Vol 31 No 6 July 2019

TAX INFORMATION Bulletin

CONTENTS

1 In summary

3 Questions we've been asked

QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home?

34 Standard practice statements

SPS 19/03: Income equalisation deposits and refunds

SPS 19/04: Late filing penalties

49 Legislation and determinations

DET 19/01: Standard-cost household service for private boarding service providers

DET 19/02: Standard-cost household service for short-stay accommodation providers

National Average Market Values of Specified Livestock Determination 2019

2019 Kilometre rates for business use of motor vehicles

2019 Square metre rate

79 Legal decisions - case notes

High Court clarifies that the insuring of an identified risk is not a financial service and the premia paid are not exempt from tax pursuant to ss 3(1)(h) and 3(1)(l) of the Goods and Services Tax Act 1985

Inland Revenue
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** (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.

Correction – ***Tax Information Bulletin*** **Vol 31 No 4 May 2019: Simplifying tax administration – individuals income tax**

Example 9 published in the Simplifying tax administration – individuals income tax item on page 14 is incorrect.

Example 9 – Jeff

Lauren, Olivia and Ruairi have a brother called Jeff who also works at the accounting firm and earns salary and wages. On 1 April 2018, Jeff also commences a start-up technology venture, which he operates in his own capacity. Although Jeff is only working on his venture part time, it is successful and he earns an additional $200,000 for the 2018–19 tax year.

Inland Revenue reviews Jeff's income information at the end of the 2018–19 tax year and, based on the information held for Jeff, the Commissioner is satisfied that the information contained in his pre-populated account correctly and completely records Jeff's income for that tax year. Inland Revenue therefore finalises Jeff's pre-populated account and it becomes an assessment on 15 May 2019.

New section 22G(3) provides that a qualifying individual, or an individual who is treated as a qualifying individual, may amend the income information in their final account at any time before their terminal tax date for the tax year. Although Jeff clearly has "other income" that he needs to provide, he has been treated as a qualifying individual and therefore has until his terminal tax date (7 February 2020) to provide any additional information and amend his tax position for the year.

Jeff logs into myIR on 1 February 2020 and updates his tax position to include an additional $200,000 in income and finalises his account for the tax year. Although this is treated as a new assessment for the purposes of section 22G(3), Jeff is liable to pay provisional tax as he derived untaxed income during the tax year which caused him to have residual income tax (RIT) of more than $2,500 at year-end.

Because of his level of untaxed income, Jeff's RIT exceeds $60,000 and therefore he does not qualify for the provisional tax safe harbour in section 120KE.

As Jeff does not meet the definition of a natural person with an initial provisional tax liability (as he continues to derive income from employment), he can use the interest concession rules in section 120KBB. This means that Jeff's RIT will be due and payable on the date of his last instalment of provisional tax for that year (being 7 May 2019 for Jeff as he has a standard 31 March balance date) as he was not liable to make any provisional tax payments during the year (because his RIT for the prior year was less than $2,500).

As Jeff did not pay his current year RIT amount on the 7 May 2019, he is subject to UOMI on the outstanding RIT from the day after that date.

IN SUMMARY

Questions we've been asked

QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation? 3

This Question We've Been Asked looks at the income tax rules when renting out your own home.

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself? 12

This Question We've Been Asked considers the income tax rules that apply for dwellings that are used privately and also rented out.

QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately? 16

This Question We've Been Asked explains the mixed use asset rules, specifically what rental income is taxable; what income is exempt; and what proportion of your expenses are tax deductible.

QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately? 22

This Question We've Been Asked looks at situations where for a particular income year a dwelling is subject to the standard rules, not the mixed-use asset rules.

QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home? 27

This Question We've Been Asked considers when you can register for GST, and the implications of voluntary registration.

Standard practice statements

SPS 19/03: Income equalisation deposits and refunds 34

This standard practice statement replaces *SPS 17/01: Income equalisation deposits and refunds*. The replacement statement recognises the recent repeal of the Income Equalisation Adverse Event Scheme.

SPS 19/04: Late filing penalties 44

This standard practice statement replaces *SPS 12/02: Late filing penalty*. It sets out how the Commissioner will exercise her discretion and practices with regard to late filing penalties.

Legislation and determinations

DET 19/01: Standard-cost household service for private boarding service providers 49

This Determination rescinds and replaces determination *DET 05/03: Standard-cost household service for boarding service providers* and applies from the start of the 2019-20 income year.

DET 19/02: Standard-cost household service for short-stay accommodation providers 67

This determination may be relevant to taxpayers who provide short-stay accommodation services in their home, if they do not rent out rooms for more than 100 nights in the year. It sets standard costs that can be treated as expenditure incurred in deriving income from providing the short-stay accommodation service. For any income year, a taxpayer can choose to use these standard costs instead of their actual expenses, provided the criteria in the determination are met.

National Average Market Values of Specified Livestock Determination 2019 75

This determination establishes the national average market value of specified livestock for 2019.

2019 Kilometre rates for business use of motor vehicles 78

The table of rates for the 2018/2019 income year for motor vehicle expenditure claims.

2019 Square metre rate 78

The square metre rate for the 2018/2019 income tax year.

IN SUMMARY (continued)

Legal decisions - case notes

High Court clarifies that the insuring of an identified risk is not a financial service and the premia paid are not exempt from tax pursuant to ss 3(1)(h) and 3(1)(l) of the Goods and Services Tax Act 1985 79

The Court found that the premia paid in insurance policies where the policy covers an identified risk for a borrower's loan repayments on the occurrence of a specified insured event, or a policy which covers the difference between the total loss-pay out received from a motor vehicle insurer and any outstanding loan where a car is written off, were not exempt from tax under the financial services exemption.

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 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?

This "Question We've Been Asked" (QWBA) explains how the income tax rules apply if you occasionally rent out your home, a room in your home, or a separate dwelling on your property for short stays (eg, through Airbnb, Bookabach or Holiday Houses).

Key provisions

Income Tax Act 2007 – ss CC 1, DA 1 and DA 2

Key terms

Guest means a person provided with short-stay accommodation in return for payment.

Short-stay accommodation means accommodation provided for up to four consecutive weeks in a dwelling that is not the guest's ordinary residence. It doesn't include accommodation provided to residential tenants, boarders or care home residents, and it doesn't include student or emergency accommodation.

Question

What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?

Answer

If you rent out your home (or part of your home) as short-stay accommodation, any amounts you receive from guests will be income.

However, you may have different options for meeting your tax obligations, depending on your circumstances.

You may be able to use "standard costs" set by the Commissioner for your expenses. If you use this approach, your income up to the level of the standard costs will be treated as exempt. You would only have to declare the rental income in excess of the standard costs.

If you can't use the "standard cost" approach, or you don't want to, your deductions will be based on your actual costs related to earning the income. Some of those costs will only be partly deductible because they also relate to your private use of the home.

If you rent out a separate dwelling on the same property as your home for short-stay accommodation, different tax rules could apply, depending on your situation.

Explanation

1. Different rules apply depending on whether you're renting out your own home (or part of your home) or a separate dwelling on the same property. In this QWBA we look at separate dwellings first as they are either straightforward or covered by another item.

Renting out a separate dwelling on the same property as your home

2. If you rent out a separate dwelling on the same property as your home (for example, a sleep-out or a cottage on the property) for short-stay accommodation, different income tax rules could apply, depending on your situation. The dwelling is looked at as a separate asset. If it is only rented out and never used privately, all of its rental income will be taxable, and you may claim 100% of your deductible expenses in relation to the dwelling. If, in addition to sometimes renting out the dwelling, you also sometimes use it privately, the dwelling may be subject to either the "mixed-use asset" rules or the standard income tax rules. To work out which rules apply, see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*

Renting out all or part of your home

3. If you rent out all or part of your home as short-stay accommodation, any amounts you receive from the guests will be taxable as rental income. The activity doesn't need to be run as a business for the amounts you receive to be income.

4. You may have two options for meeting your tax obligations (summarised in Table 1), depending on your circumstances:
   - the standard-cost approach; or
   - the actual-cost approach.
5. If you meet certain criteria, you may choose to use standard costs, set by the Commissioner, for your expenses. This is referred to as "the standard-cost approach". If you use this approach, you don't need to declare income from the rental activity up to the amount of the standard costs. You only need to declare any income you make to the extent it exceeds the standard costs. This approach is easier, because it means you don't have to work out your actual expenses, which would require some of the expenses being apportioned. The criteria you have to meet to be able to use this approach are set out in [7].
6. If you can't use the standard-cost approach, or you don't want to, your deductions will be based on your actual costs related to earning the income. Expenses that relate solely to your rental activity (eg, advertising fees) are 100% deductible. But mixed expenses, that relate to both your rental activity and your own use of your home (eg, home loan interest, insurance and rates), need to be apportioned. This QWBA will help you understand how to calculate the percentage of your mixed expenses that's tax deductible.

Table 1: Comparison of standard-cost and actual-cost approaches

Standard-cost approach	Actual-cost approach
The income up to the amount of your standard-costs is exempt income. You don't include it in a tax return.	All of the income is assessable income and has to be declared.
The amount of income in excess of your standard-costs is assessable income. You need to include it in a tax return. You can't claim deductions for any of your actual expenses that are covered by the standard-costs in DET 19/02: Standard-cost household service for short-stay accommodation providers.	You may claim associated expenses and depreciation losses as tax deductions. You'll need to work out how much you may deduct, bearing in mind that: • expenses that relate solely to the rental activity (eg, advertising) are 100% deductible; • mixed expenses (eg, home loan interest, insurance and rates), need to be apportioned; and • depreciation losses in respect of chattels used both privately and by paying guests also have to be apportioned.
If you're not the only owner of the property, you'll need to think about who should declare the income – see from [38].	

Can I use the standard-cost determination for short-stay accommodation providers?

7. You may choose to use the standard-cost approach in *DET 19/02: Standard-cost household service for short-stay accommodation providers*, if:
   (1) you're a natural person (eg, an individual not a company);
   (2) you rent out a room or rooms of your home to guests for short-stay accommodation (not more than four consecutive weeks);
   (3) you don't rent out rooms for more than 100 nights in the income year (counting each room that's rented out separately);
   (4) the property isn't held in a trust, or if it is you paid all of the costs for the year for the use of the property (eg, home loan interest or rent, insurance, rates, and repairs and maintenance);
   (5) you don't provide the short-stay accommodation service as part of a GST taxable activity;
   (6) your home isn't used in the income year to provide both a short-stay accommodation service and a private boarding service (as defined in *DET 19/01: Standard-cost household service for boarding service providers* or any determination that replaces DET 19/01);
   (7) neither you nor anyone else applies any other standard-cost household service determination (eg, DET 001: Standard-cost household service for childcare providers) in relation to services provided in the home; and
   (8) no one claims deductions for actual costs incurred in relation to the use of your home to provide accommodation to others, such as flatmates, for any time in the income year when the short-stay accommodation service is provided.
8. If you meet these criteria and choose to use the standard-cost approach for the year, the rest of this QWBA won't be relevant to you. If you choose to use the standard-cost approach, *DET 19/02: Standard-cost household service for short-stay accommodation providers* explains what you need to do to meet your income tax obligations.

9. Be aware that you may only use the standard-cost approach for years in which you meet the criteria. If you don't meet the criteria for a particular income year, you'll need to base your deductions for that year on your actual costs, which will involve apportioning some expenses. This QWBA explains how the rules work if you have to, or choose to, use the actual-costs approach.

Can I use the standard-costs for boarders instead?

10. A separate determination sets standard costs for expenses for people who receive income from private boarders. You can't use that determination for income from providing short-stay accommodation. This is because short-stay accommodation guests are not boarders. A boarder is someone who lives in someone else's home and receives meals, in return for payment. To be a boarder, the person has to actually live in your home and use it as their normal residence for a period (often this is a year or a semester). Someone who pays to stay in your home for a short period and isn't using it as their normal residence is not a boarder. This QWBA calls these people "guests".
11. If you receive income from both boarders and short-stay accommodation guests, you can't use either of the standard-cost determinations. If you're in this situation, you'll need to use your actual costs for your deductions.
12. The boarders determination that applies from the start of the 2019-20 income year, *DET 19/01: Standard-cost household service for boarding service providers*, can be found on the Inland Revenue website. Each year, updated weekly standard-costs for the boarders determination are published on the Inland Revenue website.

If I'm using the actual-cost approach, how do I work out what deductions I can claim?

13. As noted in the table at [6], if you're using the actual-cost approach some of your expenses will be fully deductible and some will only be partly deductible. This is because some of your expenses (eg, home loan interest, insurance and rates) relate partly to your rental activity and partly to your own private use of your home.
14. You'll also be able to claim deductions for the depreciation of the chattels in your home that paying guests can use. But, as with your mixed expenses, you may only claim for part of the depreciation for chattels that are used both privately and by paying guests.
15. The following will help you work out what deductions you may claim – and will help you calculate what percentage of your mixed expenses and depreciation is tax deductible.

Expenses that are fully deductible – expenses that relate solely to your rental activity

16. If you're not using the standard-cost approach, you may claim deductions for 100% of expenses that relate solely to your rental activity. This would include:
    - advertising costs;
    - any commission or fee you pay to an advertising platform or transaction facilitator (this does not include any service fee the guests pay the platform – just fees you pay);
    - supplies used solely by your paying guests;
    - any additional insurance premium you pay (over what you would otherwise pay) because of the rental activity; and
    - any additional rates you have to pay (over what the normal residential rates would be) because of the rental activity.

