

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.

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 (search keywords: 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.

Ref	Draft type	Title	Comment deadline
PUB00369	Public ruling	Income tax - treatment of alteration to rights attached to shares under section CB 4	2 December 2019
PUB00346	Question we've been asked	If property held in a trust is rented out by the trustees for short-stay accommodation, who should declare the income, and what deductions can be claimed?	3 December 2019
PUB00346	Question we've been asked	If property held in a trust is rented out by a beneficiary of the trust for short-stay accommodation, who should declare the income, and what deductions can be claimed?	3 December 2019
PUB00347	Interpretation statement	GST treatment of short-stay accommodation	3 December 2019
ED0221	Standard practice statement	Tax payments – when received in time	13 December 2019
PUB00326	Interpretation statement	Income tax - when is development or division work minor?	19 December 2019
ED0218	Standard practice statement	Student loan repayment - options for relief	24 December 2019

IN SUMMARY

Legislation and determinations

Foreign currency amounts - conversion to New Zealand dollars (for the six months ending 30 September 2019)

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This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company ("CFC") and foreign investment fund ("FIF") rules for the six months ending 30 September 2019.

DEP105: Tax Depreciation Rate for pushrod/cable propelled pipeline camera inspection systems (not including pipeline crawlers)

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This determination sets a depreciation rate for pushrod/cable propelled pipeline camera inspection systems used to inspect pipework, for example domestic household sewer pipes or water pipes.

Legal decisions - case notes

Commissioner successful in tax avoidance case

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This matter relates to two proceedings heard at the same time.

The first proceeding was in relation to Mr Brown personally (the Mr Brown proceedings). Mr Brown challenged income tax assessments for the 2001 and 2003 to 2008 income tax years in which the Commissioner of Inland Revenue (the Commissioner) rejected Mr Brown's proposed adjustments removing income of \$857,848 attributed to Mr Brown on the basis there was a tax avoidance arrangement.

The second proceeding was in relation to DLC as trustee of the DLC Family Trust (the DLCFLT proceedings). DLC challenged income tax assessments for the 2014 and 2015 income tax years in which the Commissioner rejected DLC's proposed adjustment seeking to have interest deductions of \$256,680 attributed to DLC in each year on the basis that these interest deductions arose from a tax avoidance arrangement. In both proceedings the Taxation Review Authority (the Authority) found that there was a tax avoidance arrangement and upheld the Commissioner's assessments.

Court of Appeal considers Commissioner's opposition to the restoration of companies to the New Zealand Companies Office register to protect the integrity of the tax system

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This was an appeal of the High Court's decision restoring five companies to the Companies Register (the register) under s 329 of the Companies Act 1993 (the Act). *Commercial Management Ltd v Commissioner of Inland Revenue* [2018] NZHC 2224. The Court of Appeal overturned the High Court's decision and held that:

- 1.1 The applicants' failed to provide the information that the Court needed in order to give proper consideration to the application.
- 1.2 Restoration of the removed companies after such a long period of being deregistered would be either nugatory or contrary to the public interest.

High Court considers whether a repayment of a loan can generate an input tax deduction

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The matter was an appeal of a Tax Review Authority ("the TRA") decision, *TRA 08/18 [2019] NZTRA 3*, denying Mr Darryl Patrick Burke the right to claim additional input deductions for a payment made during the two-month taxable period ending 30 September 2007 ("the Disputed Period"). Mr Burke argued that the payment of \$498,640.48 to his financier, Citywide Capital Limited ("CCL"), represented payment for the goods and services supplied to him during the development. The Commissioner viewed the payment as fulfilment of Mr Burke's obligation under a loan agreement with CCL; the payment was not charged with goods and services tax ("GST") and accordingly cannot generate an input tax deduction. The TRA agreed.

The High Court found in favour of the Commissioner. The reasons given by Justice Downs largely mirror those of Judge Sinclair from the TRA which the High Court held to have been "undoubtedly correct" (at [18]).

General articles

New Inland Revenue Tax Technical website coming in early 2020

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To help you find tax technical answers more quickly, we're building a new Tax Technical website.

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.

Foreign currency amounts – conversion to New Zealand dollars (for the six months ending 30 September 2019)

This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company (“CFC”) and foreign investment fund (“FIF”) rules for the six months ending 30 September 2019.

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

- actual rate for the day for each transaction (including close of trading spot exchange rate on the day), or
- rolling 12-month average rate for a 12-month accounting period or income year (see the table **Currency rates 6 months ending 30 September 2019 – rolling 12-month average**), or
- mid-month actual rate as the basis of the rolling average for accounting periods or income years greater or lesser than 12 months (see the table **Currency rates 6 months ending 30 September 2019 – mid-month actual**).

