

Day-to-day running of the farm is left to Marion and Barry. They have Alan working for them full time. Alan stays in a separate cottage on the farm. During busy periods, they also employ other farm workers to work in the milking sheds or on the farm.

Marion and Barry were previously variable order sharemilkers but changed to contract milking because of the volatility in dairy prices. Their day-to-day work remains the same but they are now paid a set amount per kilo of milk solids. As part of the contract milking agreement they live in the main farmhouse on the farm. Marion and Barry run their contracting milking business and manage the farm from their farmhouse. They use their farmhouse for meetings with their staff and for other business meetings and planning. The farmhouse kitchen is used to prepare food for the staff and Alan often eats his meals at the kitchen table. The farmhouse has a home office where Marion and Barry complete the many administrative and regulatory requirements. The farmhouse is also used to store farm equipment.

Marion and Barry are contract milkers and can use the approach for farmers on type 1 farms in IS 17/02 to claim 20% of relevant farmhouse expenditure without having to do a home office calculation. Alan may not use this approach because he is not a "contract milker" for the purposes of the QWBA.

References

Subject references

contract milker
deductions
farmhouse
sharemilker

Legislative references

Income Tax 2007: ss DA 1, DA 2, DB 18AA
Sharemilking Agreements Act 1937: s 2 ("sharemilker", "sharemilking agreement")
Sharemilking Agreements Order 2011: Schedule ("sharemilker")

Other references

IG 16/01: Determining employment status for tax purposes (employee or independent contractor?), *Tax Information Bulletin,* Vol 28, No 3 (April 2016): 97
IS 17/02: Income tax – deductibility of farmhouse expenses, *Tax Information Bulletin*, Vol 29, No 4 (May 2017)

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 2018/01: A type of attributing interest in a foreign investment fund for which a person may not use the fair dividend rate method (Russell Investment Company plc: NZDH-A class shares)

Reference

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

Discussion (which does not form part of the determination)

Shares in the Russell Investment Company plc ("RIC"), an Irish public limited company, to which this determination applies, are an attributing interest in a foreign investment fund ("FIF") for New Zealand resident investors. RIC is structured as an umbrella fund with segregated liability between sub-funds. Those sub-funds do not have a separate legal personality under Irish law.

New Zealand resident investors are required to apply the FIF rules to determine their tax liability in respect of their investment in shares in RIC each year.

The Global High Yield Fund ("GHY Fund") is a sub-fund of RIC which invests in a portfolio of corporate debt instruments. RIC issues a class of shares denominated in New Zealand dollars ("NZDH-A shares") that provide holders of that class of shares with an interest in the pool of investments held by the GHY Fund. RIC undertakes hedging for NZDH-A shares, with the intention that this arrangement ensures the New Zealand dollar value of that class of shares is unaffected by foreign exchange movements.

Section EX 46(10)(c) of the Income Tax Act 2007 does not apply to prevent the use of the fair dividend rate ("FDR") method, but would apply if the GHY Fund represented a separate foreign company and the NZDH-A share class was the only class of shares on issue.

On this basis, where a New Zealand resident invests in NZDH-A shares issued by RIC and the share class, which has a value in New Zealand dollars, is linked to an interest in the GHY Fund that invests predominantly in corporate debt instruments that are highly effectively hedged against foreign currency movements, I consider that it is appropriate for investors holding those interests in RIC to be excluded from using the FDR method for the 2019 and subsequent income years.

Scope of determination

This determination is issued on the basis of information provided to the Commissioner before the date of this determination and applies to an attributing interest in a FIF held by New Zealand resident investors in a non-resident issuer where:

1. The non-resident issuer:
    a. is an Irish public limited company established on 31 March 1994 that issues multiple classes of shares; and
    b. is known at the date of this determination as Russell Investment Company plc; and
    c. is structured as an umbrella fund with segregated liability between sub-funds; and
2. The attributing interest consists of a New Zealand dollar denominated class of shares, NZDH-A, issued by that non-resident that provides exposure solely to the GHY Fund that predominantly (i.e. 80% or more by value at a time in the income year) holds corporate debt instruments; and
3. The investment assets attributable to NZDH-A shares are subject to foreign currency hedging arrangements undertaken by the non-resident for the purpose of eliminating exchange rate risk for New Zealand investors on a highly effective basis.

