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TAX INFORMATION
Bulletin

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Inland Revenue
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YOUR OPPORTUNITY TO COMMENT

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

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.

Ref	Draft type	Title	Comment deadline
PUB00303a-g (7 items)	Questions we've been asked, Determinations	Renting out your home, a room within your home, or a separate residential property as short-stay accommodation	22 March 2019
ED0211	Standard practice statement	Late filing penalties	22 March 2019

IN SUMMARY

NEW LEGISLATION

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

Taxation (New Due Date for New and Increased Assessments) Commencement Order 2019

The *Taxation (New Due Date for New and Increased Assessments) Commencement Order 2019* will come into force by 1 April 2019 and sets **8 July 2019** as the date that section 142AB of the Tax Administration Act 1994 comes into force for income tax, including Working for Families assessments.

This new section standardises the due dates for default assessments which are issued by the Commissioner in the absence of a return.

Current treatment

Section 142A of the Tax Administration Act 1994 currently 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.

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, 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.

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.

New treatment

Section 142AB modifies these rules to align the due date for payment of tax for default assessments, whether these are made manually or electronically.

The amended rules only apply to the default assessment that 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. From April 2019, income tax, which includes Working for Families assessments, meets those criteria.

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 currently applies to tax types that proposed section 142AB does not apply to. It 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, 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.

A more detailed description of how section 142AB applies can be found on page 2 of *Tax Information Bulletin* Vol 30 number 6 (July 2018).

OPERATIONAL STATEMENTS

Operational statements set out the Commissioner's view of the law in respect of the matter discussed. They are intended to be a preliminary view in the absence of a public binding ruling or an interpretation statement on the subject

OS 19/01: Exemption from electronic filing

Introduction

All legislative references are to the Tax Administration Act 1994 unless otherwise stated.

This Operational Statement sets out the criteria for a person to be granted an exemption from the requirement to file returns/information electronically in relation to:

(i) An employer who is included in the online group of employers;

(ii) A GST registered person who exceeds the statutory threshold for filing returns electronically;

(iii) A person who makes a payment of investment income.

Application

This Operational Statement applies to the exemptions from electronic filing that the Commissioner may grant under sections 23G, 25P and 36BD(3). It does not apply to requests for variations from the requirements of the Act under sections 23Q and 25R. If a person has concerns with complying with the legislation outside the matters covered by this statement, they should contact Inland Revenue immediately to discuss their situation.

Background

1. The Taxation (Annual Rates for 2017-2018, Employment and Investment Income, and Remedial Matters) Act which received royal assent on 29 March 2018 contains, amongst other measures, changes to improve the administration of the PAYE rules and to improve the collection of investment income information and the provision of GST information.
2. From 1 April 2019, employers that are included in the online group of employers will be required to supply their employment income information electronically to Inland Revenue. An employer is in the online group if their gross amounts of tax payable for the preceding tax year exceeds $50,000 or the amount set by Order in Council.
3. Payers of investment income will be required to supply their investment income information electronically from 1 April 2020.
4. GST registered persons whose taxable supplies exceed the threshold set by an Order in Council will be required to file their returns electronically. An Order in Council setting the threshold has yet to be made.
5. An exemption from the requirement to file returns/supply information electronically will available for those who are unable to comply due to the lack, or inadequacy, of digital services.

Legislation

6. The relevant provisions of the Tax Administration Act 1994 are:

23G Exemption for certain employers in online group

(1) The Commissioner may exempt an employer in the online group from the online group requirements if it is reasonable in the circumstances, taking into account

(a) the nature and availability of digital services to the employer, including the reliability of those services for the purposes of the employer; and

(b) the capability of the employer relating to the use of computers; and

(c) the costs that the employer would incur in complying with the requirements if those costs would be unreasonable in the circumstances.

(2) The Commissioner must provide a statement of reasons for the exemption

(3) Subject to subsection (4), an exemption under this section remains valid until the Commissioner notifies the employer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.