Expenses that are partly deductible – expenses that relate to both rental activity and private use

17. You may only claim deductions for **part of** any expenses that relate to both your rental activity and the private use of your home. These sorts of mixed expenses would include things like:
    - power bills;
    - internet expenses;
    - interest on your home loan;
    - property insurance (or what the insurance premium would be if you have to pay more because of the rental activity);
    - repairs and maintenance; and
    - rates (or what the normal residential rates would be if you have to pay more because of the rental activity).
18. While you'll generally only be able to deduct part of these sorts of expenses, there are some situations where they'll be fully deductible, because they don't relate to the private use of your home at all. This could be the case, for example, if you can identify actual usage charges for a period where you vacated the house and rented out the whole property.

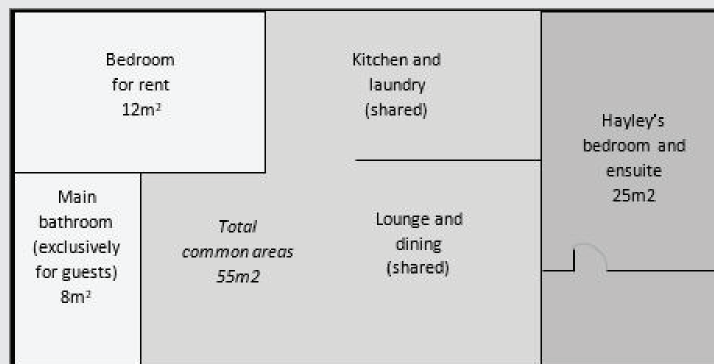
19. But in most situations where you rent out all or part of your home, to work out what proportion of these mixed expenses you may claim, you'll need to take into account:
    - the floor area of different parts of your house; and
    - the number of nights during the year that the room was rented out.
20. If there's a reasonable basis for apportioning a particular expense other than floor area, you can use that.
21. While less common, in some situations instead of taking into account the number of nights the room was actually rented out, you may take into account the periods it was either rented out or available to be rented out. This is explained below from [24].

How to apportion mixed expenses based on the number of rental nights

22. Generally, you should apportion mixed expenses, like those mentioned at [17], based on the floor area that the guest has exclusive use of, as a proportion of the total floor area of your house. You may also add a reasonable amount based on the guest's access to common areas – Inland Revenue will accept 50% as a reasonable amount in most situations. Generally, where you rent a room in your house you may only claim expenses for when the room was rented out.

Example 1: Apportioning mixed expenses based on the number of rental nights

Hayley has a two-bedroom villa. She uses the second bedroom occasionally as an office, or when friends or family stay. She decides to rent out the second bedroom through a peer-to-peer platform to make some extra money. When she rents out the room, the guests are also able to use some common areas in the villa – the lounge, dining room, kitchen, laundry, and main bathroom. Hayley rented out the room for 120 nights during the year. The floor areas of the different parts of Hayley's villa are shown in the diagram below.



Hayley should apportion her mixed expenses on the following basis:

$20m^2$	Used exclusively by guests – 100% deductible for days the room is rented out
$55m^2$	Common areas – 50% deductible for days someone is renting the bedroom
$25m^2$	Private area – 0% deductible

Hayley has to calculate what proportion of her mixed expenses she may deduct for the areas of the house used exclusively by guests, and what proportion she may deduct for the common areas. The results of those calculations are then added together.

The areas used **exclusively by guests** are $20m^2$ out of the total $100m^2$ floor area of the villa, and are 100% deductible for the 120 out of 365 days in the year that the room is rented out:

$$\frac{20}{100} \times \frac{120}{365} \times 100 = 6.58\%$$

The **common areas**, able to be used by both Hayley and guests, are $55m^2$ out of the total $100m^2$ floor area of the villa, and are 50% deductible for the 120 out of 365 days in the year that the room is rented out:

$$\frac{55}{100} \times \frac{120}{365} \times 50 = 9.04\%$$

Adding these figures (6.58% and 9.04%) together, Hayley calculates that she may deduct 15.62% of her mixed expenses for the year. Her mixed expenses include her power bills, internet expenses, the interest on her home loan, her property insurance, and her rates.

In addition, Hayley may deduct 100% of her expenses that relate solely to the rental activity. These expenses include the cost of advertising the room for rent, her host service fees, the sheets and towels she bought for guests to use (she only uses those for guests renting out the room), and the tea, coffee, sugar, cereal and milk the guests use.

23. If you rent out your whole house for a period, and the guests have access to the whole house, you don't need to factor in the floor area calculations. Your apportionment would just be based on the number of nights the house is rented out.

Example 2: Apportioning mixed expenses based on the number of rental nights

Jason and Kim are saving for an overseas holiday and decide to rent out their apartment for four weeks during a high-profile sporting event in their city. They stay with Jason's parents during this time.

Jason and Kim should apportion their mixed expenses on the following basis:

The whole apartment is used **exclusively by guests** for 28 out of the 365 days in the year, and the mixed expenses are 100% deductible for that period:

$$\frac{28}{365} \times 100 = 7.67\%$$

Therefore, Jason and Kim may deduct 7.67% of their mixed expenses for the year. Their mixed expenses include 28 days' worth of the daily fixed charge for their power connection, internet expenses, the interest on their home loan, their property insurance, and their rates.

In addition, Jason and Kim may deduct 100% of their expenses that relate solely to the rental activity. These expenses include the cost of advertising the apartment for rent, their host service fees, the power usage charges for the period (if this can't be identified precisely an average may be used), and supplies used by the guest (eg, cleaning products, toilet paper, and pantry staples).

How to apportion mixed expenses based on availability

24. As noted in [20], while less common, in some situations instead of taking into account the number of nights the space was actually rented out, you may take into account the periods it is either rented out or *available* to be rented out.

25. For a room in your home, you could only do this where you don't use the space at all, including for storage, and it is essentially not used as part of your home. This would be difficult to show, as in most situations it would be expected that expenses for a room in your own home are private expenses for periods when the room is not actually rented out. One example of a situation where you might be able to show otherwise is if you operated a bed and breakfast with high occupancy from your home, so the rental rooms are essentially not used as part of your home. Example 4 covers a situation like this.

26. Another situation where availability could potentially be used is if you have a separate dwelling on the same property as your home that's not used as part of your home and is **not** a mixed-use asset. For example, a sleep-out that's only rented out and not used privately at all, or a sleep-out that's rented out and used privately, but isn't unused for 62 days or more in the year. In either of those situations, the mixed-use asset rules wouldn't apply – see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?* Example 3 covers a situation like this.

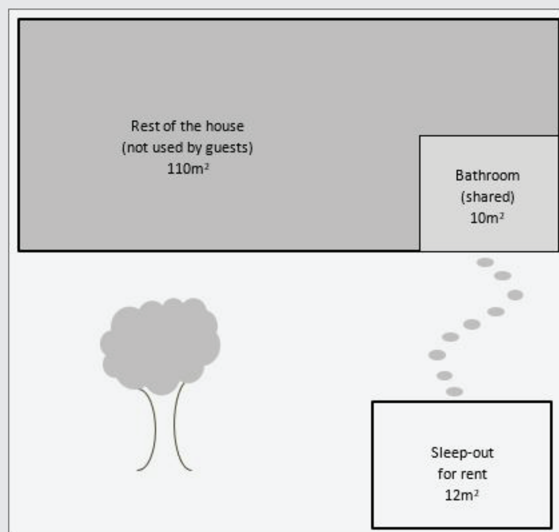
27. In situations where you may take into account the periods the space is either rented out or *available* to be rented out and not being used privately, you'll need to have evidence that shows when it was available to be rented out. Evidence that the space is available for rent would need to be more than a mere statement of its availability, sporadic or limited advertising, or advertising that isn't likely to attract many customers. You would have to have evidence of active and regular marketing of the space at market rates, and that it's available at times and for periods that demonstrate it's genuinely available to rent.

Example 3: Apportioning mixed expenses based on availability – a separate dwelling from your home

Melanie and Alistair live in a very popular wine region, and regularly rent out the sleep-out in their garden. They don't use the sleep-out themselves for anything. The sleep-out is advertised year-round, and in the last tax year it was available for rent at any time other than for six weeks (42 nights) over the Christmas holidays when Melanie's parents, who live overseas, came to stay and used the sleep-out.

In the tax year, the sleep-out was used to earn income and was also used privately (by Melanie's parents). Melanie and Alistair have used "*QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*" to work out the sleep-out isn't a mixed-use asset for the tax year because it was only unused for 58 days. It would have to have been unused for 62 days or more to be a mixed-use asset. Therefore, the rules in this QWBA apply.

The sleep-out does not have a bathroom, so guests who stay there use the main bathroom of Melanie and Alistair's house, which can be accessed from the garden. The sleep-out is on a separate power connection from the house. Guests can use Melanie and Alistair's wi-fi. There are tea and coffee facilities in the sleep-out, and guests can order a cooked breakfast for an additional charge. Melanie and Alistair rented out the sleep-out for 265 nights during the tax year. The floor areas of the different parts of the property are shown in the diagram below.



Melanie and Alistair should apportion their mixed expenses on the following basis:

Area	Basis
$12m^2$	Used exclusively by guests – 100% deductible for days the sleep-out is rented out or available to be rented out, as it is not used by Melanie and Alistair
$10m^2$	Common area – 50% deductible for days someone is renting the sleep-out
$110m^2$	Private area – 0% deductible

Melanie and Alistair have to calculate what proportion of their mixed expenses they may deduct for the sleep-out, which was used exclusively by guests, and rented or available for rent all but six weeks (42 nights) of the year, and what proportion they may deduct for the common area (the shared bathroom). The results of those calculations are then added together.

The sleep-out, used **exclusively by guests**, is $12m^2$ out of the total $132m^2$ floor area of the dwellings on the property, and is 100% deductible for the 323 out of 365 nights in the tax year that it was either rented out or available to be rented out:

$$\frac{12}{132} \times \frac{323}{365} \times 100 = 8.04\%$$

The **common area**, the shared bathroom, which is able to be used by Melanie and Alistair and guests, is $10m^2$ out of the total $132m^2$ floor area of the dwellings on the property, and is 50% deductible for the 265 out of 365 nights in the year that the sleep-out is rented out:

$$\frac{10}{132} \times \frac{265}{365} \times 50 = 2.75\%$$

Adding these figures (8.04% and 2.75%) together, Melanie and Alistair calculate that they may deduct 10.79% of their mixed expenses for the year. Their mixed expenses include their internet expenses, the interest on their home loan, their property insurance, and their rates.

Because the sleep-out is on a separate power connection from the house, Melanie and Alistair may deduct 100% of the power bills for the sleep-out for the 323 out of 365 nights in the year that it is either rented out or available to be rented out.

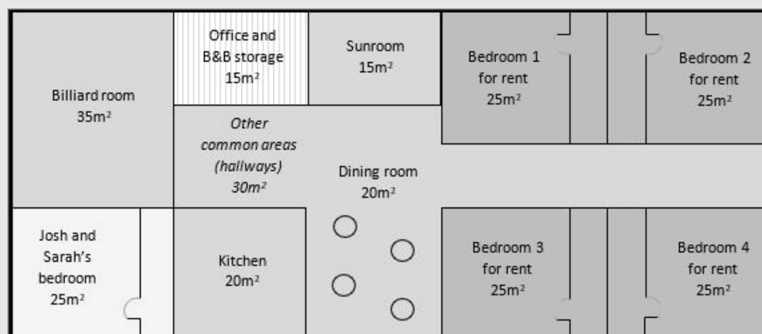
In addition, Melanie and Alistair may deduct 100% of their expenses that relate solely to the rental activity. These expenses include the cost of advertising the sleep-out for rent, the host service fees, and the tea and coffee supplies in the sleep-out.

The amounts Melanie and Alistair receive for cooked breakfasts are income, and they may deduct the cost of the ingredients used.

28. As noted in [19], where you occasionally rent out a room in your home, normally you would need to apportion your mixed expenses based on the number of nights the room is actually rented out (as shown in Example 1). This is because when you are not renting out the room, those expenses are purely private expenses related to keeping your home. However, the following example shows a situation where it would be accepted that the mixed expenses could be apportioned on the basis of the availability of the rooms for rent.

Example 4: Apportioning mixed expenses based on availability – space within your home

Josh and Sarah run a bed and breakfast (B&B) from their home in a tourism hotspot. The B&B has four bedrooms, each with an ensuite, which are advertised year-round and are available for rent at any time other than for three weeks in winter, when Josh and Sarah take a holiday. Guests can use a sunroom and a billiard room. If guests wish to dine in, meals can be enjoyed in the dining room, or room service can be requested. The B&B has approximately 60% occupancy, and Josh and Sarah had guests in at least one room for 300 days during the year. The floor areas of the different parts of the B&B are shown in the diagram below.



Josh and Sarah should apportion their mixed expenses on the following basis:

15m²	Used exclusively for the B&B operations – 100% deductible
100m²	Used exclusively by guests – 100% deductible for days the rooms are rented out or available to be rented out, as they not used by Josh and Sarah
120m²	Common areas – 50% deductible for days someone is renting a room in the B&B
25m²	Private area – 0% deductible

Josh and Sarah have to calculate what proportion of their mixed expenses they may deduct for the:

- office and storage area, which is used exclusively for B&B operations;
- rental rooms, which are used exclusively by guests and are available for rent for 49 weeks of the year; and
- common areas.

They then need to add the results of those calculations together.