Interpretation

In this determination unless the context otherwise requires:

"Fair dividend rate method" means the fair dividend rate method under section EX 44 of the Income Tax Act 2007; and

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

"Non-resident" means a person that is not resident in New Zealand for the purposes of the Income Tax Act 2007.

Determination

An attributing interest in a FIF to which this determination applies is a type of attributing interest for which a person may not use the FDR method to calculate FIF income from the interest.

Application Date

This determination applies for the 2019 and subsequent income years. However, under section 91AAO(3B) of the Tax Administration Act 1994, this determination also applies for an income year beginning before the date of this determination for a person who invests in the NZDH-A class of shares in the GHY Fund and who chooses that the determination applies for that income year.

Dated this 11th day of May 2018.

Haydn Clark
Technical Specialist

National Average Market Values of Specified Livestock Determination 2018

Note to this determination

This note does not form part of the national average market values of specified livestock determination 2018 (the determination) but are produced to aid Inland Revenue staff, taxpayers and their agents in their understanding of how the values contained in this determination are arrived at and how they should be used.

Section EC 15 of the Income Tax Act 2007 (the Act) requires the Commissioner of Inland Revenue (CIR) to make a determination declaring the national average market values (NAMV) of certain types and classes of livestock. This determination is published in May each year.

These NAMVs are used by livestock owners to value their livestock on hand where owners have elected to use the herd scheme to value livestock in an income year.

As the name of this determination suggests, NAMVs provide the **national** average market value of specified livestock classes. As such they may not always reflect the market value of the livestock of a particular taxpayer, or of a particular region. This being so, the values are not intended to be used for any other purpose than that for which they are produced; valuing livestock of taxpayers who have elected to value their livestock under the herd scheme in the income year for which the determination relates.

In order to ascertain the market value of the various classes of livestock the CIR contracts with a number of experienced livestock valuers situated throughout the country[1]. Each valuer is asked to provide the market value of the various specified livestock classes located in their region. There is generally more than one valuer contracted for each region. The market valuations required are for "good quality on-farm animals" as at 30 April. From these values the CIR then calculates the national average market value for each livestock class. In the case of sheep, beef, dairy cattle and deer classes a weighted average is used (based on total livestock numbers for a type of livestock in that region compared to the national herd numbers for that type of livestock[2]). Because of the comparatively low numbers of livestock, a straight average is used for the remaining livestock types.

[1] 38 valuations were obtained for the 2018 determination.

[2] Numbers are based on data collated by Statistics New Zealand.

National Average Market Values of Specified Livestock Determination 2018

This determination may be cited as "The National Average Market Values of Specified Livestock Determination, 2018".

This determination is made in terms of section EC 15 of the Income Tax Act 2007 and shall apply to specified livestock on hand at the end of the 2017-2018 income year.

For the purposes of section EC 15 of the Income Tax Act 2007 the national average market values of specified livestock, for the 2017-2018 income year, are as set out in the following table.

Type of livestock	Class of livestock	Average Market Value per Head $
Sheep		
	Ewe hoggets	123.00
	Ram and wether hoggets	119.00
	Two-tooth ewes	179.00
	Mixed-age ewes (rising three-year and four-year old ewes)	160.00
	Rising five-year and older ewes	142.00
	Mixed-age wethers	109.00
	Breeding rams	289.00
Beef Cattle	***Beef breeds and beef crosses:***	
	Rising one-year heifers	735.00
	Rising two-year heifers	1137.00
	Mixed-age cows	1497.00
	Rising one-year steers and bulls	922.00
	Rising two-year steers and bulls	1283.00
	Rising three-year and older steers and bulls	1608.00
	Breeding bulls	3004.00
Dairy Cattle	***Friesian and related breeds, Jersey and other dairy breeds:***	
	Rising one-year heifers	691.00
	Rising two-year heifers	1313.00
	Mixed-age cows	1529.00
	Rising one-year steers and bulls	581.00
	Rising two-year steers and bulls	936.00
	Rising three-year and older steers and bulls	1320.00
	Breeding bulls	1947.00
Deer	***Red deer, wapiti, elk, and related crossbreeds:***	
	Rising one-year hinds	380.00
	Rising two-year hinds	511.00
	Mixed-age hinds	572.00
	Rising one-year stags	396.00
	Rising two-year and older stags (non-breeding)	627.00
	Breeding stags	2055.00