(4) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.

(5) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

25P Non-electronic filing of investment income information

(1) Despite **sections 25F to 25N**, the Commissioner may exempt a payer from the requirement to deliver their investment income information in electronic form and by means of an electronic communication. The Commissioner must provide a statement of reasons for the exemption.

(2) In determining whether to exempt a payer under **subsection (1)**, the Commissioner must have regard to—

(a) the nature and availability of digital services to the payer, including the reliability of those services for the purposes of the payer; and

(b) the capability of the payer relating to the use of computers; and

(c) the costs that the payer would incur in complying with the requirements, if those costs would be unreasonable in the circumstances.

(3) Subject to subsection (4), an exemption under this section remains valid until the Commissioner notifies the payer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.

(4) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.

(5) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

36BD Electronic filing requirements for registered persons

…

(3) The Commissioner may exempt a registered person, or a class of registered persons, whose taxable supplies exceed the threshold from the requirement to file in the prescribed electronic form or by the prescribed means of electronic communication. The Commissioner must provide a statement of reasons for the exemption.

(4) In determining under subsection 3 whether to exempt the person or class of persons, the Commissioner must have regard to—

(a) the nature and availability of digital services to the person or persons in the class, including the reliability of those services for the purposes of the person or persons; and

(b) the capability of the person or persons in the class relating to the use of computers; and

(c) the costs that the person or persons in the class would incur in complying with the requirements if those costs would be unreasonable in the circumstances.

(5) Subject to subsection 6, an exemption under this section remains valid until the Commissioner notifies the employer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.

(6) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.

(7) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Discussion

7. In relation to an employer, a payer of investment income or a GST registered person who must provide information to the Commissioner in electronic form and by an electronic means of communication (the use of digital services), the legislation grants the Commissioner the power to exempt a person from this obligation. The exemption provisions for an employer, a payer of investment income or a registered person are the same and can be considered together.

8. In deciding whether to grant a person an exemption, the Commissioner must consider:

- the nature and availability of digital services to the person, including the reliability of those services for the purposes of the person; and,
- the capability of the person relating to the use of computers; and
- whether the costs that would be incurred by the person in complying with the requirements of the legislation would be unreasonable.

Nature, availability and reliability of digital services

9. The term "digital services" refers to the delivery, processing, recording, generating and the displaying of information electronically. It includes but is not limited to, internet-enabled systems, email, text, and apps. For a person to send information electronically to Inland Revenue they will require at least a computer, tablet or similar device that is able to connect to the internet. No specific or special software will be required as a person will be able to file electronically through the myIR portal on Inland Revenue's website.
10. In regards to the nature and availability of digital services to a person, the Commissioner will take into account the availability of connection to the internet and type of connection. Some rural areas of New Zealand do not have any access to the internet. Without the ability to connect to the internet, a person is not going to be able to comply with the legislation. The Commissioner accepts that a person will need at least a broadband internet connection to be able to supply information electronically.
11. The Commissioner will also consider the reliability of the internet connection that the person has access to. If the connection is prone to frequent disconnections or slow speeds, these may be a factor in the Commissioner granting an exemption. An unreliable internet connection will be a significant factor in granting an exemption from the requirement to file returns/information electronically.

Capability

12. The Commissioner will consider whether the person has the necessary computer skills to be able to use the digital technology. If not, do they have an employee, or can they engage the services of someone, who is able to use the technology? Or does the person have some disability that affects their ability to use digital services?
13. If a person uses a computer with an internet connection in their business or as part of their everyday affairs, it is reasonable to expect that they will have little difficulty in sending the necessary returns/information electronically to Inland Revenue.

Are the costs in complying unreasonable?