The office and storage area, used **exclusively for B&B operations**, is 15m² out of the 260m² total floor area of the house, and is 100% deductible as it is only used in relation to the rental activity:

$$\frac{15}{260} \times 100 = 5.77\%$$

The rental rooms, used **exclusively by guests**, are 100m² out of the total 260m² floor area of the house, and are 100% deductible for the 49 out of 52 weeks in the year that the rooms are either rented out or available to be rented out:

$$\frac{100}{260} \times \frac{49}{52} \times 100 = 36.24\%$$

The **common areas**, which are used by Josh and Sarah and guests, are 120m² out of the total 260m² floor area of the house, and are 50% deductible for the 300 out of 365 days in the year that at least one of the rooms is rented out:

$$\frac{120}{260} \times \frac{300}{365} \times 50 = 18.97\%$$

Adding these figures (5.77%, 36.24% and 18.97%) together, Josh and Sarah calculate that they may deduct 60.98% of their mixed expenses for the year. Their mixed expenses include their power bills, internet expenses, the interest on their home loan, the amount of their property insurance premium that equates to what their premium would be if they didn't run the B&B from the property, and the portion of their rates that they would have to pay if they didn't run the B&B from the property (ie, what normal residential rates would be for the property).

In addition, Josh and Sarah may deduct 100% of their expenses that relate solely to the rental activity. These expenses include the cost of advertising the rooms for rent, the host service fees, the amount they pay in additional property insurance premiums (over what they'd pay if they didn't run the B&B from the property), the amount they pay in additional rates (over what the normal residential rates would be) because they run the B&B from the property, and bathroom supplies for the rooms.

The amounts Josh and Sarah receive for meals purchased by guests are income, and they may deduct the costs of providing those meals.

Depreciation of chattels

29. As noted in [14], you'll also be able to claim deductions for the depreciation of the chattels in your home that paying guests can use. Depreciation deductions reflect that chattels in your home are subject to wear and tear resulting in them reducing in value while being used to earn income.

30. If the chattels are **only** used by guests (eg, chattels in a bedroom you only use for renting out), the full amount of depreciation will be deductible.

31. But you may only claim for part of the depreciation on "mixed-use" chattels – ie, chattels in common areas that guests are able to use, and chattels in a room you rent out and also use privately.

32. The approach to work out how much depreciation you may claim each year for "mixed-use" chattels is similar to the approach to apportioning your mixed expenses. But it differs slightly, because there is a specific apportionment formula in the Income Tax Act 2007 for depreciation of assets partly used to earn income.

33. Before you can apply the formula, you need to work out the depreciation loss for the year for each asset.

34. For low value items ($500 or less), the depreciation loss is the item's cost. If the item is part of a group of items you purchased at the same time from the same supplier, and the items would have the same depreciation rate, the $500 threshold applies to the group of items. For example, if you bought $2,000 worth of linen at one time, you would have to depreciate the linen using one of the methods mentioned at [35].

35. For other items, you work out the depreciation loss for the year using either the diminishing value method or the straight-line method. There's information about those methods on Inland Revenue's website (**www.ird.govt.nz** keyword: depreciation), and you can find the relevant depreciation rates using Inland Revenue's depreciation rate finder – available on Inland Revenue's website (**www.ird.govt.nz/calculators/keyword/depreciation/calculator-depreciation-rate-finder.html**).

Whichever method you use, you can't pool assets to depreciate them as a single asset if they're partly used privately – so you won't be able to use the pooled approach for chattels in the common areas of your home that guests can use, or for chattels in a room you rent out and also use privately.

36. Once you know the depreciation losses for the year for the chattels in your home that are both used privately and able to be used by paying guests, you need to work out what proportion of those losses you may deduct. To do this, multiply those losses by:

$$\frac{(a + b)}{c}$$

Where –

"**a**" is: nights in the year the space (eg, room, or whole house) is rented out

"**b**" is: nights in the year the space is available to be rented out and the mixed-use chattels are not used privately

"**c**" is: nights in the year the mixed-use chattels are used or available for any purpose

37. For mixed-use chattels in common areas, item "b" in the formula would typically be zero. This is because when the room you rent out is available for rent, you are still using the chattels in your lounge or other common areas for private use. An example of where this would not be the case would be if you were away overseas and renting out your whole house for short stays. In that situation, for the periods in between paying guests, you would not be using the chattels for private use, so those days the house is vacant would be counted in item "b".

Example 5: Calculating a deduction for depreciation of chattels

Jasper rents out the spare room in his house for short stays. When he has paying guests, they can use the lounge, dining room, kitchen, laundry and bathroom. Jasper rents out the room for a total of 120 nights during the year. Jasper doesn't use the spare room at all.

Jasper may deduct the full depreciation loss he calculates for the chattels in the spare room, as these are only used by paying guests.

Jasper calculates that he may deduct 32.88% of his depreciation losses in respect of the chattels in the common areas of the house that paying guests can use:

$$\frac{120}{365} \times 100 = 32.88\%$$

If Jasper was away for work for 30 nights during the year, the calculation would remain the same. While Jasper did not use the chattels in the common areas privately on those days, they were also not available to be used by paying guests, as Jasper only rents out the spare room when he is home.

Who should declare the income?

38. The income belongs to the owner of the land (including leasehold land) and they must declare it to Inland Revenue. If there is more than one owner, the income needs to be split appropriately between them.
39. If the land is owned in a trust, the rules about who has to declare the income are more complicated, and we recommend you see a tax advisor to help you with your affairs.
40. If you lease the property from a relative (other than a trust) and use it to earn income, you should ensure you're paying an adequate amount of rent for the property to the extent of the income-earning use. If you don't, the Commissioner can deem there to be adequate rent paid. This is to ensure that property can't be leased between relatives for low or nominal rent to shift income for a tax benefit (see s GC 5 of the Income Tax Act 2007).

What records do I need to keep?

41. You need to keep records of:
    - the number of nights you rent out your home, the room, or the separate dwelling on your property;
    - how much income you receive for renting out the area; and
    - any expenses you will want to claim deductions for.

Provisional tax

42. If the tax you have to pay at the end of the year is more than $2,500, the next year you'll have to pay provisional tax – which means that you pay tax instalments during the year. There's information about provisional tax on the Inland Revenue website (**www.ird.govt.nz** keyword: provisional tax).

References

Subject references

income tax

short-stay accommodation

Legislative references

Income Tax Act – s GC 5

Other references

DET 001: Standard-cost household service for childcare providers (Inland Revenue)

DET 19/01: Standard-cost household service for boarding service providers (Inland Revenue)

DET 19/02: Standard-cost household service for short-stay accommodation providers (Inland Revenue)

Overview – Short-stay accommodation items (Inland Revenue)

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

This "Question We've Been Asked" (QWBA) will help you work out which income tax rules apply to a dwelling you sometimes rent out as short-stay accommodation (eg, through Airbnb, Bookabach and Holiday Houses) and sometimes use yourself – eg, a holiday home.

Key provisions

Income Tax Act 2007 – subpart DG

Question

What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

Answer

Different rules could apply in this situation. The rules that apply will determine the tax treatment for the dwelling.

Different rules can apply each year, so at the end of each income year you'll need to work out which rules the dwelling falls into for that year:

- the "mixed-use asset" rules; or
- the standard tax rules.

The main difference between the mixed-use asset rules and the standard rules is how you calculate the proportion of your costs you can deduct.

This QWBA will help you work out which tax rules apply to the dwelling for each income year. You need to revisit which rules apply each year.

Key terms

Guest means a person provided with short-stay accommodation in return for payment.

Mixed-use asset means an asset that is used both privately and to earn income, and is also unused for at least 62 days in the year.

Short-stay accommodation means accommodation provided for up to four consecutive weeks in a dwelling that is not the guest's ordinary residence. It doesn't include accommodation provided to residential tenants, boarders or care home residents, and it doesn't include student or emergency accommodation.

Explanation

1. If you have a dwelling that you rent out as short-stay accommodation, and also sometimes use yourself, you will need to work out which income tax rules apply so you can meet your tax obligations. The dwelling could be a holiday house or a separate dwelling on the same property you live on (for example, a sleepout or a cottage).
2. Depending on your circumstances, the dwelling will either fall under:
    - the "mixed-use asset" rules; or
    - the standard tax rules.
3. This QWBA explains how to work out which rules apply in your situation.

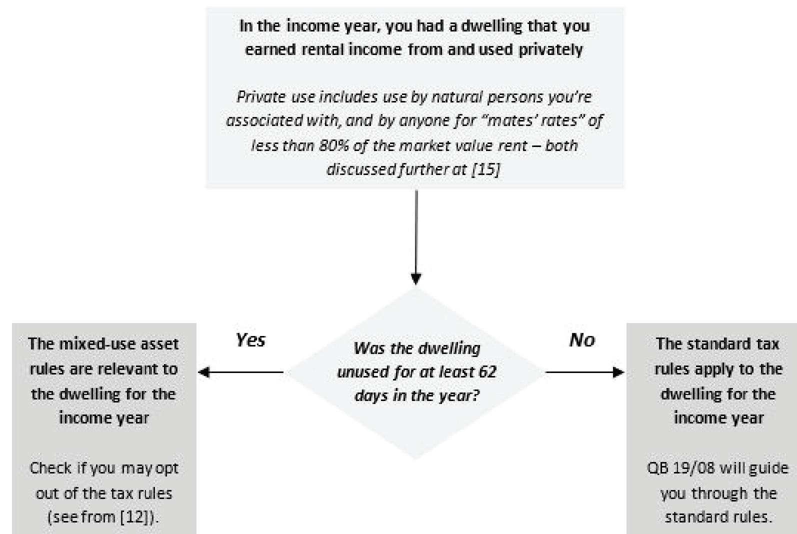
Records you'll need to keep

4. You'll need to keep good records to work out each year which rules apply, and then to apply the relevant rules correctly. This would include records of:
    - the number of nights the dwelling is used privately (this includes by you, by people you're associated with, and by anyone for less than 80% of the market value rent);
    - the number of nights you rent out the dwelling, and how much income you receive for renting it out;
    - when the dwelling was available to be rented out (this will be relevant if the standard rules apply); and
    - any expenses you want to claim deductions for.

Mixed-use asset rules or standard rules?

5. The mixed-use asset rules deal with deductions for certain assets (including land) that are used both privately and to earn income, but are also unused for significant periods during the year. Under these rules, the expenses incurred for a dwelling that's sometimes rented out are deductible for the periods it's rented out and non-deductible for the periods it's used privately.

6. The issue the rules address is how to treat the expenditure incurred when the dwelling is empty. Under the standard rules, deductions for the time the dwelling is empty are based on whether it is *available* for income earning. However, under the mixed-use asset rules, the proportion of expenses that may be deducted for the empty periods is reduced. The amount that may be deducted is based on the proportion of income-earning use of the dwelling relative to the total use of the dwelling during the year.
7. If you have a dwelling that you sometimes rent out for short-stay accommodation and also sometimes use yourself, the factor that determines which rules apply is whether the dwelling is unused for 62 days or more during a year.



8. A dwelling can flip in and out of the mixed-use asset rules from one year to the next, so you need to look at which rules are relevant to the dwelling for **each income year** (which for most people is 1 April – 31 March). The mixed-use asset rules can apply to most ownership structures, so it doesn't matter if you own the property or if it's owned by another entity or held in another structure (eg, a trust or a family company).
9. The dwelling will be a "mixed-use asset" if, during the year:
   - you partly used it to earn income;
   - you partly used it privately (this includes use by family members, or by friends renting it for "mates' rates" that are less than 80% of the market value rent); and
   - it was not used for at least 62 days in the year.

Standard rules

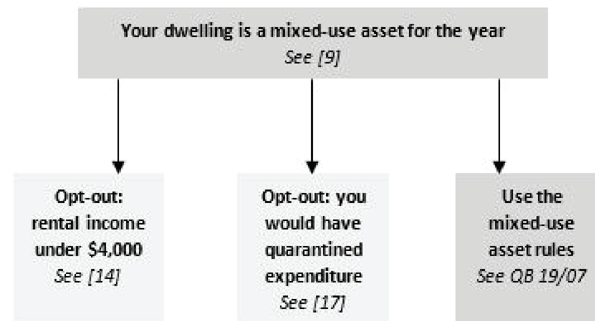
10. If the dwelling doesn't meet the three criteria listed in [9] for a particular income year, the standard tax rules will apply for that year. *QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?* explains how the standard rules work. You'll need to revisit which rules apply each year.

Mixed-use asset rules

11. If the dwelling meets the three criteria at [9] for a particular income year, the mixed-use asset rules are relevant. However, there are two situations in which you may opt out of the tax rules altogether for the rental income from the dwelling.

Opting out of the tax rules for the rental income if the dwelling is a mixed-use asset

12. You may choose to opt out of the tax rules if:
   - your rental income for the year from the dwelling is under $4,000; or
   - you made a loss from the dwelling and would have some of your deductions quarantined (that is, carried forward to the next year).



13. If you choose to opt out of the tax rules for the rental income from the dwelling, the income is exempt. This means that you don't pay tax on it and you can't claim tax deductions for your expenses related to the dwelling.

Opt-out: rental income from the dwelling is under $4,000

14. The first situation in which you can opt out of the mixed-use asset rules (and the tax rules generally) for the rental income from the dwelling is where the gross rental income (before expense deductions) for the year is under $4,000.

15. The $4,000 threshold for opting out of the tax rules **doesn't include** income that's classed as exempt income. Exempt income is income from renting out the dwelling to associated persons (eg, family members), and income from renting out the dwelling for less than 80% of the market value rent (eg, renting it to friends for "mates' rates"). Both of these are explained below:

    Income from renting out the dwelling to associated persons

    - This covers income from renting the dwelling to natural persons you're associated with (eg, close relatives such as your children, grandchildren, siblings or in-laws).
    - If a trust, partnership or company owns the dwelling, this would cover income from the dwelling being rented to associated natural persons (eg, for a trust, the settlors and beneficiaries).