Type of livestock	Class of livestock	Average Market Value per Head $
Deer (continued)	***Other breeds:***	
	Rising one-year hinds	343.00
	Rising two-year hinds	457.00
	Mixed-age hinds	489.00
	Rising one-year stags	356.00
	Rising two-year and older stags (non-breeding)	463.00
	Breeding stags	1103.00
Goats	***Angora and angora crosses (mohair producing):***	
	Rising one-year does	62.00
	Mixed-age does	83.00
	Rising one-year bucks (non-breeding)/wethers	52.00
	Bucks (non-breeding)/wethers over one year	51.00
	Breeding bucks	394.00
	Other fibre and meat producing goats (Cashmere or Cashgora producing):	
	Rising one-year does	59.00
	Mixed-age does	88.00
	Rising one-year bucks (non-breeding)/wethers	51.00
	Bucks (non-breeding)/wethers over one year	63.00
	Breeding bucks	394.00
	Milking (dairy) goats:	
	Rising one-year does	301.00
	Does over one year	383.00
	Breeding bucks	324.00
	Other dairy goats (culls)	42.00
Pigs		
	Breeding sows less than one year of age	286.00
	Breeding sows over one year	358.00
	Breeding boars	544.00
	Weaners less than 10 weeks of age (excluding sucklings)	86.00
	Growing pigs 10 to 17 weeks of age (porkers and baconers)	148.00
	Growing pigs over 17 weeks of age (baconers)	213.00

This determination is signed by me on the 15th day of May 2018.

Rob Wells
Manager
Technical Standards

Determination: amount of a particular schedular payment (being per diem allowances paid in the screen production industry) that shall be regarded as expenditure incurred in production of payment

Introduction

This Determination sets out the amount regarded as expenditure incurred in the production of particular schedular payments when those payments are per diem allowances paid to resident and non-resident contractors and resident and non-resident entertainers working in the Screen Production Industry in New Zealand.

Section RA (5) & RD 10 (1) of the Income Tax Act 2007 require anyone who makes a PAYE income payment to deduct tax when making it.

Under section RD 3 (1-4) of the Income Tax Act 2007 a schedular payment is included in the definition of "PAYE income payments". Consequently, any person who makes a schedular payment must deduct tax from it at the time it is made, unless an exemption applies.

The Screen Production Industry pays per diem allowances to resident and non-resident contractors and resident and non-resident entertainers working on screen productions when they are working away from their town of normal residence. These allowances are to cover the costs of food as well as other minor incidental expenses in New Zealand.

As per diems paid to resident and non-resident contractors and entertainers come within the definition of PAYE income payments, tax must be deducted from such payments.

Section RD 8 (3) allows the Commissioner to determine an amount or proportion of any PAYE income payment that is considered to be expenditure incurred in the production of that payment. If the Commissioner has made such a determination, the person paying the particular schedular payment or class of schedular payments is only required to deduct tax from the amount of the PAYE income payment that exceeds this threshold (section RD 11(4) of the Income Tax Act 2007).

Application

This Determination applies to payments of per diem allowances made to resident and non-resident contractors and resident and non-resident entertainers in the Screen Production Industry. It applies:

- to per diem allowances of $80 paid on or after 1st July 2018
- except where any resident or non-resident contractor, or any resident or non-resident entertainer is also provided with the goods and services for which the allowance is paid by the payer or another party acting on the payer's behalf, and
- until the Commissioner varies or revokes this determination.

Interpretation

In this Determination, unless the context otherwise requires, expressions have the same meaning as in Schedule 4 [Standard rates for tax for schedular payments] and sections RD 8 and YA 1 of the Income Tax Act 2007.

Determination

Where any resident or non-resident contractor, or resident or non-resident entertainer receives a per diem allowance in relation to services provided to a screen production and that allowance is a schedular payment, the sum of $80 per day shall be regarded as expenditure incurred in the production of the payment. If the total amount of the payment is less than $80 per day, the total amount of the payment shall be regarded as expenditure incurred in the production of the payment.