14. As well as considering the nature and availability of digital services, the Commissioner must also take into account whether the costs that would be incurred by the person in complying with the legislation would be unreasonable.
15. This is a question of what is unreasonable in the circumstances of the person. The use of computers and other digital devices is now common place in New Zealand. Typically, an employer or a registered person would use a computer as part of their business and in all likelihood that computer will be connected to the internet (if access is available). The Commissioner expects that where a person is connected to the internet and uses digital services as part of their everyday business, e.g. email, internet banking, electronic invoicing for instance, there will be no impediment for the person meeting the requirements of the legislation and to file returns/information electronically. No material compliance costs will necessarily result as the person can use the myIR portal on Inland Revenue's website to provide the information electronically.
16. The Commissioner will consider whether the costs that would be incurred by the person are materially more than would be expected to be borne by a person in similar circumstances. For instance, a high-country farmer without access to the internet through the copper wire network or fibre may be faced with a substantial cost to connect via satellite (installation of equipment and ongoing subscription costs) compared to a farmer in another area of the country who has ready access to broadband.
17. It is accepted that the circumstances for some payers of investment income may be different to that of an employer or a registered person in that they may not necessarily be in business and are perhaps less likely to have a computer or any other means to connect to the internet. It is the Commissioner's view that it would be unreasonable to expect such a person to incur the cost of buying a computer and connecting to the internet for the sole purpose of meeting the requirements of the legislation. An exemption would appear appropriate in such circumstances.

Applying for an exemption

18. The following information is to be provided when applying for an exemption from electronic filing:
    - Name;
    - IRD/GST Number;
    - The exemption that is being applied for, i.e. employer, registered person or investment income payer;
    - Whether the person owns or has access to a computer, smart phone, tablet or similar device that is capable of connecting to the internet;
    - A detailed reason for requiring an exemption. Specifically, what issues are faced in filing returns or providing information electronically that would impose unreasonable compliance costs on the person.
19. Where the Commissioner decides to allow an exemption to the person, she will provide the reasons for the exemption being granted.
20. When granting an exemption, the Commissioner may set a start date and an end date on the exemption. In such a case the Commissioner will provide the reason for setting the time limit.
21. Where no time limit is set, the exemption will apply until the person is notified by the Commissioner that it is to be cancelled. In this case the exemption will expire on the date that is 6 months after the date given in the notification. The Commissioner reserves the right to revoke a person's exemption at any time it is determined that the person's circumstances have changed and now must file electronically.

This Operational Statement is signed on 7 February 2019

Rob Wells
Manager, Technical Standards

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.

Livestock values – 2019 national standard costs for specified livestock

The Commissioner of Inland Revenue has released a determination, reproduced below, setting the national standard costs for specified livestock for the 2018–2019 income year.

These costs are used by livestock owners as part of the calculation of the value of livestock on hand at the end of the income year, where they have adopted the national standard cost ("NSC") scheme to value any class of specified livestock.

Farmers using the scheme apply the rising one-year NSC to stock bred on the farm each year, and add the rising two-year NSC to the value of the opening young stock available to come through into the mature inventory group at year-end. Livestock purchases are also factored into the valuation of the immature and mature groupings at year-end, so as to arrive at a valuation reflecting the enterprise's own balance of farm bred and externally purchased animals.

NSCs are developed from the national average costs of production for each type of livestock farming based on independent survey data. Only direct costs of breeding and rearing rising one-year and two-year livestock are taken into account. These exclude all costs of owning (leasing) and operating the farm business, overheads, costs of operating non-livestock enterprises (such as cropping) and costs associated with producing and harvesting dual products (wool, fibre, milk and velvet).

For bobby calves, information from spring 2018 is used while other dairy NSCs are based on the 2017-2018 income and expenditure from a DairyBase sample of owner-operated dairy farms. For sheep, beef cattle, deer and goats, NSCs are based on survey data from the 2016-2017 sheep and beef farm survey conducted by the Beef & Lamb New Zealand Economic Service. This is the most recent information available for those livestock types at the time the NSCs are calculated in December 2018.

For the 2018–2019 income year the NSCs for all livestock types except deer, bobby calves and dairy goats have remained static when compared to the previous year. The main contributor to the small increase in bobby calf costs was an increase in foodstuffs.