    Inland Revenue guide IR620 (**www.ird.govt.nz** keyword: ir620) can help you work out if someone is associated with you. It can be found on Inland Revenue's website.

    If a company owns the dwelling, in addition to the normal rules about association, the company will be associated with anyone who has a share in the company that gives them the right to use the dwelling.

    Income from renting out the dwelling at "mates' rates"

    - This covers income from renting the dwelling to friends at "mates' rates" of less than 80% of the market value rent.
    - This does not include income from renting the dwelling at a lower price because it's off-peak season, a longer-term rental, or for other similar reasons. This is because in those situations the market rate is the lower price.

16. All of your other rental income from the dwelling is counted. If your counted income for the year from renting out the dwelling is less than $4,000 gross (that is, before expense deductions), you may opt out of the tax rules – see further from [25].

Opt out: quarantined expenditure

17. The second situation in which you may opt out of the tax rules for the rental income from the dwelling is where you would otherwise have what's called "quarantined expenditure" for the year for the dwelling.

18. You would have quarantined expenditure if:
    - your income from renting out the dwelling during the income year was less than 2% of the property's value; and
    - you made a loss from renting out the dwelling (that is, the expenses you can deduct for the year under the mixed-use asset rules exceed the income).

19. In this situation, if you **don't opt out** of the tax rules, you may only deduct your expenses up to the amount of income. Your expenses over and above your income from the dwelling are "quarantined" – meaning they are carried forward to a future income year to offset against any future profits from the dwelling.

20. Instead of that, if you want you may **opt out** of the tax rules by choosing to treat the income for the year as exempt, and not get any deductions for your expenses related to the dwelling.

21. In working out if your income was less than 2% of the property's value, you **don't include** exempt income (amounts of income described in [15]). It's your taxable income from the dwelling that's counted towards the 2% threshold.

22. The property value you use to measure the 2% threshold against is generally the local rating value. However, if you bought the property from someone you aren't associated with since the rates value was last set, you use the purchase price.
23. If there's another dwelling on the same property, the 2% threshold is measured against a proportion of the local rating valuation, based on the percentage of the total land area that the asset is on. So, for example, if you have a sleepout that's a mixed-use asset on the same property as your house, and the area of the sleepout is 20% of the total section, you'd test the 2% threshold against 20% of the rating valuation.
24. If you calculate that you would have quarantined expenditure for the year for the dwelling, you can opt out of the tax rules – see further from [25].

If you decide to opt out

25. If you're in one of above situations, and you choose to opt out of the tax rules for the rental income from the dwelling, you don't need to do anything for that income for that income year. All of the income from renting out the dwelling is classed as exempt income, and you can't claim any related expenses as deductions.
26. For each income year, you need to revisit whether the dwelling is a mixed-use asset (see from [5]) and if it is, whether you are able to opt out of the tax rules (see from [12]).

If you can't or don't opt out

27. If the dwelling is a mixed-use asset and you can't or don't opt out of the tax rules for the rental income, the mixed-use asset rules will apply for the particular year. *QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?* explains how the mixed-use asset rules work. You'll need to revisit which rules apply each income year.

References

Subject references

bach
holiday home
income tax
mixed-use asset
short-stay accommodation

Other references

IR620 – A guide to associated persons definitions for income tax purposes (April 2017) (**www.ird.govt.nz** keyword: ir620)

Overview – Short-stay accommodation items (Inland Revenue)

QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

This "Question We've Been Asked" (QWBA) explains how the income tax rules apply to a dwelling you sometimes rent out as short-stay accommodation (eg, through Airbnb, Bookabach and Holiday Houses) and sometimes use privately, where the dwelling is subject to the mixed-use asset rules.

Before you use this QWBA, you need to work out if the mixed-use asset rules apply to the dwelling. "QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?" will help you work that out.

Key provisions

Income Tax Act 2007 – subpart DG

Question

How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

Answer

If the mixed-use asset rules apply, rental income from the dwelling will generally be taxable. However, some income will be exempt – for example, income from renting the dwelling to family members or to others at "mates' rates".

The mixed-use asset rules set out how to determine the costs you may deduct against your income from providing the short-stay accommodation.

Costs that are solely related to renting out the dwelling are fully deductible. Costs that are solely related to your private use of the dwelling are not deductible. Other costs are partly deductible – the deductible amount is based on the number of rental nights relative to the total number of nights the dwelling is used.

If you make a loss from renting out the dwelling, you may not be able to deduct all of your expenses that year – some might be carried forward to future years.

Key terms

Guest means a person provided with short-stay accommodation in return for payment.

Mixed-use asset means an asset that is used both privately and to earn income, and is also unused for at least 62 days in the year. This would include many baches.

Short-stay accommodation means accommodation provided for up to four consecutive weeks in a dwelling that is not the guest's ordinary residence. It doesn't include accommodation provided to residential tenants, boarders or care home residents, and it doesn't include student or emergency accommodation.

Explanation

1. If you have a dwelling that you sometimes rent out as short-stay accommodation and also sometimes use yourself, you will need to work out which income tax rules apply, so you can meet your tax obligations. The dwelling could be a holiday home, or a separate dwelling on the same property you live on (eg, a sleep-out or cottage).
2. Depending on your circumstances, the dwelling will either fall under the "mixed-use asset" rules or the standard tax rules.
3. To work out which rules apply in your situation, see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?* You'll need to revisit which rules apply each year.
4. This QWBA will be relevant if:
   - you've determined that for a particular income year the dwelling is a mixed-use asset; and
   - you haven't opted out of the tax rules.

     [You can only do this in certain circumstances – see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*]

Background

5. The mixed-use asset rules apply where assets are sometimes used privately, sometimes used to earn income, and are also unused for a significant period during the year. The rules ensure an appropriate proportion of the expenses that relate to the "unused" period is deductible. The proportion that's deductible is based on the amount of income-earning use relative to the total use of the asset.

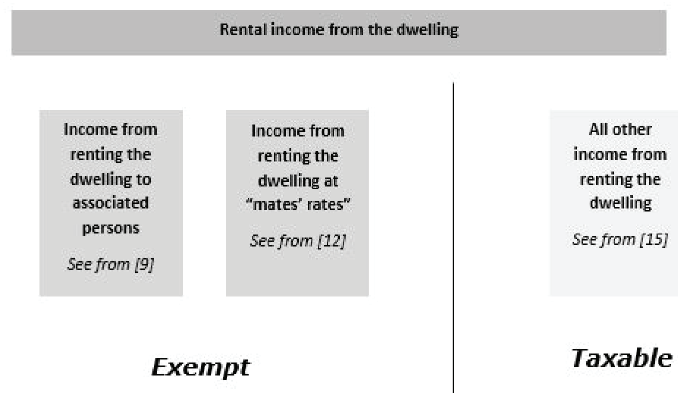
What do I do if the mixed-use asset rules apply to the dwelling?

6. Once you've determined that the mixed-use asset rules apply to the dwelling for a particular income year (see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*), you'll need to work out:
    - what rental income is taxable;
    - what income is exempt; and
    - what proportion of your expenses is tax deductible.
7. This QWBA covers each of those issues.

What income is taxable and what income is exempt?

8. Income you receive from renting out the dwelling is generally taxable. However, there are two situations where it will be exempt. Where you have exempt income, you don't pay tax on the amount you receive, and you can't deduct expenses for those days. Figure 1 summarises what you need to consider when working out whether your rental income is taxable or exempt.

Figure 1: Determining whether rental income is taxable or exempt



Exempt income: renting out the dwelling to an associated person

9. The first situation where income you receive from renting out the dwelling is exempt is where you rent it out to a natural person who's associated with you.
10. This covers income from renting out the dwelling to natural persons you're associated with (eg, close relatives such as your children, grandchildren, siblings or in-laws).
11. If a trust, partnership or company owns the dwelling, this would cover income from the dwelling being rented to associated natural persons (eg, for a trust, the settlors and beneficiaries).

> Inland Revenue guide IR620 (**www.ird.govt.nz** keyword: ir620) can help you work out if someone is associated with you. It can be found on Inland Revenue's website.
>
> If a company owns the dwelling, in addition to the normal rules about association, the company will be associated with anyone who has a share in the company that gives them the right to use the dwelling.

Exempt income: renting out the dwelling at "mates' rates"

12. The second situation where income you receive from renting out the dwelling is exempt is where you rent it out for less than 80% of the market value rent.
13. This covers income from renting the dwelling to friends at "mates' rates" of less than 80% of the market value rent.
14. It doesn't include income from renting the dwelling at a lower price because it's off-peak season, a longer-term rental, or other similar reasons. This is because in those situations the market rate is the lower price.

Taxable income

15. Other than the two situations above, any amounts you receive from renting out the dwelling are taxable. The activity doesn't need to be run as a business for the amounts you receive to be income.
16. You'll be able to deduct expenses related to the dwelling. We explain below how to work out what proportion of expenses is deductible.

What portion of my expenses can I claim deductions for?

17. You'll be able to claim deductions for 100% of expenses that relate solely to your rental activity. Any expenses that relate solely to your private use of the dwelling are not deductible. But many of your expenses will relate to both your income-earning and private use of the dwelling, so will be only partly deductible.

18. If the dwelling is owned by a close company (eg, a family company), there are special rules for interest deductions. These rules aren't covered in this QWBA, but you can read about them in Inland Revenue's Special Report on mixed-use assets (14 August 2013), which is on Inland Revenue's website (**taxpolicy.ird.govt.nz/** search keyword: "special report" mixed-use). The following paragraphs explain how the general rules work.

Expenses that are fully deductible

19. You may claim deductions for 100% of some expenses. To be fully deductible, the expense (which can't be a capital expense) must:

    (1) relate solely to the use of the dwelling to derive income (not including exempt income); and

    (2) meet either or both of the following:

        (a) be expenditure that you wouldn't reasonably expect to receive a personal benefit from (or if a company owns the dwelling, no associate of the company would be reasonably expected to receive a personal benefit from);

        and/or

        (b) be expenditure that you must reasonably incur to meet a regulatory requirement to be able to use the dwelling to derive income, and you wouldn't have incurred the expenditure otherwise.

20. These expenses would include things like:

    - advertising costs, including any commission or fee you pay to an advertising platform or transaction facilitator (this does not include any service fee the guests pay the platform – just fees you pay);
    - supplies used solely by your paying guests;
    - cleaning costs for the rental periods;
    - any additional insurance premium you pay (over what you would otherwise pay) because you rent out the property; and
    - any additional rates you pay (over what the normal residential rates would be) because you rent out the property.

21. You may also deduct 100% of the cost of repairing damage to the property that occurred when it was being used to earn income. This doesn't include when it's used to earn exempt income (which is in the two situations mentioned from [8]). It also doesn't include damage that's the result of ordinary wear and tear, as that occurs during both periods the dwelling is rented and periods it's used privately.

Expenses that are non-deductible

22. Any expenses that relate solely to the private use of the dwelling are not deductible. Private use includes use by you, by natural persons you're associated with, and by anyone for "mates' rates" of less than 80% of the market value rent. For example, if you use the dwelling for a month over the summer and you can identify actual usage charges that are a component to some of your expenses (eg, power), you can't deduct any of the usage component for that period as it relates solely to your private use of the dwelling. Similarly, any consumables you use at the dwelling are not deductible.

Expenses that are partly deductible

23. All of your other deductible expenses must be apportioned between the income-earning use of the dwelling, and the private use. This would be the case for expenses such as:

    - power bills;
    - internet expenses;
    - interest on your home loan;
    - property insurance (or what the insurance premium would be if you have to pay more because you rent out the property);
    - repairs and maintenance;
    - depreciation on chattels; and
    - rates (or what the normal residential rates would be if you have to pay more because you rent out the property).

24. There's a formula to use to apportion these expenses, so you know what proportion is deductible.

25. Under the formula, the proportion of expenses that are deductible reflects the income-earning use of the dwelling relative to the private use. Only days the dwelling is actually used are counted, so days it is available to be rented out but isn't actually rented out don't alter the proportion of expenses you may deduct.

26. For example, if you stayed at the dwelling for 30 nights a year, and rented it out for 25 nights, you could deduct 45.45% of your expenses (25 income-earning nights out of a total of 55 nights the dwelling was used).

27. The formula (in s DG 9 of the Income Tax Act 2007) refers to "days", but if a different unit of measure would give a more appropriate apportionment, you use that measure instead. For accommodation, "nights" would be the measure you would use. Therefore, the formula would be:

$$\text{your expenditure} \times \frac{\text{"income-earning" nights}}{\text{"income-earning" nights} + \text{counted nights}}$$

28. "Income-earning nights" are:

Nights the dwelling is used to earn income, other than exempt income

So nights you rent out the dwelling to someone who's associated with you or for "mates' rates" (less than 80% of the market value, as discussed from [12]) are **not counted** as "income-earning nights".

Nights you use the dwelling to repair damage caused by a renter

This **doesn't include** nights you stay at the dwelling to repair damage caused by renters you get exempt income from (which is in the two situations mentioned at [8] – associates and people paying "mates' rates"). It also **doesn't include** nights you stay at the dwelling to repair damage that's the result of ordinary wear and tear.

Your use of the dwelling to carry out the repairs must be necessary for you to be able to count those nights as "income-earning nights". Therefore, you may only count the nights you need to stay at the dwelling to complete the repairs from damage caused on an "income-earning night".

Nights the dwelling was reserved by someone who didn't end up using it

These nights may be counted as "income-earning nights" if the dwelling isn't available for use because the person who'd reserved it didn't end up using it. For example, a no-show, or a cancellation close to the reserved date which means the dwelling can't be used by someone else.