However, where the resident or non-resident contractor, or resident or non-resident entertainer is also provided with the goods and services for which the allowance is paid, either by the payer or another party acting on the payer's behalf, then no amount will be exempted by operation of this Determination from the application of the Income Tax Act 2007.

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

This Determination is signed on the 1st day of July 2018

Tony Morris
Customer Segment Lead
Significant Enterprises Customer Segment

Examples

These examples apply to per diems which come within the definition of "schedular payment" in the Income Tax Act 2007.

1. Contractor/entertainer receives a per diem allowance of $80. The goods and services for which the allowance is paid are not also provided by the payer or another payer acting on the payer's behalf. The payer does not have to deduct tax because the total payment does not exceed $80 per day. The contractor/entertainer does not have to keep receipts.
2. Contractor/entertainer receives a per diem allowance of $80. Contractor/entertainer is also provided with all meals while working, either on the set, or at some other location. The payer has to deduct tax from the per diem allowance of $80 as one of the matters for which the allowance is being paid is also being actually provided by the payer.
3. Contractor/entertainer receives a per diem allowance of $80. The contractor/entertainer is also able to obtain food from a particular café adjacent to the set. The café is directly reimbursed by the production company. In that situation the cost of the food is met by the payer of the per diem and it is being physically provided on its behalf. The payer has to deduct tax from the per diem allowance of $80.
4. Contractor/entertainer receives a per diem allowance of $100. The cost of the goods and services for which the allowance is paid are incurred by the recipient. The payer has to deduct tax from $20 of each daily payment as the payment exceeds the $80 threshold on a daily basis.

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, 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.

Family Dispute Resolution Act Mediated Agreement Not Privileged/Confidential

Case	McKay v Commissioner of Inland Revenue [2018] NZCA 138
Decision date	4 May 2018
Act(s)	Child Support Act 1991 ss 4, 7, 15 and 90; Family Disputes Resolution Act 2013 ss 12 and 14
Keywords	Privilege, confidentiality, child support, mediated agreement

Summary

The Appellant appealed the High Court judgment which found that an agreement produced through mediation ("the Mediated Agreement") under the Family Disputes Resolution Act 2013 ("the FDRA") was not privileged and/or confidential, and was therefore available for the Commissioner of Inland Revenue ("the Commissioner") to use when making an assessment under the Child Support Act ("the CSA"). The Court of Appeal agreed with the High Court that the Mediated Agreement was not privileged or confidential, allowing the Commissioner to rely on that document as proof of parentage when making a CSA assessment.

Impact

This case confirms the Commissioner's position that Family Dispute Resolution ("FDR") mediation agreements are not privileged or confidential so as to preclude her from using them to make child support assessments under the CSA.

Facts

In 2014 the Appellant had a brief liaison with a woman, A. In 2015, A gave birth to a son, B. A DNA report ("the DNA Report") commissioned by the Appellant very strongly supported the Appellant being B's biological father. On 23 July 2015, the Appellant and A entered into the FDR process under the FDRA which culminated in the Mediated Agreement. The Mediated Agreement included an acknowledgement by the Appellant that he was B's father. On 3 August 2015, the FDR provider gave A and the Appellant a form recording the outcome of the FDR ("the FDR Form"), under ss 12(7) and (8) of the FDRA. The FDR Form did not attach the Mediated Agreement, but included a reference to the matters agreed upon within it.

On 25 August 2015, the Commissioner received a child support application from A naming the Appellant as the father of B and attaching the DNA Report and the Mediated Agreement. The Commissioner assessed the Appellant for child support on the basis the Mediated Agreement included a written statement by the Appellant acknowledging that he was the father of B, under s 7(1)(e) of the CSA.

The Appellant filed a notice of objection to the Commissioner's assessment under s 90(1) of the CSA stating, inter alia, that the Mediated Agreement was privileged under s 14(2) of the FDRA and that he had not agreed to its disclosure.

Decision

The High Court Decision

The High Court held that the Mediated Agreement was neither privileged nor confidential and that the Commissioner was entitled to take it into account in her child support assessment.

Discussion

The Court of Appeal found the High Court was correct in concluding that s 14 does not confer privilege on the Mediated Agreement. It agreed with the High Court's observation that the underlying purpose of the privilege conferred by s 14(2) was to encourage parties engaged in settlement negotiations to speak freely, and to facilitate out of court resolution.