Legislation enacted in September 2010 with effect from 1 April 2008 permits the Commissioner to set currency rates and approve methods of calculating exchange rates. The Commissioner can set rates for general use by taxpayers or for specific taxpayers. The Commissioner’s ability to set rates and approve methods applies in circumstances where the 2007 Act does not contain a specific currency conversion rule (sections YF 1(5) and (6)), or in circumstances where the 2007 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 2007 Act.

Actual rate for the day for each transaction

The actual rate for the day for a 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 the transaction is required to be measured or calculated (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 by applying 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 by a FIF where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(a)).

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

The table **Currency rates 6 months ending 30 September 2019 – month end** provides exchange rates for the last day of the month. These are provided for convenience to assist taxpayers who may need exchange rates on those days.

Currency rates 6 months ending 30 September 2019 – 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)) for accounting periods of 12 months
- FIF income or loss calculated under the attributable FIF income method (sections EX 21(4)(b) and EX 50(3)(a)) for accounting periods of 12 months
- attributed CFC income or loss calculated under the CFC rules (section EX 21(4)(b)) for accounting periods of 12 months
- calculating the New Zealand dollar amount of foreign income tax under the CFC rules (section LK 3(b)) or under the FIF rules where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(b)) for accounting periods of 12 months.

Currency rates 6 months ending 30 September 2019 – 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:

- 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
- FIF income or loss calculated under the attributable FIF income method (sections EX 21(4)(b) and EX 50(3)(a)) for accounting periods of less than or greater than 12 months
- attributed CFC income or loss calculated under the CFC rules (section EX 21(4)(b)) for accounting periods of less than or greater than 12 months
- the New Zealand dollar amount of foreign income tax under the CFC rules (section LK 3(b)) or under the FIF rules where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(b)) for accounting periods of less than or greater than 12 months.

Example 1

A taxpayer with a 30 September balance date purchases shares in a Philippine company (which is a FIF but does produce a guaranteed yield) on 7 September 2019. Its opening market value on 1 October 2019 or its closing market value on 30 September 2019 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:

$$\text{PHP } 350,000 \div 32.4776 = \$10,766.58$$

(In this example, the rate selected is the month-end rate for September 2019 for PHP. Refer to the table “**Currency rates 6 months ending 30 September 2019 – month end**”.)

Example 2

A CFC resident in Hong Kong has an accounting period ending on 30 June 2019. Attributed CFC income for the period 1 July 2018 to 30 June 2019 is 200,000 Hong Kong dollars (HKD), which converts to:

$$\text{HKD } 200,000 \div 5.2525 = \$38,077.11$$

(In this example, the rate selected is the rolling 12-month average rate for June 2019 for HKD. Refer to the table “**Currency rates 6 months ending 30 September 2019 – rolling 12-month average**”.)

Example 3

A resident individual with a 30 September 2019 accounting period acquired a FIF interest in a Japanese company on 1 October 2018 for 10,500,000 yen. The interest is sold in September 2019 for 10,000,000 yen. Using the comparative value method and applying section EX 57(2)(b), these amounts are converted as:

$$\text{JPY } 10,500,000 \div 73.5156 = \$142,826.83$$

$$\text{JPY } 10,000,000 \div 73.5156 = \$136,025.55$$

(In this example, the rolling 12-month rate for September 2019 for JPY has been applied to both calculations. Refer to the table “**Currency rates 6 months ending 30 September 2019 – rolling 12-month average**”.)

Example 4

A CFC resident in Singapore was formed on 20 April 2019 and has a balance date of 30 September 2019. During the period 1 May 2019 to 30 September 2019, 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 2019:

$$0.8982 + 0.8903 + 0.9112 + 0.8956 + 0.8759 = 4.4712$$

$$4.4712 \div 5 = 0.89424$$

2. Round exchange rate to four decimal places: 0.8942
3. Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 0.8942 = \$559,159.02$$

(In this example, the rates are from the table “**Currency rates 6 months ending 30 September 2019 – mid-month actual**”, from May to September 2019 inclusive for SGD.)