29. "Counted nights" are:

Nights the dwelling is used, but aren't "income-earning nights"

This includes nights you use the dwelling, nights someone associated with you uses the dwelling, and nights the dwelling is rented out for less than 80% of the market value rent.

Examples of "income-earning nights' and "counted nights"	
Income-earning nights	***Counted nights***
• You rent the property to a non-associated person at market rates. • Guests damage the property: - You stay there for two nights and spend the whole weekend repairing the damage *these are both income-earning nights* - After a tiring weekend of repairs, you decide to stay for an extra 2 nights *Only the nights you had to stay for the repairs are income-earning nights – the extra nights are "counted nights"* • A guest cancels on the first day of their 3-night booking and no-one else books the place for those nights.	• You stay at the property for a holiday. • You rent the property to your in-laws at market rates. • You rent the property to your best friend for "mates' rates" of $50 a night rather than the usual price of $100. • Your in-laws or friend who stayed at "mates' rates" damage the property and you stay there for two nights to spend the weekend repairing the damage. • The paint in the bedrooms is looking shabby, so you stay at the property for a week re-painting. • A non-associated guest paying market rates damaged the property, but the damage is only minor and you fix it in a couple of hours on your next family holiday at the property.

30. Example 1 at [36] shows how the apportionment formula works.

31. If you don't want to do the calculations yourself, there's a calculator on the Inland Revenue website that you can use to work out how much you may deduct for the expenses that need to be apportioned (eg, the expenses listed at [23]). (**www.ird.govt.nz/calculators/keyword/individualincometax/calculator-mixed-use-assets.html**)

32. Remember, if the dwelling is owned by a close company, there are special rules for interest deductions, which aren't covered here. See [18] for where to find out more about those special rules.

Losses and the expenditure quarantine rules

33. If you make a loss from renting out the dwelling (that is, the deductible expenses for the year exceeded the rental income), you might not be allowed to deduct all of your expenses for that year. These rules are called the "expenditure quarantine rules", and if they apply, you may only deduct your expenses up to the amount of the rental income from the dwelling. Any deductions in excess of that are carried forward to future income years until they're able to be offset against any future profits from the dwelling (whether the mixed-use asset rules or the standard tax rules apply in the year that you make a profit from the dwelling).

34. If the expenditure quarantine rules apply, the effect is that the allowable deductions in excess of the income from the dwelling can't be offset against your income from other sources (eg, your salary and wage income).

35. The expenditure quarantine rules apply if:

- your income from renting out the dwelling during the income year was less than 2% of the property's value; and
- you made a loss from renting out the dwelling (that is, the deductible expenses for the year exceeded the income).

36. In working out if your income was less than 2% of the property's value, you **don't include** exempt income (described Figure 1 at [8]). It's your taxable income from the dwelling that has to meet the 2% threshold. This is illustrated in Example 1.

Example 1: Using the apportionment formula

Matt's holiday home has a rating value of $300,000. He bought the holiday home before the last time the rating value was reset. Matt rented out his holiday home for 20 nights in the income year, at $200 a night. All of the rental nights were to people he isn't associated with, and at full market rate. Matt used the holiday home for 35 nights, and his brother (an associated person) used it for 12 nights.

Matt's fully deductible expenses (which relate solely to the rental use of the holiday home) for the year were $230 for advertising, and a total of $500 for cleaning services after each guest (not including associates or friends paying "mates' rates"). The expenses Matt has that relate to both the rental activity and the private use of the holiday home total $20,000 (which includes home loan interest, rates, insurance, utility bills and general maintenance). Matt does not have any expenses that relate only to his private use of the holiday home.

Using the apportionment formula, Matt calculates that he may deduct $5,970.15 of those expenses:

$$\$20{,}000 \times \frac{20}{67} = \$5{,}970.15$$

So the total amount Matt may deduct is $6,700.15 ($230 + $500 + $5,970.15).

His total income from renting out the holiday home was $4,000 (20 nights × $200).

Therefore, Matt therefore has a net loss of -$2,700.15.

Two percent of the property value for the holiday home is $6,000. Because Matt's income from renting the holiday home ($4,000) is less than that, he may only deduct expenses up to the amount of income – so $4,000 worth. The remaining deductible expenses ($2,700.15) are carried forward to the next income year.

37. The property value you use to measure the 2% threshold against is generally the local rating value. However, if you bought the property from someone you aren't associated with since the rates value was last set, you use the purchase price.

Note: If you would otherwise have quarantined expenditure for an income year, you may instead choose to opt out of the mixed-use asset rules. This is discussed in *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*

If you do this, all of the income from renting out the dwelling is classed as exempt income and you can't claim any related expenses as deductions. However, this QWBA is about how the mixed-use assets rules apply if you haven't opted out of them.

Who should declare the income?

38. The income belongs to the owner of the land (including leasehold land) and they must declare it to Inland Revenue. If there is more than one owner, the income needs to be split appropriately between them.
39. If the dwelling is owned in a trust, the rules about who has to declare the income are more complicated, and we recommend you see a tax advisor to help you with your affairs.
40. If you lease the property from a relative (other than a trust) and use it to earn income, you should ensure you're paying an adequate amount of rent for the property to the extent of the income-earning use. If you don't, the Commissioner can deem there to be adequate rent paid. This is to ensure that property can't be leased between relatives for low or nominal rent to shift income for a tax benefit (see s GC 5 of the Income Tax Act 2007).

What records do I need to keep?

41. Because the dwelling may or may not fall within the mixed-use asset rules (remember, you'll need to work out each year whether it does), you'll need to keep good records so you can apply the income tax rules correctly either way. This includes records of:
    - the number of nights you rent out the dwelling at market value, and how much income you receive for this;
    - the number of nights you rent out the dwelling at "mates' rates", and how much income you receive for this;
    - the number of nights you, or people you're associated with, used the dwelling;
    - when the dwelling was available to be rented out (this will be relevant if the standard rules apply);
    - any expenses you want to claim deductions for; and
    - any quarantined expenditure you have in respect of the dwelling.

Provisional tax

42. If the tax you have to pay at the end of the year is more than $2,500, you'll have to pay provisional tax the next year – which means you pay tax instalments during the year. There's information about provisional tax on the Inland Revenue website (**www.ird.govt.nz** keyword: provisional tax).

References

Subject references

bach
holiday house
income tax
mixed-use asset
short-stay accommodation

Legislative references

Income Tax Act 2007 – ss CC 1 and GC 5, and subpart DG

Other references

IR620 – Associated persons definitions for income tax purposes (April 2017) (**www.ird.govt.nz** keyword: ir620)

Overview – Short-stay accommodation items (Inland Revenue)

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

Special Report on mixed-use assets, Inland Revenue (14 August 2013) (**taxpolicy.ird.govt.nz/** search keyword: "special report" mixed-use)

QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

This "Question We've Been Asked" (QWBA) explains how the standard income tax rules apply to a dwelling you sometimes rent out as short-stay accommodation (eg, through Airbnb, Bookabach and Holiday Houses) and sometimes use privately.

Before you use this QWBA, you need to work out if the standard tax rules or the mixed-use asset rules apply to the dwelling. "QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?" will help you work that out.

Key provisions

Income Tax Act 2007 – s CC 1

Question

How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

Answer

If the standard tax rules apply, rental income from the dwelling will generally be taxable, including "mates' rates" rental income. The only exception is minor contributions to expenses from family and friends.

Costs that relate solely to renting out the property are fully deductible (eg, advertising). Costs that relate solely to your private use of the dwelling are not deductible. Other costs are partly deductible – the deductible amount is based on the number of nights the dwelling is rented or available to be rented relative to the total number of nights in the year.

If you make a loss from renting out the dwelling, you may not be able to deduct all of your expenses that year – some of your deductions might be carried forward to future years.

Key terms

Guest means a person provided with short-stay accommodation in return for payment.

Short-stay accommodation means accommodation provided for up to four consecutive weeks in a dwelling that is not the guest's ordinary residence. It doesn't include accommodation provided to residential tenants, boarders or care home residents, and it doesn't include student or emergency accommodation.

Explanation

1. If you have a dwelling that you sometimes rent out as short-stay accommodation, and also sometimes use yourself, you need to work out which income tax rules apply so you can meet your tax obligations. The dwelling could be a holiday home, or a separate dwelling on the same property you live on (eg, a sleepout or a cottage).
2. Depending on your circumstances, the dwelling will fall into either the **mixed-use asset rules** or the **standard tax rules**.
3. To work out which rules apply in your situation see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?* You'll need to revisit which rules apply each year.
4. This QWBA will be relevant if you've determined that for a particular income year the dwelling is subject to the **standard rules**.
5. This QWBA doesn't apply if the dwelling is owned by a company.

What is the main difference between the standard rules and the mixed-use asset rules?

6. The main difference between the standard rules and the mixed-use asset rules is how you calculate the proportion of expenses you may deduct. Under the standard rules, the proportion of expenses that's deductible is based on the **amount of time the asset is used for or available for income earning**.

What do I do if the standard tax rules apply to the dwelling?

7. If you've determined that the standard rules apply to the dwelling for a particular income year (see *QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?*), this QWBA will help you apply those rules. Remember, you need to look at whether the dwelling falls into the mixed-use asset rules or the standard rules **each income year** (which for most people is 1 April – 31 March).

What's income and what isn't?

Amounts received are generally income

8. If the standard rules apply to the dwelling, the amounts you receive from paying guests will generally be income under s CC 1 of the Income Tax Act 2007. The activity doesn't need to be run as a business for the amounts you receive to be income.
9. You'll be able to deduct expenses related to the dwelling. We explain how to work out what proportion of expenses are deductible from [13].

Minor contributions to expenses

10. An exception to amounts you receive from guests being income is where family or friends use the dwelling and aren't charged rent, but make a minor contribution to your expenses (eg, they pay you $20 towards power and heating). In that situation, the contribution isn't rental income, but you also can't claim any deductions for that period.

Renting the dwelling at "mates' rates"

11. If you rent the dwelling at less than full market rates (eg, to family or friends at "mates' rates"), the rent will be income. In this situation, Inland Revenue will accept a deduction for your expenses for that period up to the amount of rent received for the period.

What can I can claim deductions for?

12. You'll be able to claim deductions for 100% of expenses that solely relate to your rental activity. Any expenses that solely relate to your private use of the dwelling are not deductible. But many of your expenses will relate to both your income-earning and private use of the dwelling – these "mixed expenses" are only partly deductible.
13. You'll also be able to claim deductions for the depreciation of the chattels in the dwelling that paying guests can use. But, as with your mixed expenses, you can only claim for part of the depreciation because the chattels are used when the dwelling is rented out to earn income and also when it's used privately.
14. The following paragraphs will help you work out what deductions you may claim, and will help you calculate what percentage of your mixed expenses and depreciation is tax deductible.

Expenses that are fully deductible – expenses that relate solely to rental activity

15. You may claim deductions for 100% of expenses that solely relate to your rental activity. This would include:
    - advertising costs, including any commission or fee you pay to an advertising platform or transaction facilitator (this doesn't include any service fee the guests pay the platform – just fees you pay);
    - supplies used solely by your paying guests;
    - cleaning costs for the rental periods;
    - any additional insurance premium you pay (over what you would otherwise pay) because you rent out the property; and
    - any additional rates you have to pay (over what the normal residential rates would be) because you rent out the property.
16. You may have some expenses that you can split between being related solely to your rental activity and being mixed rental and private expenses. For example, expenses that have a fixed component and a usage component (eg, power). If you can identify actual usage charges for a period where the dwelling was only rented out and not used privately at all, you don't have to apportion the usage component for that period – it is fully deductible. The fixed charge component still needs to be apportioned, as it's necessary to maintain a power connection, which is used both privately and by paying guests.

Expenses that are non-deductible – expenses that relate solely to private use

17. Any expenses that relate solely to private use of the dwelling are not deductible (this includes use by family or friends who aren't charged rent). For example, if you use the dwelling for a month over the summer and you can identify actual usage charges that are a component to some of your expenses (eg, power), you can't deduct any of the usage component for that period as it relates solely to your private use of the dwelling. Similarly, any consumables you use at the dwelling are not deductible.

Expenses that are partly deductible – expenses that relate to both rental activity and private use

18. You may only claim deductions for **part of** any expenses that relate to both your rental activity and the private use of the dwelling. These sorts of mixed expenses would include:
    - power bills (but see [16] and [17]);
    - internet expenses;
    - interest on your home loan;
    - property insurance (or what the insurance premium would be if you have to pay more because you rent out the property);
    - repairs and maintenance; and
    - rates (or what the normal residential rates would be if you have to pay more because you rent out the property).
19. Where you rent out a dwelling that you also sometimes use, to work out what proportion of these mixed expenses you may claim, you need to take into account:
    - the periods the property is rented out (including at "mates' rates") or available to be rented out; and
    - the periods the property is used privately (this includes use by family or friends who aren't charged rent).
20. Generally, to work out the proportion of your expenses you may deduct, you multiply those expenses by:

$$\frac{\text{nights the dwelling is rented out or available to be rented out}}{\text{nights in the year}}$$

21. You'll need to keep track of the number of nights you rent out the dwelling, and you'll need to have evidence of when it was available to be rented out. This evidence needs to be more than a mere statement of its availability, sporadic or limited advertising, or advertising that isn't likely to attract many customers. You need to have evidence of active and regular marketing of the space at market rates, and that it's available at times and for periods that demonstrate it's genuinely available to rent.
22. Nights the dwelling is used privately aren't counted as nights it's available to be rented out. This is the case even if the property remains advertised (eg, if you don't mark it as being "unavailable" or "booked" in an online booking system). Private use includes when you use the dwelling, and also when family or friends use it if they aren't charged rent (even if they make a minor contribution to your expenses, as noted at [10]).
23. If renters have access to the whole dwelling (ie, there are no parts they are not permitted to use), your apportionment is just based on the number of nights the dwelling is rented out or available to be rented out, as a proportion of the total nights in the year.