There has been a substantial increase in NSCs for dairy goats. This has come about because of a change in the calculation methodology. In recent years the dairy goat farming industry has changed from a largely pasture based model to a primarily housed farming system. As a result of these changes, the NSC formula has been updated to take account of the different costs structure attributable to this housed farming model. The resultant increase in costs is being phased in over three years commencing with the 2017-2018 income year.

The NSCs calculated each year only apply to that year's immature and maturing livestock. Mature livestock valued under this scheme effectively retain their historic NSCs until they are sold or otherwise disposed of, albeit through a FIFO or inventory averaging system as opposed to individual livestock tracing. It should be noted that the NSCs reflect the average costs of breeding and raising immature livestock and will not necessarily bear any relationship to the market values (at balance date) of these livestock classes. In particular, some livestock types, such as dairy cattle, may not obtain a market value in excess of the NSC until they reach the mature age grouping.

One-off movements in expenditure items are effectively smoothed within the mature inventory grouping, by the averaging of that year's intake value with the carried forward values of the surviving livestock in that grouping. For the farm-bred component of the immature inventory group, the NSC values will appropriately reflect changes in the costs of those livestock in that particular year.

The NSC scheme is only one option under the current livestock valuation regime. The other options are market value, the herd scheme and the self-assessed cost scheme ("SAC") option. SAC is calculated on the same basis as NSC but uses a farmer's own costs rather than the national average costs. There are restrictions in changing from one scheme to another and before considering such a change livestock owners may wish to discuss the issue with their accountant or other adviser.

National Standard Costs for Specified Livestock Determination 2019

This determination may be cited as "The National Standard Costs for Specified Livestock Determination 2019".

This determination is made in terms of section EC 23 of the Income Tax Act 2007. It shall apply to any specified livestock on hand at the end of the 2018–2019 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

For the purposes of section EC 23 of the Income Tax Act 2007 the national standard costs for specified livestock for the 2018–2019 income year are as set out in the following table.

Kind of livestock	Category of livestock	National standard cost $
Sheep	Rising 1 year	34.20
	Rising 2 year	24.10
Dairy Cattle	Purchased bobby calves	192.40
	Rising 1 year	430.60
	Rising 2 year	338.40
Beef Cattle	Rising 1 year	368.10
	Rising 2 year	203.60
	Rising 3 year male non-breeding cattle (all breeds)	203.60
Deer	Rising 1 year	92.20
	Rising 2 year	53.50
Goats (Meat and Fibre)	Rising 1 year	28.30
	Rising 2 year	19.40
Goats (Dairy)	Rising 1 year	215.00
	Rising 2 year	50.00
Pigs	Weaners to 10 weeks of age	104.30
	Growing pigs 10 to 17 weeks of age	87.60

This determination is signed by me on the 24th day of January 2019.

Rob Wells
Manager, Technical Standards, OCTC

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.

Court of Appeal confirms decision to assess taxpayer as liable for New Zealand income tax on the basis he has a permanent place of abode in New Zealand

Case	*Van Uden v Commissioner of Inland Revenue* [2018] NZCA 487
Decision date	8 November 2018
Act(s)	Income Tax Act 1994, Income Tax Act 2004 and Income Tax Act 2007
Keywords	"Permanent place of abode"

Summary

This is an appeal from a decision of the High Court upholding the Commissioner of Inland Revenue's ("the Commissioner") decision to assess Gerardus van Uden ("the appellant") for New Zealand income tax for the 2005 to 2009 tax years on the basis that he had a permanent place of abode in New Zealand in those years and was therefore liable to pay tax in New Zealand on his worldwide income. A 10 percent penalty on the basis the appellant had taken an unacceptable tax position was also imposed.

Impact

The decision confirms the interpretation of 'permanent place of abode' as set out in *Commissioner of Inland Revenue v Diamond* [2015] NZCA 613, (2015) 27 NZTC22-03 ("*Diamond*").