Currency rates 6 months ending 30 September 2019 – rolling 12-month average

Currency	Code	15/04/19	15/05/19	15/06/19	15/07/19	15/08/19	15/09/19
Australia Dollar	AUD	0.9338	0.9362	0.9371	0.9408	0.9445	0.9455
Bahrain Dinar	BHD	0.2551	0.2542	0.2527	0.2524	0.2520	0.2515
Britain Pound	GBP	0.5189	0.5191	0.5185	0.5207	0.5220	0.5228
Canada Dollar	CAD	0.8914	0.8913	0.8874	0.8865	0.8861	0.8855
China Yuan	CNY	4.5644	4.5763	4.5785	4.5864	4.5848	4.5865
Denmark Kroner	DKK	4.3988	4.4036	4.3925	4.4044	4.4057	4.4139
Euporean Community Euro	EUR	0.5897	0.5902	0.5886	0.5901	0.5903	0.5913
Fiji Dollar	FJD	1.4341	1.4334	1.4298	1.4312	1.4328	1.4322
French Polynesia Franc	XPF	70.3621	70.4275	70.2418	70.4174	70.4293	70.5531
Hong Kong Dollar	HKD	5.3027	5.2831	5.2525	5.2483	5.2402	5.2279
India Rupee	INR	47.6093	47.5345	47.3934	47.3947	47.3971	47.2331
Indonesia Rupiah	IDR	9,741.6625	9,724.2150	9,687.5717	9,660.3817	9,630.3542	9,562.4683
Japan Yen	JPY	75.4018	75.0853	74.5497	74.2653	73.9102	73.5156
Korea Won	KOR	759.6927	762.8017	763.1982	765.5752	768.6492	770.1665
Kuwait Dinar	KWD	0.2052	0.2046	0.2035	0.2035	0.2032	0.2028
Malaysia Ringgit	MYR	2.7690	2.7695	2.7661	2.7690	2.7700	2.7650
Norway Krone	NOK	5.6665	5.6790	5.6795	5.7003	5.7222	5.7496
Pakistan Rupee	PKR	88.3850	89.4873	90.9604	93.0904	94.8733	96.4316
Phillipines Peso	PHP	35.8099	35.6522	35.4007	35.2551	35.1545	34.9668
PNG Kina	PGK	2.2564	2.2547	2.2483	2.2519	2.2531	2.2528
Singapore Dollar	SGD	0.9219	0.9199	0.9159	0.9150	0.9141	0.9121
Solomon Islands Dollar*	SBD	0.0855	0.0850	0.0841	0.0840	0.0837	0.0831
South Africa Rand	ZAR	9.4613	9.5203	9.5440	9.5745	9.5984	9.5587
Sri Lanka Rupee	LKR	115.0181	115.6501	115.9694	116.8127	117.5105	118.1284
Sweden Krona	SEK	6.1092	6.1377	6.1433	6.1663	6.1808	6.1981
Swiss Franc	CHF	0.6737	0.6716	0.6679	0.6667	0.6648	0.6645
Taiwan Dollar	TAI	20.7512	20.7406	20.7016	20.7157	20.7086	20.6745
Thailand Baht	THB	21.9291	21.8169	21.6165	21.4686	21.3021	21.1413
Tonga Pa'anga*	TOP	1.5189	1.5163	1.5111	1.5112	1.5102	1.5072
United States Dollar	USD	0.6763	0.6738	0.6700	0.6697	0.6687	0.6673
Vanuatu Vatu	VUV	74.9474	75.1744	75.2659	75.4998	75.6380	75.7281
West Samoan Tala*	WST	1.7503	1.7449	1.7412	1.7434	1.7440	1.7420

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 6 months ending 30 September 2019 – mid-month actual