Example 2

Nathan and Joel have a holiday house in Queenstown, that they and their extended family use for a total of 100 nights during the year. The house is rented out for 240 nights during the year, and is advertised and available to be rented out throughout the year except when the family want to use it. The holiday house isn't in the mixed-use asset rules, as it's not unused for 62 days or more during the year.

Nathan and Joel may deduct 100% of their expenses that relate solely to the rental activity. These expenses include the cost of advertising the house for rent, their host service fees, the additional rates they pay (over what the normal residential rates would be) because they rent the property out, and the additional insurance premium they pay (over what they'd otherwise pay) because they rent the property out.

The house is rented out or available to be rented out for 265 out of the 365 nights of the year, so Nathan and Joel calculate that they may deduct 72.60% of their mixed expenses:

$$\frac{265}{365} \times 100 = 72.60\%$$

These expenses include the interest on Nathan and Joel's home loan, utility bills, repairs and maintenance costs, the amount of their rates that equates to what the standard residential rates would be if the property wasn't in a higher rating category, and the amount of their insurance premium that equates to what their premium would be if the property wasn't rented out.

24. If part of the house isn't available for use by the guest (eg, a locked room in which you store your personal possessions), you may not deduct the proportion of mixed expenses that relate to that space. You need to factor in the floor area calculations like this:

Example 3

Nathan and Joel from Example 2 keep items they and their family use on holiday in one of the bedrooms in the house, which is locked, and can't be used by guests. The bedroom is $25m^2$, and the whole house is $200m^2$

Nathan and Joel calculate that they may deduct 63.53% of their mixed expenses:

$$\frac{175}{200} \times \frac{265}{365} \times 100 = 63.53\%$$

Depreciation of chattels

25. As noted at [13], you'll also be able to claim deductions for the depreciation of the chattels in the dwelling that paying guests can use. Depreciation deductions reflect that chattels in the dwelling are subject to wear and tear, resulting in a reduction in their value while being used to earn income.
26. As with your mixed expenses, you may only claim for part of the depreciation because the chattels are used when the dwelling is rented out to earn income and also when it's used privately.
27. The approach to work out how much depreciation you may claim each year is similar to the approach for apportioning mixed expenses. But it does differ slightly, as there is a specific apportionment formula in the Income Tax Act 2007 for depreciation of assets partly used to earn income.
28. Before you can apply the formula, you need to work out the depreciation loss for the year for each asset.
29. For low value items ($500 or less), the depreciation loss is the item's cost. If the item is part of a group of items you purchased at the same time from the same supplier, and the items would have the same depreciation rate, the $500 threshold applies to the group of items. For example, if you bought $2,000 worth of linen at one time, you would have to depreciate the linen using one of the methods mentioned at [30].
30. For other items, you work out the depreciation loss for the year using either the diminishing value method or the straight-line method. There's information about those methods on Inland Revenue's website (**www.ird.govt.nz** keyword: depreciation), and you can find the relevant depreciation rates using Inland Revenue's depreciation rate finder – available on Inland Revenue's website (**www.ird.govt.nz/calculators/keyword/depreciation/calculator-depreciation-rate-finder.html**).

Whichever method you use, you can't pool assets to depreciate them as a single asset if they're partly used privately – so you won't be able to use the pooled approach for the chattels in the dwelling.

31. Once you know the depreciation losses for the year for the chattels in the dwelling that paying guests can use, you need to work out what proportion of those losses you may deduct. To do this, multiply those losses by:

$$\frac{\text{nights the dwelling is rented out or available to be rented out}}{\text{nights in the year the dwelling is used or available for any purpose}}$$

32. While it is the chattel depreciation that is being worked out, the chattels are only used or available for use when the dwelling is – which is why the dwelling rental and availability nights are used to calculate the allowable chattel depreciation loss.
33. The difference between this formula and the approach for mixed expenses is that you are identifying the number of nights the dwelling is rented out or available to be rented out as a proportion of all of the nights in the year it is available for any purpose, rather than as a proportion of all of the nights in the year. So, if the dwelling is not available for use by anyone for a period, those nights are not counted.

Example 4

Nicola has a holiday home in a popular tourist town. She and friends used it for a total of 80 nights during the year, and it was rented out for 230 nights. The house was uninhabitable for 52 days during the year, while Nicola had the house extended by building a loft bedroom and deck with lake views. The house was advertised and available to be rented out throughout the year, except when booked out for Nicola and her friends to use, and over the building period. The holiday home isn't in the mixed-use asset rules, as it's not unused for 62 days or more during the year.

Nicola calculates that she may deduct 63.84% of her mixed expenses (home loan interest, insurance, rates, power bills, internet, etc):

$$\frac{233}{365} \times 100 = 63.84\%$$

However, for depreciation the calculation is slightly different. Instead of dividing the rental/available for rental days by the number of days in the year, the total of those days is divided by the number of days the property is used or available for any purpose, which would exclude the 52 building days when it couldn't be used. Nicola calculates that she may deduct 74.44% of her depreciation losses for the chattels in the house:

$$\frac{233}{313} \times 100 = 74.44\%$$

Losses and the proposed rental expenditure ring-fencing rules

34. There are currently rules proposed that may mean that if you make a loss from renting out the dwelling (that is, your deductible expenses for the year exceeded the income), you might not be allowed to deduct all of your expenses that year – some might be carried forward to future income years. If these rules are enacted, there will be information about them on Inland Revenue's website.

Who should declare the income?

35. The income belongs to the owner of the land (including leasehold land) and they must return it to Inland Revenue. If there is more than one owner, the income needs to be split appropriately between them.
36. If the dwelling is owned in a trust, the rules about who has to declare the income are more complicated, and we recommend you see a tax advisor to help you with your affairs.
37. If you lease the property from a relative (other than a trust) and use it to earn income, you should ensure you're paying an adequate amount of rent for the property to the extent of the income-earning use. If you don't, the Commissioner can deem there to be adequate rent paid. This is to ensure that property can't be leased between relatives for low or nominal rent to shift income for a tax benefit (see s GC 5 of the Income Tax Act 2007).

What records do I need to keep?

38. Because the dwelling may or may not fall within the mixed-use asset rules (remember, you'll need to work out each year whether it does), you'll need to keep good records so you can apply the income tax rules correctly either way. This includes records of:
    - the number of nights you rent out the dwelling at market value, and how much income you receive for this;
    - the number of nights you rent out the dwelling at "mates' rates", and how much income you receive for this;
    - the number of nights you, or people associated with you, used the dwelling;
    - when the dwelling was available to be rented out (see [21] and [22]);
    - any expenses you want to claim deductions for; and
    - any ring-fenced expenditure you have in respect of the dwelling.

Provisional tax

39. If the tax you have to pay at the end of the year is more than $2,500, the next year you'll have to pay provisional tax – which means that you pay tax instalments during the year. There is information about provisional tax on the Inland Revenue website (**www.ird.govt.nz** keyword: provisional tax).

References

Subject references

bach
holiday house
income tax
mixed-use asset
short-stay accommodation

Legislative references

Income Tax Act 2007 – ss CC 1 and GC 5

Other references

Overview – Short-stay accommodation items (Inland Revenue)

QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?

QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?

QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home?

This "Question We've Been Asked" (QWBA) explains whether hosts who provide short-stay accommodation in their house or property can register for GST. This QWBA is part of a series of items dealing with common issues encountered by those listing properties through peer-to-peer websites (eg, Airbnb, Bookabach and Holiday Houses).

Key provisions

Goods and Services Tax Act 1985 (the Act) sections: 2 (definition "dwelling"), 5, 6, 8, 11(1)(mb), 14, 20, 21, 21F and 51.

Question

Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home?

Answer

Yes. Supplies of short-stay accommodation are taxable supplies. Provided you have a "taxable activity" of continuously or regularly supplying (or intending to supply) short-stay accommodation to guests for payment, you may register for GST.

If your supplies exceed $60,000, or are likely to, in any 12-month period you must register. In most cases supplies of short-stay accommodation will likely be below the registration threshold of $60,000 in a 12-month period but you may voluntarily register for GST. However, registering for GST will not be right for everyone.

If you register for GST, there are on-going requirements and when you sell your property or stop providing short-stay accommodation you will likely have GST to pay.

Key terms

Guest means the recipient of the supply of short-stay accommodation.

Host means the person supplying the short-stay accommodation.

Short-stay accommodation means accommodation provided for up to four weeks in a dwelling that is not the guest's principal place of residence. It does not include accommodation provided to residential tenants, boarders or care home residents, and it does not include student or emergency accommodation.

Explanation

1. If you supply short-stay accommodation by renting out your house, a room in your house, a separate dwelling on your property, or your bach or holiday home then you can potentially register for GST.
2. To register under the Act, you need to have a "taxable activity". A taxable activity involves making taxable supplies but excludes making exempt supplies. Confusion exists because some supplies of residential accommodation (such as long-term residential rental) are exempt under the Act. However, supplies of short-stay accommodation (as that term is used in this QWBA) are taxable supplies, so are not excluded from a taxable activity.
3. A taxable activity involves continuously or regularly supplying (or intending to supply) short-stay accommodation to guests for consideration (ie, payment). Determining whether your level of activity is sufficient to be a taxable activity is a question of fact.
4. If you carry on a taxable activity, you may register for GST. If your supplies exceed $60,000 in a 12-month period, you must register for GST. If your supplies are less than this amount, you may still voluntarily register for GST. If you register for GST you will have additional compliance costs in terms of recordkeeping, invoicing, regular filing of returns and adjustments for private and income-earning use. You will also need to balance the benefit of an initial GST refund for a portion of the property against the subsequent GST tax liability when the property is sold or your taxable activity ends. Because GST is charged on the property's value and property usually increases in value, your GST tax liability when you sell or stop your activity will generally be greater than any initial benefit you receive.
5. In working out whether to register for GST, you need to understand the following aspects of GST:
    - supplies of short-stay accommodation;
    - carrying on a taxable activity;
    - registering for GST;
    - on-going requirements; and
    - stopping a taxable activity.

Supplies of short-stay accommodation

6. A taxable activity involves making taxable supplies but excludes making exempt supplies. The Act treats the supply of accommodation in a "dwelling" as an exempt supply. A question arises as to whether the supply of short-stay accommodation in a room in your home or property is the supply of accommodation in a "dwelling" and an exempt supply.
7. "Dwelling" is defined in the Act by the nature of the use of the accommodation by the guest and not the function of the premises. While the accommodation may be a dwelling from your perspective, it does not mean there is a supply of accommodation in a dwelling from the guest's perspective. For a supply of accommodation to a guest to be in a "dwelling":
   - the premises must be the guest's principal place of residence;
   - the guest must have rights of quiet enjoyment (from s 38 of the Residential Tenancies Act 1986); and
   - the premises cannot be a commercial dwelling.
8. Short-stay accommodation in this QWBA means accommodation provided for up to four weeks in a dwelling that is not the guest's principal place of residence. It is assumed the guest will have a main residence elsewhere. This means the first requirement for the supply of accommodation to be an exempt supply will not be satisfied.
9. Quiet enjoyment in the Residential Tenancies Act 1986 generally applies to longer-term residential tenancies and not to short-stay accommodation that is commonly offered on peer-to-peer websites. The quiet enjoyment must be without interruption from the landlord. It is unlikely you will provide this, and the standard terms and conditions on peer-to-peer websites normally exclude such rights of quiet enjoyment. The second requirement for the supply of accommodation to be an exempt supply is not satisfied either.
10. This means the supply of short-stay accommodation to a guest in your home or property will not be the supply of accommodation in a "dwelling" and an exempt supply. Your home or property will not be the guest's principal place of residence and the guest will not have rights of quiet enjoyment. Because short-stay accommodation fails to satisfy these two requirements it is irrelevant whether your premises are also a "commercial dwelling".
11. This means the supply of short-stay accommodation is a taxable supply, so you might be able to register for GST.

Carrying on a taxable activity

12. To register for GST, you must be carrying on a taxable activity. For a taxable activity to exist:
    - there must be an activity;
    - which is carried on continuously or regularly by a person; and
    - that involves, or is intended to involve, supplies made to another person for consideration.
13. Where you provide short-stay accommodation, you will usually be carrying on an activity and the first requirement will be met.
14. The second requirement is that your activity is "carried on continuously or regularly". For an activity to be carried on "continuously", you must carry on the activity over a period or in a sequence uninterrupted in time. The activity must not have stopped in a permanent sense or have been interrupted in a significant way. For your activity to be carried on "regularly", it must be carried on at reasonably short intervals with a steadiness or uniformity of action. Your activity must recur or be repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character. An activity that is intermittent or occasional does not qualify. (*Newman v CIR* (1994) 16 NZTC 11,229 (HC), *Allen Yacht Charters Ltd v CIR* (1994) 16 NZTC 11,270, *Wakelin v CIR* (1997) 18 NZTC 13,182 and *Case N27* (1991) 13 NZTC 3,229).
15. A "taxable activity" must also be an activity that "involves or is intended to involve" the supply of goods and services to another person for consideration. This means your activity of providing short-stay accommodation must be for money. Sometimes you can have a taxable activity before you start getting paying guests. In determining the nature and character of an activity, any stated intention can be tested against the objective realities of the case and generally "actions speak louder than words" (*Case N27*). Where you are registering because you intend to start carrying on a taxable activity you must specify a commencement date.
16. Determining whether a taxable activity is being carried on, including whether it is being carried on continuously or regularly, is a question of fact and degree. If short-stay accommodation is offered in your own home and does not occur very often, it can be difficult to determine whether the activity is sufficiently continuous or regular. All of the circumstances will need to be considered. The factor that usually will be the strongest indicator of a taxable activity is occupancy.