Facts

The appellant is a ship's captain. For the past 40 years he has worked for an overseas shipping company, China Navigation Company Ltd. On average, he is at sea for approximately eight months every year.

In January 1980 the appellant married. He lived with his first wife in the Philippines until late 1987. He moved with his family to New Zealand in 1987 and lived in Mangere Bridge until 1995 when he and his first wife separated and then divorced.

The appellant remarried in 1998 and lived with his wife at 27 Evelyn Road. When the appellant met his wife she was living at 27 Evelyn Road as part of a matrimonial settlement. In April 1997 she transferred 27 Evelyn Road to a family trust. The appellant first lived with his wife at 27 Evelyn Road in November 1998 and they have, for the most part, lived there when they have returned to New Zealand thereafter. The Commissioner says that 27 Evelyn Street is the appellant's permanent place of abode in New Zealand for the tax years 2005 to 2009.

Since January 1980 the appellant has been enrolled in his employer's non-contributory superannuation fund ("the Provident Fund"). He also owned a small parcel of units in a Hong Kong Unit Trust.

The appellant filed New Zealand income tax returns until and including the 2004 tax year, albeit he only returned approximately half of his salary in New Zealand. For the income years ended 31 March 2005 and 31 March 2006 the appellant filed nil income tax returns. In the year ended 31 March 2007 he filed a non-resident tax return disclosing a small loss for the year. In the years ended 31 March 2008 and 31 March 2009 he filed non- resident tax returns.

Decision

The Court upheld the conclusion reached by the Tax Review Authority ("the TRA") and the High Court that, during the tax years in dispute, the appellant had a permanent place of abode in New Zealand. Further, the appellant was liable to pay tax on his interest on his employer's superannuation fund and an unacceptable tax position penalty.

Was 27 Evelyn Road a permanent place of abode in New Zealand for the appellant in the 2005 to 2009 tax years

The Court considered s OE of the Income Tax Act ("ITA") 1994. Subsections (2) and (3) of s OE 1 ITA 1994 provide two bright line tests, based on aggregate days in New Zealand in any period of 12 months. However, subsection (1) provides an overriding provision as to residence.

The Court referred to the meaning of the term "permanent place of abode" as discussed in *Diamond*. The Court considered the *Diamond* test calls for "an integrated factual assessment, directed to determining the nature and quality of the use the taxpayer habitually makes of a particular place of abode." The Court found the objective, integrated factual assessment did not support the appellant's characterisation of 27 Evelyn Road as a convenient place to stay and that he did not have the intention of using it as a home.

The Court found that it is unrealistic to allow the Trust structure to obscure the fact that Mr van Uden availed himself of 27 Evelyn Road while he was in New Zealand and made it his home.

The Court was satisfied that the appellant had a permanent place of abode in New Zealand. The individual factors listed in *Diamond* supported this conclusion:

Continuity or otherwise of the taxpayer's presence in New Zealand and in the dwelling

The appellant has had a continuous presence in New Zealand since 1957 except for a short stint in the Netherlands and later the Philippines. In the relevant tax years the appellant spent approximately eight months a year at sea however when he was not on the ship or travelling he would return to New Zealand and when he was not visiting family he lived at 27 Evelyn Road.

The duration of that presence

27 Evelyn Road has been available to, and used by, the appellant for approximately 12 years from November 1998 to June 2010.

The durability of the taxpayer's association with the particular place

The appellant maintained significant ties with 27 Evelyn Road exhibited in both practical and financial ways. The appellant incurred regular household expenditure at a variety of stores near the 27 Evelyn Road. Further the 27 Evelyn Road address was used for SKY TV, motor vehicle registration, bills, bank statements, insurance policies and investments.