Currency	Code	15/04/19	15/05/19	15/06/19	15/07/19	15/08/19	15/09/19
Australia Dollar	AUD	0.9428	0.9475	0.9447	0.9546	0.9518	0.9271
Bahrain Dinar	BHD	0.2550	0.2475	0.2447	0.2533	0.2430	0.2405
Britain Pound	GBP	0.5163	0.5110	0.5156	0.5368	0.5334	0.5102
Canada Dollar	CAD	0.9040	0.8820	0.8705	0.8767	0.8585	0.8474
China Yuan	CNY	4.5372	4.5138	4.4950	4.6216	4.5343	4.5159
Denmark Kroner	DKK	4.4666	4.3758	4.3250	4.4573	4.3307	4.2998
Euporean Community Euro	EUR	0.5983	0.5860	0.5791	0.5968	0.5806	0.5760
Fiji Dollar	FJD	1.4409	1.4196	1.4043	1.4411	1.4215	1.3926
French Polynesia Franc	XPF	71.3901	69.9240	69.1038	71.2137	69.2222	68.6983
Hong Kong Dollar	HKD	5.3021	5.1523	5.0814	5.2584	5.0567	4.9887
India Rupee	INR	46.9336	46.0961	45.5973	46.1229	46.0554	45.3095
Indonesia Rupiah	IDR	9512.9100	9493.9500	9367.1200	9356.2300	9187.7100	8943.5200
Japan Yen	JPY	75.7710	71.9220	70.4710	72.5010	68.4330	68.9340
Korea Won	KOR	767.4048	778.9531	770.5190	793.1253	781.2007	752.5838
Kuwait Dinar	KWD	0.2057	0.1997	0.1974	0.2045	0.1962	0.1939
Malaysia Ringgit	MYR	2.7793	2.7405	2.7264	2.7626	2.6990	2.6672
Norway Krone	NOK	5.7465	5.7239	5.6582	5.7382	5.8143	5.7322
Pakistan Rupee	PKR	96.1538	92.5926	101.0101	107.5269	102.0408	100.0000
Phillipines Peso	PHP	34.9642	34.3686	34.0177	34.3155	33.8660	33.3014
PNG Kina	PGK	2.2851	2.2185	2.1881	2.2768	2.1895	2.1703
Singapore Dollar	SGD	0.9150	0.8982	0.8903	0.9112	0.8956	0.8759
Solomon Islands Dollar*	SBD	0.0837	0.0827	0.0804	0.0847	0.0782	0.0773
South Africa Rand	ZAR	9.5011	9.3326	9.6174	9.3421	9.8517	9.2964
Sri Lanka Rupee	LKR	117.6471	116.2791	114.9425	117.6471	113.6364	114.9425
Sweden Krona	SEK	6.2681	6.3015	6.1604	6.2865	6.2182	6.1303
Swiss Franc	CHF	0.6791	0.6620	0.6485	0.6615	0.6297	0.6316
Taiwan Dollar	TAI	20.8817	20.4016	20.4598	20.8648	20.1856	19.7323
Thailand Baht	THB	21.5051	20.7013	20.2739	20.7624	19.8874	19.4577
Tonga Pa'anga*	TOP	1.5242	1.4964	1.4739	1.5155	1.4786	1.4601
United States Dollar	USD	0.6763	0.6564	0.6492	0.6719	0.6449	0.6377
Vanuatu Vatu	VUV	76.3359	75.1880	74.6269	76.3359	75.1880	74.0741
West Samoan Tala*	WST	1.7358	1.6843	1.7130	1.7580	1.7212	1.6993

Notes to table:

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

Source: Bloomberg CMPN BGN

Currency rates 6 months ending 30 September 2019 – month end

Currency	Code	30/04/19	31/05/19	30/06/19	31/07/19	31/08/19	30/09/19
Australia Dollar	AUD	0.9470	0.9425	0.9570	0.9584	0.9399	0.9279
Bahrain Dinar	BHD	0.2517	0.2465	0.2533	0.2473	0.2379	0.2361
Britain Pound	GBP	0.5122	0.5176	0.5287	0.5394	0.5188	0.5094
Canada Dollar	CAD	0.8935	0.8819	0.8800	0.8651	0.8410	0.8293
China Yuan	CNY	4.4957	4.5142	4.6123	4.5167	4.5154	4.4780
Denmark Kroner	DKK	4.4442	4.3729	4.4098	4.4218	4.2797	4.2908
Euporean Community Euro	EUR	0.5952	0.5850	0.5907	0.5922	0.5741	0.5747
Fiji Dollar	FJD	1.4341	1.4190	1.4401	1.4201	1.3877	1.3793
French Polynesia Franc	XPF	71.0319	69.8163	70.5202	70.6957	68.5214	68.4203
Hong Kong Dollar	HKD	5.2366	5.1225	5.2485	5.1351	4.9482	4.9097
India Rupee	INR	46.4551	45.3134	46.2977	45.4556	45.0386	44.4108
Indonesia Rupiah	IDR	9514.96	9301.22	9475.11	9266.25	8943.96	8889.83
Japan Yen	JPY	74.3860	70.7060	72.4510	71.3340	67.1520	67.6890
Korea Won	KOR	776.8553	777.2317	776.8152	779.3637	763.7350	751.1162
Kuwait Dinar	KWD	0.2031	0.1990	0.2039	0.1998	0.1917	0.1907
Malaysia Ringgit	MYR	2.7609	2.7316	2.7731	2.7290	2.6557	2.6241
Norway Krone	NOK	5.7606	5.7248	5.7323	5.8136	5.7533	5.6974
Pakistan Rupee	PKR	94.3396	97.0874	109.8901	105.2632	99.0099	98.0392
Phillipines Peso	PHP	34.6283	34.0053	34.4008	33.6284	32.8125	32.4776
PNG Kina	PGK	2.2558	2.2150	2.2757	2.2519	2.1466	2.1313
Singapore Dollar	SGD	0.9085	0.8986	0.9090	0.9015	0.8765	0.8656
Solomon Islands Dollar*	SBD	5.3523	5.2391	5.3891	5.2616	5.0763	5.1766
South Africa Rand	ZAR	9.5448	9.5312	9.4626	9.4098	9.5738	9.4801
Sri Lanka Rupee	LKR	117.6471	114.9425	119.0476	116.2791	113.6364	113.6364
Sweden Krona	SEK	6.3217	6.2084	6.2366	6.3393	6.1969	6.1632
Swiss Franc	CHF	0.6804	0.6543	0.6559	0.6520	0.6258	0.6250
Taiwan Dollar	TAI	20.6249	20.6200	20.8032	20.4535	19.7688	19.4518
Thailand Baht	THB	21.2984	20.6102	20.6118	20.2200	19.3215	19.1659
Tonga Pa'anga*	TOP	1.5123	1.4868	1.5152	1.4898	1.4515	1.4509
United States Dollar	USD	0.6675	0.6531	0.6718	0.6559	0.6328	0.6263
Vanuatu Vatu	VUV	75.1880	74.6269	76.3359	75.7576	74.0741	73.5294
West Samoan Tala*	WST	1.7127	1.6952	1.7574	1.7293	1.7008	1.6834