In addition, the CSA contemplated the use of mediated agreements by the Commissioner in making determinations on the liability of parents to pay child support under the CSA [s 15(1) and (3)]. Therefore such agreements were not "statements" for the purposes of the application of s 14, with the result that the Mediated Agreement was not privileged.

The Appellant also argued that s 14(2) of the FDRA applied because the Commissioner was a "person acting judicially" when making child support assessments. However, the Court of Appeal found the only inquiry required of the Commissioner under the FDRA is to be satisfied that the statutory definition of 'parent' applies to the Appellant. Such an inquiry was purely administrative.

The Court did not accept the Appellant's further submission that the terms of the Mediated Agreement were confidential. The Mediated Agreement did not contain any agreement between the parties to that effect and there was nothing in the statutory scheme to justify inferring it. The fact that the contents of the Mediated Agreement may be included in the FDR form prepared by the FDR provider and subsequently given to the Family Court under s 13 of the FDRA provides clear indication that the document is not confidential to the parties. The Court reached that conclusion even though there may have been a misunderstanding of the legal position about confidentiality on the part of the Appellant.

The Court further stated that the Commissioner is under a statutory duty to exercise her functions under the CSA so as to achieve the legislative objects. Once the Commissioner was satisfied that the Appellant was B's parent within the statutory definition the Commissioner was under a duty to exercise the functions of assessment contemplated by the CSA.

Costs

The Court of Appeal did not order costs on the appeal. While not a test case, there was an element of public interest in the outcome of that case. In addition, the Court acknowledged the Appellant had been misled into believing that the Mediated Agreement was privileged and confidential and that he would not have signed it if he had known that it would be used by A to make him liable to pay child support without any court proceeding being undertaken. The Court also found the Appellant had not unduly enlarged the work of the Commissioner in the proceeding.

Commissioner Not Entitled to Costs for In-House Counsel Appearing in High Court

Case	CIR v New Orleans Hotel (2011) Limited [2018] NZHC 971
Decision date	7 May 2018
Act(s)	High Court Rules 2016 Rules 14.1, 14.2 and 14.6
Keywords	Costs actually incurred, costs, inhouse counsel

Summary

The Commissioner of Inland Revenue ("the Commissioner") failed in her application for 2B costs on a liquidation proceeding on the basis that the Commissioner had not incurred costs in the sense contemplated by part 14 of the High Court Rules 2016.

Impact

The impact of this decision is that in-house counsel employed by the Commissioner are not entitled to apply for costs under the High Court Rules. It appears that claims for disbursements will be unaffected.

Facts

This was a cost decision in relation to a long running liquidation matter that had been filed on 1 September 2016. Following a defended hearing in relation to an application to restrain advertising (*CIR v New Orleans Hotel (2011) Limited* [2017] NZHC 2500) and an appeal of the decision (*CIR v New Orleans Hotel (2011) Limited* [2017] NZHC 2769) in favour of the Commissioner on that application, the liquidation proceedings were eventually withdrawn on 25 January 2018, upon confirmation that the defendant company had paid its tax debt in full.

At the time the liquidation proceedings were withdrawn, Osborne AJ reserved the question of costs until the decision of the Full Bench of the Court of Appeal in *McGuire v Secretary for Justice* [2018] NZCA 37.

Osborne AJ wanted to know whether or not the Court of Appeal would comment on or modify the position in the earlier decision of *Joint Action Funding Limited v Eichelbaum* [2017] NZCA 249. In *Joint Action Funding Limited*, the Court of Appeal had overturned the longstanding exception for self-represented lawyers to the general principle that a self-represented litigant was not entitled to an award of cost.

In *Joint Action Funding Limited*, the Court of Appeal had held that the phrase "costs incurred" in rule 14.2(f) envisaged invoices rendered for legal services provided by a legal practitioner to a client. It followed from this that under the current cost rules, claims for costs are confined to legal costs billed by a lawyer retained by a party litigant for legal services provided by the lawyer to that litigant (at [43]).

In *McGuire* the Full Bench did not consider that there was any need to revisit the conclusions reached in *Joint Action Funding*.