The closeness or otherwise of the taxpayer's connection with the dwelling

While the appellant does not own the property, as seen in Case H97, a taxpayer does not need to own a property in his or her own name to have a permeant place of abode there. It is reasonably evident that the appellant had a close connection to 27 Evelyn Road. Whenever he returned to New Zealand and was not staying on the ship, travelling or visiting relatives he would stay at 27 Evelyn Road. Unlike the four rental properties owned by the trust, 27 Evelyn Road was not formally let until 2010. In a loan application for funding to purchase 29 Evelyn Road, 27 Evelyn Road is referred to as their home.

Permanent not temporary place of abode

The Court found 27 Evelyn Road was a permanent place of abode rather than a temporary place of abode. The property was always available to the appellant when he returned to New Zealand. The only time it was let was informal and when the appellant was not in the country.

Other permanent place of abode

The appellant no longer maintains that he has a permanent place of abode outside of New Zealand.

Mr Van Uden's superannuation account: taxable foreign investment fund income

The appellant argued that because contributions to his account in the Provident Fund are paid by his employer, and he is not required to make any contributions himself, then there is no "cost of expenditure incurred by or on behalf of the appellant as regards the Provident Fund".

The Court agreed with the Commissioner's submission that the appellant's employer was clearly acting on his behalf when it made its contributions to the Provident Fund.

Section CG 15 ITA applies to the 2005 tax year and was enacted as such in 1993 (as part of the Income Tax Act 1976). The section had originally referred only to the aggregate cost or expenditure incurred by the person. The words "or on behalf of" were added several months later. The Court found the explanatory note to the Taxation Reform Bill (No 7)1993 makes the point clear. Parliament clearly intended to include employer contributions to superannuation funds. As Venning J noted in the High Court, it is the employee who benefits from those contributions – to the extent, the cost or expenditure is incurred by or on behalf of them.

In the ITA 2004 and ITA 2007 (which apply to the 2006 to 2009 years), s CQ 5(1)(d) (the equivalent of s CG 15(2)(d)) brings an interest within the FIF rules if the total cost of attributing interests in FIFs that the person holds is more than $50,000. The Court agreed with the Commissioner's submission that there is no requirement that any particular person incurred a cost, a comprehensive answer to the appellant's challenge as regards those tax years.

The time bar

The assessment for the 2005 to 2008 tax years became time barred from reassessment pursuant to s 108(1) of the Tax Administration Act 1994 ("the TAA") on 31 March 2013. Notices of reassessment for those time barred years were subsequently issued on 24 February 2014. The Court considered whether, before that, the Commissioner had exercised the power under s 108(2) to lift the time bar.

The Court adopted the description of events from Venning J's judgment in the High Court. The Court found that there can be no challenge to Venning J's reasoning that Mr Young (of the Disputes Unit) had an authority to make an opinion under s 108(2) and he expressly stated he exercised his delegation under that section. It was, the Judge said, that opinion that was the necessary requirement for the purposes of s 108(2) rather than the language used to record it.

Further, as noted in *Great North Motor Company Ltd (in rec) v Commissioner of Inland Revenue* [2017] NZCA 328; (2017) 28 NZTC 23-022 at [33], when considering a tax challenge under part 8A of the TAA, the TRA is obliged to review the ruling de novo. That de novo process having been followed, and the TRA having confirmed those assessments, there is no room for any further challenge pursuant to s 108 of the TAA.

The unacceptable tax position penalty

The Court found that the objective assessment of the evidence supports the conclusion that the appellant's contention that he was not tax resident in New Zealand in the relevant years was not "about as likely as not to be correct".

REGULAR CONTRIBUTORS TO THE TIB

Office of the Chief Tax Counsel

The Office of the Chief Tax Counsel (OCTC) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The OCTC also contributes to the "Questions we've been asked" and "Your opportunity to comment" sections where taxpayers and their agents can comment on proposed statements and rulings.

Legal and Technical Services

Legal and Technical Services contribute the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters.

Legal and Technical Services also contribute to the "Your opportunity to comment" section.

Policy and Strategy

Policy advises the Government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as Orders in Council.

Legal Services

Legal Services manages all disputed tax litigation and associated challenges to Inland Revenue's investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

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