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

General Determination DEP105: Tax Depreciation Rate for pushrod/cable propelled pipeline camera inspection systems (not including pipeline crawlers)

Note to Determination DEP105

The Commissioner has been asked to consider what depreciation rate should apply for pushrod/cable propelled pipeline camera inspection systems used to inspect pipework, for example domestic household sewer pipes or water pipes.

The asset is basically a compact waterproof camera with an illumination source, capable of operation inside pipes, with rechargeable batteries or a mains supply cable. Push rods are provided with a self-levelling camera head and an iPad or similar device used as a monitor/control station. There is also a separate handheld locator device which picks up a beacon signal emitted from the camera, so that underground location and the layout of the pipe can be identified.

There appears to be a large range of pipeline camera inspection systems. This determination covers the simple pushrod/cable propelled pipeline camera inspection systems. The remote operated tractor/crawler vehicle type systems are treated as a separate asset class ("pipeline crawler") in the "Dairy plant", "Fishing", "Oil and gas industry" industry categories and "Compressed air plant (where not industry specified)", "Factory and other sundries", "Reticulation systems, including power generation (excluding electrical, communications and gas reticulation)", "Water and effluent treatment (where not industry specified)" asset categories.

Determination DEP105: Tax Depreciation Rates General Determination Number 105

This determination may be cited as "Determination DEP105 Tax Depreciation Rates General Determination Number DEP105: Pushrod/cable propelled pipeline camera inspection systems (not including pipeline crawlers)".

1. Application

This determination applies to taxpayers who own items of depreciable property of the kind listed in the tables below:

This determination applies for the 2018/19 and subsequent income years.

2. Determination

Pursuant to section 91AAF of the Tax Administration Act 1994, the general determination will apply to the kind of items of depreciable property listed in the table below by:

- Adding into the "Dairy Plant", "Fishing", "Medical and Medical Laboratory", "Oil and Gas" industry categories, and the "Compressed Air Plant (where not industry specified)", "Factory and Other Sundries", "Reticulation Systems including Power Generation (excluding electrical, communications and gas reticulation)" and "Water and Effluent Treatment (where not industry specified)" asset categories, the new asset class, estimated useful life, and general diminishing value and straight-line depreciation rates listed below:

Asset class	Estimated useful life (years)	DV rate (%)	SL rate (%)
Pushrod/cable propelled pipeline camera inspection systems (not including pipeline crawlers)	4	50	40

3. Interpretation

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

This determination is signed by me on 16th day of October 2019

Rob Falk

National Advisor, Technical Standards

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.

Commissioner successful in tax avoidance case

Case	[2019] NZTRA 5
Decision date	27 September 2019
Act(s)	Income Tax Act 2004 (ITA), ss BG 1, CA 1, DA 1, DB 6, GB 1, HH 3, HH 4 and OB 1. Tax Administration Act 1994 (TAA), ss 59(3), 89C(k), 108, 141B, 141D and 149A.
Keywords	tax avoidance, arrangement, trust, income, rental income, interest expenses, reconstruction, trustee income, beneficiary income, income under ordinary concepts, time bar

Summary

This matter relates to two proceedings heard at the same time.

The first proceeding was in relation to Mr Brown personally (“the Mr Brown proceedings”). Mr Brown challenged income tax assessments for the 2001 and 2003 to 2008 income tax years in which the Commissioner of Inland Revenue (“the Commissioner”) rejected Mr Brown’s proposed adjustments removing income of \$857,848 attributed to Mr Brown on the basis there was a tax avoidance arrangement.