Some factors that **may be** relevant in the short-stay accommodation context (particularly where the premises are your own home) could potentially include:

- the level of occupancy;
- the steps you have taken to start providing short-stay accommodation (for example, undertaking feasibility studies, preparing business plans, advertising (nature and extent), and approaching local authorities for necessary consent, if required);
- whether your property is listed on various websites and at an appropriate price;
- the type, size, design and layout of your home or premises;
- the location of your home or premises and hence it's desirability;
- the extent and nature of modifications to your home or property to enable you to provide short-stay accommodation;
- the time you dedicate, and can dedicate, to the activity;
- whether you make the short-stay accommodation available over a sustained period;
- the steps you have taken that demonstrate a continuing commitment to supply short-stay accommodation, for example, advertising and ongoing marketing activities; and
- future bookings.

17. If you do not have a taxable activity, then you cannot register for GST. However, there may still be income tax implications. For more information see "Overview – Short-stay accommodation items" (Inland Revenue). If you do have a taxable activity, then you may register for GST. However, this does not necessarily mean that registration is either compulsory or right for you. These issues are discussed in the next section of this QWBA.

Example 1

Luke and Betty own a three-bedroom house in a suburb of Lower Hutt. They were not that interested in renting out their home to strangers and they thought the income would be only modest as demand is limited for short-stay rentals in their suburban neighbourhood. That changed when they heard the area was set to host the Golden Oldies Commonwealth Games and that they could rent out their house for $1,000 a night. They listed their home on a website, and it was booked for 10 nights. They spent the time visiting their grandchildren in Australia.

Luke and Betty thought it worked so well that they plan to do something similar in two years' time during a rugby tournament. Apart from that, they have no intention of listing their property again.

One-off or occasional rentals (even though they can be lucrative) will not be a taxable activity as the activity does not satisfy the requirement of being continuous or regular. The rugby tournament is too far away for the activity to be continuous (and Luke and Betty's plans are too uncertain). Therefore, Luke and Betty do not have a taxable activity as this was essentially a one-off.

Example 2

Peggy has seen various news items about Airbnb homestays. She has heard that it is a growth industry and a way of meeting interesting people. Her husband, who is in full-time employment, agrees. The couple live in a small farming town situated just off a main highway. It is a pleasant enough place, but does not have any notable attractions. The couple investigate the possibility of selling their existing home and buying a bigger property. They register for GST stating their taxable activity to be "homestay operators". They sell their present home and buy a three-bedroom home about 10 kilometres from town. They claim an input tax deduction on part of the purchase price of the house.

As soon as they move in, they advertise the homestay on a peer-to-peer website and put up a homestay sign outside the front gate.

Inland Revenue queries the input tax deduction claim. Enquiries reveal that:

- the town is too remote to attract guests on a regular basis;
- the taxpayers have not undertaken research into the local market and have not taken any significant steps to ascertain the viability of the activity;
- the distance of the home from the remote town makes it less likely that anyone would choose to stay there on holiday; and
- at the time the claim is queried (6 months after registration) only two paying guests have stayed (and they were relatives of town residents).

In the absence of other evidence being provided, this claim would probably be disallowed on the basis that the taxpayers are not carrying on a taxable activity.

Example 3

Mai owns a small one-bedroom apartment in central Auckland. To help pay the mortgage she lets her entire apartment on Airbnb and goes and stays with her family in the Waikato. To make it worth her while she lists her apartment for $350 a night for a minimum of two nights. Charging a premium means she generally has guests only for weekends when there are big events on. She researches and targets big events like concerts, sports games and cultural events.

Over the Christmas and summer holidays her apartment is rented for 4 weekends. Mai also has guests for 2 weekends for big concerts during February and a further weekend in March when the Black Caps play Australia. Over the next 9 months there are periods when there are no big events and Mai has far fewer bookings. She has guests for only 6 weekends during those remaining 9 months.

Mai has a taxable activity. Although there are periods when she does not make supplies she has not stopped the activity in a permanent sense. The activity is also carried on regularly at (mostly) short intervals. There are "seasonal fluctuations" depending on what events are scheduled but the rental activity recurs and is habitual in nature and character. Further Mai dedicates a lot of time researching events coming up in Auckland and ensuring her pricing is profitable but competitive.

Registering for GST

18. Provided you have a taxable activity, the Act requires you to register when the value of supplies you make in the course of carrying on "all" your taxable activities has or will exceed $60,000 (exclusive of GST) in any 12-month period. This is the total amount you receive before taking expenses into account. You need to be aware of two issues when calculating the $60,000 threshold:
    - Because all taxable activities are included, it is not necessary that any one taxable activity exceeds $60,000 in annual supplies. Amounts you earn from other taxable activities are included in calculating whether you exceed the registration threshold. This could apply, for instance, if you have another business.
    - The threshold calculation includes supplies to "associated persons" that will be valued at the open market value. This could apply, for instance, if a holiday home is owned by a family trust and rented out by the trustees who also allow the beneficiaries to stay for no or reduced consideration. The use of the property by the beneficiaries may be valued at market rates in calculating whether you exceed the registration threshold.
19. Even if the value of your supplies is less than $60,000 per year, you may voluntarily register if you carry on a taxable activity. However, as the following discussion shows, there are on-going requirements and obligations if you register for GST.

On-going requirements if you register for GST

20. If you register for GST, you must satisfy on-going requirements and obligations. The following paragraphs summarise some of the main consequences of registration. This summary is a broad overview intended only as general guidance. Individual circumstances are inevitably different. Some aspects of GST, such as adjustments, depend on the particular circumstances, and hosts should consider seeking advice from a tax advisor.

Administrative requirements

21. If you register for GST, you must file a GST return for each return period. For most hosts this will mean 6-monthly or 2-monthly returns. You will also need to satisfy the administrative requirements around invoicing and record keeping.

Output tax

22. The GST charged on the supplies a registered person makes is called output tax. GST that you pay on goods and services you acquire is called input tax. If you register for GST, you need to account for GST output tax on all supplies you make of short-stay accommodation (including supplies to "associated persons"). From the amount of output tax payable in any return period, you can deduct some of the input tax you paid to determine the amount of tax payable.

Input tax

23. Generally, you can claim input tax deductions to the extent to which the goods or services you acquire are used for, or are available for use in, making taxable supplies. Where the short-stay accommodation is provided in your own home or in a property that you also use privately, you cannot claim the full amount of GST input tax that you paid. You need to do an apportionment calculation.

Apportionment

24. Where the goods or services are used for both private purposes and making taxable supplies then the expenditure must be apportioned based on use (or intended use). Input tax on buying a property is apportioned based on how you intend to use the property and is subject to subsequent on-going adjustments where the actual use is different from the intended use.

Change-in-use adjustments

25. If you register for GST, the Act requires you to work out at the end of an "adjustment period", whether an adjustment is required for any difference between your intended use and the actual use of a property used for providing short-stay accommodation. An adjustment period is generally a year ending on your balance date. The calculation is then repeated each year.

26. Not every change of use requires an actual adjustment provided the value and change of use remain below the thresholds in the Act. However, the requirement to calculate whether you need to make an adjustment applies for the whole time you own the land and remain registered for GST. In practice, this means when you claimed GST input tax on the purchase price or construction, you need to make annual adjustments where actual use is different to that initial intended use.

Special rules for mixed-use assets

27. There are special rules for calculating input tax for "mixed-use assets". A mixed-use asset is an asset that has both an income earning use and private use but is unused for at least 62 days a year (eg, holiday homes and baches). Put simply, the calculation ignores periods of non-use (eg, when a bach is empty) and input tax is divided between income-earning use and private use.

Entitlement to input tax deduction for goods acquired before registration

28. Under the Act you may make an adjustment for goods purchased before you became GST registered that you subsequently use to make taxable supplies. Land and buildings can be "goods" in this context. This rule means an adjustment is allowed for your property if you acquired it before you registered for GST. This means your property will become subject to the same apportionment rules as any other asset. It also means a likely GST liability on sale or cancellation of registration. The Act allows you to bring property purchased pre-registration into the GST rules, but it does not allow you to claim GST input tax for periods when you owned that property prior to registration.

Stopping a taxable activity

29. If you must register, or decide to register for GST, you need to be aware of what happens if you sell your property or stop providing short-stay accommodation from your property. In both cases, you will need to pay GST.

Accounting for GST on sale

30. When you sell your property, you will have to account for GST output tax on the sale of the property. Depending on your circumstances, you may have to charge and account for GST on the sale proceeds from the property, but a deduction will be allowed for input tax that has not previously been claimed on the purchase price. Given the likely appreciation in value of the property, GST on sale will exceed (possibly significantly) the further input tax claimable.
31. There are a number of special provisions that deal with supplies of a dwelling and treatment on disposal that may apply to the sale of your property. Particularly relevant are the zero-rating provisions that charge GST at 0% on certain supplies of land and dwellings. However, for this to apply, the buyer of your property must be registered and have the intention of using the property to make taxable supplies – whether by also providing short-stay accommodation or some other taxable supplies. If this and other criteria are met, then GST is charged at 0%. This effectively means that you don't pay GST on sale. However, the more common situation with sales of residential property would be to non-registered persons and such sales will attract GST.

Cancelling GST registration

32. You can ask the Commissioner to cancel your registration where the value of your taxable supplies is below the registration threshold. Alternatively, if you stop your taxable activity, you **must** notify the Commissioner within 21 days and your registration for GST will be cancelled. However, if you have taxable activities other than providing short-stay accommodation (eg, if you have another business) you may remain registered for GST but you will be required to undertake a change-in-use adjustment for your property.
33. The Commissioner also has the power to cancel your GST registration if she is satisfied that you are not carrying on a taxable activity. The Commissioner might suspect this is the case if you continue to be registered but file only "nil" returns and no longer make any taxable supplies.
34. If you stop being eligible to be registered for GST, you must account for GST output tax on any goods and services forming part of the assets of your taxable activity immediately before you stopped being a registered person (s 5(3) of the Act). You must account for GST based on the open market value of your assets used in your taxable activity (s 10(7A)). This means you will pay GST output tax based on the value of your property if you stop providing short-stay accommodation. Without planning for this, this can cause issues for two main reasons:
    - The output tax payable will usually be significantly more than the initial input tax claimed because property prices tend to rise over time. This means the relative amount of GST payable if you stop your activity will be more than the amount you originally claimed.
    - You may not have available funds to pay the GST. If you sell your property, you will have the money from the sale to pay the GST. If you just stop your activity, you still need to pay the GST, but you won't have the sale money to pay the GST.

Example 4

Baz has the opportunity to buy a house in Turangi. The house costs $400,000 but Baz reckons the local housing market is so strong that it will be worth $480,000 in a few years. He wants to either:

- Rent the property to residential tenants; or
- List the property as a holiday home on a website. He will use the property exclusively for providing short-stay accommodation. He believes the property will be popular year-round because of the proximity to the ski fields, the Tongariro Crossing and good fly fishing spots.

Baz wants to know whether he can register for GST.

Residential tenants

If he rents the property to residential tenants he cannot register for GST. The supply of accommodation in a dwelling is not a taxable supply. If rented to residential tenants it is likely to be a supply of accommodation in a dwelling because it is the tenants' principal place of residence and they have quiet enjoyment under their residential tenancy.

Short-stay accommodation

The provision of short-stay accommodation (as that term is used in this QWBA) is a taxable supply. It will not be an exempt supply of accommodation in a dwelling because the house will not be the guest's principal place of residence and they will not have rights akin to quiet enjoyment.

Baz can register for GST provided he has a taxable activity. Based on his research, Baz believes he can rent the property year-round. He estimates 120 nights of bookings per year at an average of $200 per night ($24,000 pa). If he proceeds with his plan Baz will have a taxable activity.

The value of supplies in any 12-month period will be well below the $60,000 threshold and so registration is voluntary. If Baz does register for GST, there will be administrative requirements concerning invoicing and recordkeeping. He will also be required to make returns on either a two or six-monthly basis.

Output tax will need to be returned on the supplies Baz makes (about $3,000 on his estimated supplies of $24,000).

However, Baz will be able to claim input tax deductions on expenditure he incurs in providing the short-stay accommodation. This includes an input tax deduction on the purchase price of the property. (If Baz uses the property for his own use, he will need to apportion any input tax deductions and make subsequent adjustments. If there is private use, Baz will also have to consider the rules for mixed use assets.) If Baz sells (presuming it is not a zero-rated sale) he will have to account for GST output tax on the sale. Should Baz stop his taxable activity, his GST registration would be cancelled, and he would need to pay GST output tax based on the value of the property.

Decision not to register

Baz decides to use the property to solely provide short-stay accommodation but decides not to register for GST because he does not want the extra compliance costs. He also intends to retire in a few years and wants to use the house as a holiday home solely for his family. He does not want to be liable for GST output tax when he stops his taxable activity. Baz calculates the expected increase in the property's value would leave him over $10,000 worse off:

- GST input tax will be $\frac{3}{23} \times \$400{,}000 = \$52{,}174$
- GST output tax will be $\frac{3}{23} \times \$480{,}000 = \$62{,}609$

References

Subject references

GST

short-stay accommodation

Legislative references

Goods and Services Tax Act 1985 ss 2 (definition for "dwelling"), 5, 6, 8, 11(1)(mb), 14, 20, 21, 21F and 51.