Decision

The Commissioner argued that, based on the Court of Appeal authority in *Henderson Borough Council v Auckland Regional Authority* [1984] 1 NZLR 16 at [23], she was entitled to claim for costs when she was represented by in-house counsel.

The defendant argued that *Joint Action Funding Limited* had materially altered the way in which a Court is to determine awards of cost.

Matthews AJ noted that "costs actually incurred" is confined to legal costs billed by a lawyer retained by a litigant for legal services provided by the lawyer to that litigant, and as there was no bill rendered by the lawyer who had represented the Commissioner to the Commissioner, there were no costs actually incurred in terms of *Joint Action Funding*.

Matthews AJ noted that *Henderson Borough Council* had been regularly applied by the Courts, but considered that the interpretation of the rules in *Joint Action Funding* applies outside the context of a litigant representing him or herself in person. Matthews AJ stated:

> [18] Thus this Court is now called upon to decide whether to apply *Henderson*, or the interpretation of the Rules in Part 14 in accordance with *Joint Action Funding*. I have concluded that this Court should follow *Joint Action Funding* and *McGuire*. In both cases the Court of Appeal expressly interpreted the current Rules. In neither case did the Court limit its interpretation to application only in relation to self-representing lawyers. Nor does there appear to be any principled basis upon which the rules could bear one interpretation in one context and another in a different context. The interpretation set out by the Court excludes an award of costs to in-house counsel unless the circumstances of that counsel's retainer fit within the terms of these cases.

The Judge declined to follow the decision in *Henderson*. The Judge noted that he was departing from previous decisions in the High Court in relation to costs awarded to in-house counsel, but distinguished those cases on the basis that they were decided prior to *Joint Action Funding*.

Matthews AJ noted that Rule 4.1 preserved the rule that all matters are at the discretion of the Court if they relate to costs of a proceeding. He considered, however, that since *Joint Action Funding* and *McGuire*, it would not be a principled exercise of the discretion under Rule 4.1 to award costs in a circumstance where legal costs have not been billed by a lawyer retained by a party litigant for legal services provided by the lawyer to that litigant.

Court of Appeal Quashes Limited Order for Discovery

Case	The Commissioner of Inland Revenue v Cullen Group Limited [2018] NZCA 166
Decision date	25 May 2018
Act(s)	-
Keywords	Discovery, associated persons, extrinsic aid

Summary

The Court of Appeal has quashed the limited order for discovery made in the High Court after the Appellant and Respondent came to an agreed resolution that Woolford J's decision in the High Court was wrong. Therefore the parties asked the Court of Appeal to make orders by consent allowing the appeal filed by the Commissioner of Inland Revenue ("the Commissioner").

Impact

The decision provides a positive precedential ruling in quashing the High Court limited order for discovery.

Facts

Cullen Group Limited ("CGL") filed proceedings in the High Court challenging tax assessments totalling $59.5 million. The assessments relate to non-resident withholding tax and transactions which the Commissioner alleges amounted to a tax avoidance arrangement.

The key issue in this proceeding relates to CGL's application for discovery of documents that it considered were potentially relevant as extrinsic aids for the purposes of construing parliament's intention at the time it created the "associated persons" rule under the "approved issuer levy" regime.

In the High Court, Woolford J held that a limited order for discovery was justified. The Commissioner was required to make discovery of three categories of documents relating to the relevant legislation key to the creation of the approved issuer levy regime, as well as documents relating to 20 other statutes.

Woolford J also ordered the Commissioner to pay costs.

Decision

The Court of Appeal agreed with the parties and found good reasons in law to overturn the High Court judgment.

Firstly, the Court agreed that CGL's discovery order illustrated a discovery order that goes far beyond the orthodox categories of extrinsic aids that the courts are willing to consider. Secondly, the Court agreed with Burrows and Carter that for admission of extrinsic materials, the documents should be publicly available; therefore there should be no need for discovery of such documents. Thirdly, the order is disproportionate. Lastly, even if a document relating to the "associated persons" test were to be found within the three discovery categories, it is most unlikely to be admitted by the trial Judge.

The Court therefore allowed the appeal. The orders for discovery and inspection made in the High Court are quashed. The order for costs made in the High Court is also quashed. There will be no order for costs on the appeal.

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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.

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