The second proceeding was in relation to DLC as trustee of the DLC Family Trust (“the DLCFT proceedings”). DLC challenged income tax assessments for the 2014 and 2015 income tax arrears in which the Commissioner rejected DLC’s proposed adjustment seeking to have interest deductions of \$256,680 attributed to DLC in each year on the basis that these interest deductions arose from a tax avoidance arrangement. In both proceedings the Taxation Review Authority (“the Authority”) found that there was a tax avoidance arrangement and upheld the Commissioner’s assessments.

Impact

This decision was an orthodox application of the law on tax avoidance as set out in the Supreme Court’s decision in *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115, [2009] 2 NZLR 289. The decision highlights the fiction or the “artifice or contrivance” involved in arrangements of the type undertaken by the disputants in this matter. This case also reinforces that the onus is on the taxpayer in tax challenges to put before the court documentary evidence proving the assessments are wrong and by how much.

Facts

The arrangements at issue involved the sale of properties from one of Mr Brown’s family trusts (“KSFT”), to another of his family trusts (“XPT”), to another of his family trusts (“BFCT”) and finally to the contemporaneous family trust which is the subject of the second proceedings, the DLCFT. Each sale created a debt in the subsequent trust to an associated entity. This debt provided Mr Brown with an interest expense which offset rental income Mr Brown derived from his 1/3rd interest in the properties which he continued to retain. This meant that throughout the relevant period (2001, 2003 to 2008) Mr Brown was in a loss position.

DLC as trustee of the DLCFT filed conservative tax returns paying the tax owing in 2014 and 2015 but proposed adjustments to those assessments by including interest deductions which would have the effect of significantly reducing its taxable income.

Issues

Judge Sinclair applied the law of tax avoidance to the facts of this case by analysing the following issues in relation to the Mr Brown proceedings:

- 1.1. Was there a tax avoidance arrangement involving BFCT to offset rental income by way of an interest expense?
- 1.2. Was the Commissioner able to reconstruct income under the tax avoidance arrangement to Mr Brown?
- 1.3. Has Mr Brown met the onus of proving that the amount of income reconstructed by the Commissioner onto him was incorrect, and by how much it was incorrect?
- 1.4. Was BFCT a non-complying trust?
- 1.5. Does the operation of the time bar prevent the Commissioner from reassessing Mr Brown?

In respect of the DLCFT proceedings the legal issue was:

- 1.6. Did the interest deductions proposed by DLC in the 2014 and 2015 tax years form part of a tax avoidance arrangement, and are therefore void against the Commissioner under s BG 1 of the ITA?

Decision

The Authority confirmed that both the disputants were compliant with the black letter law. This was accepted by the Commissioner, see [2019] NZTRA 5 at [55], with respect to the interest deductibility provisions, Income Tax Act 2004, ss DA 1 and DB 6, and the financial arrangement rules.

The Authority held that in both arrangements the interest deductibility provisions and the financial arrangement rules were not used in a way which was within Parliament's contemplation. The Authority concluded that the arrangements lacked a commercial reality and were essentially designed to allow Mr Brown to obtain tax benefits. Both arrangements were therefore held to be void against the Commissioner under s BG 1. See [2019] NZTRA 5 at paragraphs [56] to [87].

The Authority held that the tax purpose for both arrangements was more than merely incidental to any other purpose. The Authority accepted that the arrangements conferred a direct and significant tax benefit to the disputants which cannot be explained by any commercial or family purpose. If these arrangements were not in place, then the funds made available to and expended by Mr Brown would have been subject to tax. See [2019] NZTRA 5 at paragraphs [88] to [96].

The Authority held that the Commissioner's reconstruction was correct for both disputants. Mr Brown failed to put before the Authority documentary evidence explaining why amounts he used and that he classified as inter trust loans, investments or reimbursements for expenses paid on behalf of the beneficiaries of his family trust (his children) but were in fact personal expenditures should not be reconstructed onto him as income. The Authority concluded that Mr Brown did not meet his onus of providing the assessments were incorrect and by how much. See [2019] NZTRA 5 at paragraphs [97] to [118].

The Authority held that because the arrangement involving BFCT was a tax avoidance arrangement, BTC1 as trustee of the BFCT did not comply with all its tax obligations and consequently BFCT was a non-qualifying trust. This affected the rate of tax payable upon distribution of amounts reconstructed to Mr Brown as income in relation to BFCT. See [2019] NZTRA 5 at paragraphs [119] to [123].

The Authority held that the Commissioner was not time barred from amending the disputant's assessments on the basis that his returns were wilfully misleading and omitted to mention income from BFCT. See [2019] NZTRA 5 at paragraphs [124] to [144].

Court of Appeal considers Commissioner's opposition to the restoration of companies to the New Zealand Companies Office register to protect the integrity of the tax system

Case	<i>Commissioner of Inland Revenue v Commercial Management Ltd</i> [2019] NZCA 479
Decision date	3 October 2019
Act(s)	Companies Act 1993
Keywords	Restoration of company

Summary

This was an appeal of the High Court's decision restoring five companies to the Companies Register ("the register") under s 329 of the Companies Act 1993 ("the Act"), *Commercial Management Ltd v Commissioner of Inland Revenue* [2018] NZHC 2224. The Court of Appeal overturned the High Court's decision and held that:

- 1.1 The applicants' failed to provide the information that the Court needed in order to give proper consideration to the application.
- 1.2 Restoration of the removed companies after such a long period of being deregistered would be either nugatory or contrary to the public interest.

Impact

This decision demonstrates that where it is in the public interest, and to protect the integrity of the tax system, the Commissioner of Inland Revenue ("the Commissioner") may object to the restoration of companies to the register.

Facts

The applicants sought restoration of five removed companies ("the removed companies") to the register under s 329(1)(b) of the Act on the grounds that it is just and equitable for them to be restored. They contended that the purpose of restoring the removed companies to the register was to enable them to be parties to any settlement negotiations with the Commissioner in relation to GST, and/or enable them to pursue GST claims against the Commissioner.

The five companies were removed from the register, variously, on 17 February 1998, on 25 September 1996, on 27 June 2000, on 23 April 1998, and on 22 December 2011.

The High Court made orders under s 329 of the Act restoring the removed companies to the register. The Commissioner appealed that decision on the basis that the exercise of discretion by the Associate Judge in the High Court under s 329 was "plainly wrong".

The Commissioner said that the Associate Judge gave too much weight to the private interests of the applicants, and insufficient weight to the public interest factors that supported refusal of restoration of these companies, having regard to the length of time for which the companies had been removed from the register and the threat to the integrity of the tax system posed by restoration of the companies. The applicants submitted that the Associate Judge correctly identified and applied the principles relevant to s 329 applications.

Issues

Whether the High Court correctly exercised its discretion in finding it was just or equitable to restore the removed companies.

Decision

Delay

The Court agreed with the Associate Judge that the long delay in making an application to restore these companies to the register is a factor that points against their restoration. They found the respondent did not satisfactorily explain reasons for the delay.

Application for restoration failed to provide necessary information

The Court noted section 329(1A) provides that the Court *must* have regard to the reasons for the company's removal and whether those grounds existed at the time of removal or exist at the hearing of the application. It is incumbent on an applicant associated with the removed company (such as a former shareholder or director) to provide the information that the court requires in order to consider this mandatory relevant consideration.

They held that the applicants failed to provide sufficient information, as required by s 329(1A), for the Court to properly determine the application.

Restoration either nugatory or contrary to the public interest

The Court disagreed with the Associate Judge that there is a public interest in the removed companies being permitted to pursue their proposed claims against the Commissioner. Additionally, the Court identified significant hurdles to the GST claims that the removed companies would seek if they were restored to the register in order to pursue their GST claim.

They found that the significant delay in seeking to pursue any claims that the removed companies might have had to GST refunds counted against restoration of the companies. The potential claims by the companies for GST refunds had been spotted by the companies' tax agent by 1993 at the latest. Some 25 years then passed before any formal steps were taken to assert claims on behalf of the removed companies.

The Court held that it is not just and equitable to restore the removed companies to the register in order to enable them to pursue the claims that the applicants have identified as the sole rationale for their restoration.

They concluded that the purpose of the restoration of the companies to the register was to achieve a partial and asymmetric reversal of the GST consequences of the highly contrived and artificial tax avoidance arrangements previously entered into by these companies. In effect, when the tax avoidance arrangements that the companies had previously been a party to were set up the arrangements were a "closed loop" where the net result for GST purposes was a wash. The applicants sought to restore only one half of that loop and make claims against the Commissioner to secure a tax advantage – refunds of GST output tax paid by the removed companies.

High Court considers whether a repayment of a loan can generate an input tax deduction

Case	<i>Darryl Patrick Burke v Commissioner of Inland Revenue</i> [2019] NZHC 2569
Decision date	10 October 2019
Act(s)	Goods and services tax
Keywords	Input tax, repayment of a loan, taxable supply, GST, Goods and Services

Summary

The matter was an appeal of a Tax Review Authority ("the TRA") decision, *TRA 08/18* [2019] NZTRA 3, denying Mr Darryl Patrick Burke the right to claim additional input deductions for a payment made during the two-month taxable period ending 30 September 2007 ("the Disputed Period"). Mr Burke argued that the payment of \$498,640.48 to his financier, Citywide Capital Limited ("CCL"), represented payment for the goods and services supplied to him during the development. The Commissioner of Inland Revenue ("the Commissioner") viewed the payment as fulfilment of Mr Burke's obligation under a loan agreement with CCL; the payment was not charged with goods and services tax ("GST") and accordingly cannot generate an input tax deduction. The TRA agreed.

The High Court found in favour of the Commissioner. The reasons given by Justice Downs largely mirror those of Judge Sinclair from the TRA which the High Court held to have been "undoubtedly correct" (at [18]).

Impact

The judgment reclarifies the fact that a repayment of a loan is not consideration for a supply.

Facts

Mr Burke entered into a property venture in mid-2006 with CCL who provided funding for the purchase of two properties (secured by a mortgage) and the costs of developing the properties for sale. The loan agreement between Mr Burke and CCL resulted in suppliers being paid by CCL through draw downs on the development funds. The payments to suppliers increased the overall debt Mr Burke had with CCL, and the GST refunds received during the development of the properties which were paid to CCL by Mr Burke, were credited against his loan.

In August 2007, after the first property was sold, a payment of \$498,640.48 (“August 2007 payment”) was made to CCL by Mr Burke. Mr Burke claimed that his unique financial arrangement with CCL meant that he only made payment of the invoices to the suppliers when he made the August 2007 payment. The fact that the supplier’s invoices had already been paid by CCL at the time, was not relevant to his position.

Issues

The sole issue for the court to determine was whether the August 2007 payment should activate the deductibility of Mr Burke’s earlier expenses to offset his GST liability in the Disputed Period (at [8]).

Decision

In dismissing the appeal in its entirety, Justice Downs agreed with the TRA that the August 2007 payment was a loan repayment; one required by the loan agreement between CCL and Mr Burke. Justice Downs held the payment “was obviously *not* made to obtain supplies from his suppliers” and “this payment was *not* made in exchange for a good or service attracting GST” (at [15]; emphasis added by the Court).

Section 20(3) of the Good and Services Tax Act 1985 establishes how much GST is payable in a taxable period. Those who account for tax on a payment or hybrid basis are governed by s 20(3)(b)(i). It provides:

(3) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—

(b) in the case of a registered person who is required to account for tax payable on a payments basis or a hybrid basis pursuant to section 19, the amount of the following:

(i) input tax in relation to the supply of goods and services made to that registered person, being a supply of goods and services which is deemed to take place pursuant to section 9(1) or section 9(3)(a) or section 9(3)(aa) or section 9(6), to the extent that a payment in respect of that supply has been made during the taxable period:

For a person using the payments or hybrid basis, the input tax is deducted from the output tax in relation to the supply of goods and services “to the extent.....*a payment in respect of that supply has been made during a taxable period*” (at [13]; emphasis added by the Court).

Justice Downs held that s 20(3)(b)(i) answered Mr Burke’s case – Mr Burke was supplied goods in the three previous GST periods (ending March, May and July 2007) and these were paid by Mr Burke within these periods. He was entitled to, and he did claim, the corresponding input tax deductions within each of the three periods. “No further input tax deduction arose for the disputed period in terms of s 20(3)(b)(i); Mr Burke’s suppliers had already been paid” (at [14]). It did not matter who paid Mr Burke’s suppliers – they were paid.

Therefore, contrary to Mr Burke’s submission, there was no material linkage between the August 2007 payment and the goods earlier supplied to him. Mr Burke’s repayment to CCL did not somehow mean his suppliers were paid only then (at [15]).

GENERAL ARTICLES

New Inland Revenue Tax Technical website coming in early 2020

To help you find tax technical answers more quickly, we're building a new Tax Technical website. The new site will be linked to but will operate separately from the main Inland Revenue site.

The first release, planned for early 2020, will make it easier to browse and search our publications, public consultations, and the Tax Information Bulletin.

In the months that follow this first release, we will add more features, including:

- The ability to browse for keywords e.g. motor vehicles, depreciation rates
- Filters to narrow your results
- Better linking between publications and to other websites
- Easy preview of a table of contents in a PDF
- Better interlinking of TIB issues and their individual publications

If you'd like to get a preview of what's coming (and give us some early feedback), please contact us at Public.Consultation@ird.govt.nz.

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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

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