Residential Tenancies Act 1986, s 38

Case references

Allen Yacht Charters Ltd v CIR (1994) 16 NZTC 1,270

Case N27 (1991) 13 NZTC 3,229

Newman v CIR (1994) 16 NZTC 11,229 (HC)

Wakelin v CIR (1997) 18 NZTC 13,182

Other references

Overview – Short-stay accommodation items (Inland Revenue)

STANDARD PRACTICE STATEMENTS

These statements describe how the Commissioner will, in practice, exercise a discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

SPS 19/03: Income equalisation deposits and refunds

Introduction

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement sets out the Commissioner's practice regarding the statutory powers to accept income equalisation deposits for a tax year outside the specified period, and to accept refund applications for a tax year outside the specified period.

Unless specified otherwise, all legislative references in this Statement refer to the Income Tax Act 2007 ("ITA").

Application

This Statement applies from 4 April 2019 and replaces SPS 17/01 *Income equalisation deposits and refunds* issued in August 2017.

The Statement applies to income equalisation deposits and refunds made under:

- the main income equalisation scheme (under ss EH 3 to EH 36), and
- the thinning operations income equalisation scheme (under ss EH 63 to EH 79).

However, it does not apply to:

- the adverse event income equalisation scheme (under ss EH 37 to EH 62) – repealed effective for income years beginning after 18/03/2019.
- refunds from the main income equalisation account to:
  - persons who retire, die or are made bankrupt (under ss EH 17 to EH 24), or
  - companies that are put into liquidation (under ss EH 25 and EH 26)
- refunds from the thinning operations income equalisation account to companies that carry on a forestry business in New Zealand and are put into liquidation (under ss EH 75 and EH 76).

Standard Practice

Summary

Deposits

1. Eligible taxpayers may make a deposit into the applicable income equalisation scheme.
2. To be deductible in an accounting year, the deposit must be received by the Commissioner:
   - within the accounting year;
   - within the specified period after the end of the accounting year; or
   - within a time after the end of the specified period for an accounting year that the Commissioner allows in a case or class of cases (a "late deposit").
3. The taxpayer must, at the time the deposit is made, notify the Commissioner if the deposit is not for the current accounting year.
4. The Commissioner will accept a late deposit where the deposit is provided by the earlier of:
   - one month from the date the taxpayer's income tax return was filed for an accounting year;
   - one month from the taxpayer's income tax return due date for an accounting year.

5. In exceptional circumstances, the Commissioner will extend her discretion beyond the timeframe set out in [8]. This is discussed in more detail at [91] to [102].
6. The Commissioner must consider every request to allow a late deposit on a case-by-case basis and will decide whether to accept a deposit for the nominated accounting year after careful consideration of the taxpayer's particular circumstances.
7. Where the Commissioner declines to allow a late deposit for the accounting year nominated by the taxpayer, the deposit may still be applied to the accounting year the deposit was made in. In this situation, the Commissioner will first contact the taxpayer to give them the option of continuing with the deposit or having it returned to them.
8. The taxpayer is allowed a deduction for a deposit made into the applicable income equalisation scheme for the accounting year that was set out in the taxpayer's notice, provided it is accepted by the Commissioner for the relevant accounting year. If the taxpayer's income tax return was filed before the deposit was made, the Commissioner will reassess the return to include the deduction.

Refunds

9. An eligible taxpayer may apply for a refund from the applicable income equalisation scheme.
10. A deposit cannot generally be refunded until it has been in the scheme for one year unless specific circumstances apply. However, the Commissioner may allow an early refund where she is satisfied that the early refund is required for a purpose a refund should be given for.
11. A refund within the one-year period can only be allowed when certain legislative criteria are met. The criteria discussed in this statement are:
    - To enable the taxpayer to undertake planned development work;
    - To enable the taxpayer to buy livestock or replacement livestock;
    - To avoid them suffering serious hardship;
    - To do anything else that the Commissioner determines in a case or class of case is a purpose for which a refund should be given.
12. In every case the taxpayer is required to provide evidence to support the reason for the early refund.
13. A refund from the scheme is income in the income year in which the Commissioner receives the application except where the taxpayer chooses the income to be allocated to an accounting year.
14. To be allocated as income in an accounting year, the application must be received by the Commissioner:
    - within the accounting year; or
    - within the specified period after the end of an accounting year; or
    - within a time after the end of the specified period for an accounting year that the Commissioner allows in a case or class of cases (a "late application").
15. If the application for a refund is made within or after the specified period for an accounting year the taxpayer must, at the time of applying for the refund, notify the Commissioner that they elect the refund be allocated as income to that accounting year.
16. The Commissioner will accept a late application where the application is received by the earlier of:
    - one month from the date the taxpayer's income tax return was filed for an accounting year; or
    - one month from the taxpayer's income tax return due date for an accounting year.
17. In exceptional circumstances, the Commissioner will extend her discretion to accept a late application beyond the timeframe set out in [16]. This is discussed in more detail at [91] to [102].
18. The Commissioner must consider every request to allow a late application on a case-by-case basis and decide whether to allow the refund for the requested accounting year after careful consideration of the taxpayer's particular circumstances.
19. Where the Commissioner declines a late application for the accounting year elected by the taxpayer, the refund may still be applied to the accounting year the application was made in. In this situation, the Commissioner will first contact the taxpayer to give them the option of continuing with or withdrawing the application for a refund.
20. The taxpayer must return the income equalisation refund as income in the accounting year nominated in the taxpayer's notice, provided it is accepted by the Commissioner for the relevant accounting year. If the taxpayer's income tax return was filed before the application was made, the Commissioner will reassess the return to include the income equalisation refund as income.

21. The Commissioner must issue a refund of a deposit that is in a person's income equalisation account at the end of five years after the end of the accounting year the deposit was made for.

Background

22. The income equalisation scheme was introduced in 1965. At the time of introduction of the scheme it was stated that it would:
    - enable farmers to iron out rates of tax due to rises and falls in income;
    - encourage farmers to put aside part of their income in good years and to use this money for farm development in years when farm income falls;
    - help to remove a cause of inflation and therefore help to maintain a steadier rate of economic growth.
23. The scheme enables eligible taxpayers to:
    - make income equalisation deposits with the Commissioner; and
    - claim a deduction against their income in the accounting year; or
    - the deposit is made in, or
    - requested by the taxpayer in their notice to the Commissioner when they make a deposit, provided the request is accepted by the Commissioner.
24. When a refund is made from the scheme, the amount is included as part of the taxpayer's income in the accounting year:
    - in which the application for the refund is received by the Commissioner; or
    - elected by the taxpayer.
25. Since the implementation of the scheme use-of-money interest has been introduced. Farmers are not usually in a position to know their final financial position until after liability for use-of-money interest applies. Also, many farmers do not receive the bulk of their income until near the end of their tax year, so they have not had the use of that money throughout the year. The income equalisation scheme provides an avenue for farmers to limit their exposure to use-of-money interest.

Detailed discussion

Meanings

The following meanings describe terms used in this statement.

Accounting year

26. "Accounting year" is defined under s YA 1 and means a tax year or another 12-month period that ends with the taxpayer's balance date.
27. The definition of "accounting year" for a company also includes:
    - a period, shorter than twelve months, that is the period accounts are prepared for, including under the international tax rules, because of the formation of the company or the termination of the company's existence; and
    - a period, shorter or longer than twelve months, that is the period accounts are prepared for, including under the international tax rules, because of the company or a person adopting a new accounting balance date under ss EX 25 or EX 69.

Eligible taxpayers

28. "Eligible taxpayers" may reduce their net income for a tax year by making an income equalisation deposit into the applicable income equalisation scheme with the Commissioner pursuant to s EH 1(1).
29. Section EH 3(1) provides that eligible taxpayers in respect of the main income equalisation scheme are:
    - persons who carry on a farming or agricultural business on land in New Zealand; or
    - persons who carry on a fishing business; or
    - persons who derive income from forestry, but are not a company, public authority, Māori authority, or an unincorporated body.
30. Section EH 63(1) provides that eligible taxpayers for the thinning operations income equalisation scheme are companies that carry on a forestry business on land in New Zealand and derive income from carrying out thinning operations on the land.

31. The thinning operations income equalisation scheme does not apply to natural persons.

Serious hardship

32. The term "serious hardship" is not defined in the legislation. Although the ordinary meaning of the words "serious" and hardship" would require that there is a degree of suffering or privation that is relatively significant in the circumstances, the historical background to the scheme suggests that "serious hardship" should not be an unduly high standard to satisfy.
33. However, a taxpayer must still show evidence that an early refund would be used to avoid them suffering serious hardship.
34. This would include a situation where, if the refund were not made, the future farming operation may be seriously jeopardised, or the farmer and their family may suffer significant hardship. Examples of this could include the need to dispose of breeding stock or being unable to undertake essential farm maintenance. Note that the Commissioner considers that deferring the application of fertiliser for one year would not seriously jeopardise future farming operations.
35. Factors likely to count against an early refund to avoid serious hardship are:
    - There are alternative and more traditional sources of credit available; or
    - The early refund, or the saving as a result of an early refund, will effectively be spent on things other than maintaining the farming operations or keeping debt lower (buy a new vehicle or spending more to upgrade machinery than is reasonable, for instance).

Specified period

36. "Specified period" is defined for the purposes of the applicable income equalisation schemes under ss EH 36, EH 79 and YA 1 and means the shorter of:
    - the period of six months after the end of the accounting year that corresponds to the tax year;
    - the period from the end of the accounting year that corresponds to the tax year to the date one month after the date the person must, under s 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

Examples

Calculating the specified period with an extension of time arrangement

In the case of a taxpayer with a balance date of 30 June 2018 and an extension of time arrangement to file their income tax return by 31 March 2019, the specified period is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 July 2018 to 31 December 2018
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 30 April 2019.

The specified period ends on 31 December 2018.

Calculating the specified period without an extension of time arrangement

In the case of a taxpayer with a balance date of 30 June 2018 without an extension of time arrangement, the specified period is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 July 2018 to 31 December 2018
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 7 November 2018.

The specified period ends on 7 November 2018.

Main income equalisation scheme

Section EH 4 – Deposit

37. The minimum deposit is $200. Deposit amounts cannot exceed a taxpayer's net income derived from carrying out their farming or agricultural, fishing or forestry activity in the accounting year the deposit is accepted. Any interest received from lending or investment activities will not form part of the deposit.
38. Where the net profit has been paid as a salary to trust beneficiaries or company shareholders, the Commissioner is not likely to reassess the taxpayer's income tax return and amend the salary paid to an income equalisation deposit. She will apply her discretion in the manner set out in *SPS 18/01: Retrospective adjustments to salaries paid to shareholder-employees* and *SPS 16/01: Requests to amend assessments*.

39. An eligible taxpayer may make a deposit into the main income equalisation scheme for an accounting year at any time during the accounting year or within the specified period for the accounting year.
40. The Commissioner has neither the ability nor the discretion under the Act to accept an early deposit into the main income equalisation scheme.
41. Section EH 4(4)(c) gives the Commissioner the discretion to accept a late deposit, ie, a deposit made within a time after the end of the specified period for an accounting year in a case or class of cases allowed by the Commissioner. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
42. If the deposit is made within or after the specified period for an accounting year the taxpayer must, at the time of making the deposit, notify the Commissioner that the deposit is for that accounting year.
43. Where the Commissioner does not accept a late deposit, it may, subject to consultation with the taxpayer, be applied to the accounting year in which the deposit was made.
44. Sections DQ 1 and EH 7 provide that the taxpayer can claim a deduction for the amount of the deposit in the applicable accounting year.
45. No deduction is allowed until the deposit is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allow the deduction.

Section EH 13 – Refund on request

46. A taxpayer may apply in writing for a refund from the main income equalisation scheme under s EH 13. If the taxpayer wants a refund from the main income equalisation scheme and none of the other relevant refund provisions apply the Commissioner must refund the amount applied for. This is to the extent to which the refund can be made up of one or more deposits that have been in the main income equalisation scheme for at least one year.
47. Section EH 14 provides that a refund under s EH 13 is allocated as income to the accounting year the Commissioner receives the application for the refund, unless either of these two situations apply:
    - The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
    - A late application is received. That is:
        - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases; and
        - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
48. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year the application was made in.
49. Sections CB 27 and EH 14 provide that the taxpayer must return the refund as income in the applicable accounting year.
50. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

Section EH 15 – Refund for development or recovery

51. A taxpayer may apply, in writing, for an early refund from the main income equalisation scheme in specific circumstances under s EH 15.
52. The Commissioner must refund an amount that has been in the main income equalisation scheme for more than six months to an eligible taxpayer to enable them to:
    - undertake planned development or maintenance work; or
    - buy, immediately after the refund is given, livestock for use in their farming business (other than to replace livestock disposed of or lost as a result of a self-assessed adverse event).

53. The Commissioner must refund an amount regardless of the length of time it has been in the main income equalisation scheme to an eligible taxpayer to enable them to:
    - buy, immediately after the refund is given, livestock for use in their farming business to replace livestock replaced or lost as a result of a self-assessed adverse event;
    - avoid suffering serious hardship;
    - do anything else the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.
54. The Commissioner has the discretion to allow a refund from the main income equalisation scheme, regardless of the length of time the deposits have been in the account, for the taxpayer to do anything the Commissioner determines in a case or class of cases is a purpose for which a refund should be given. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
55. If refund requests are made on the grounds that they will be used to avoid serious hardship, the taxpayer will need to be able to explain to the Commissioner how the refund will be applied to avoid serious hardship.
56. A forecast reduction in income as part of the normal fluctuations in prices which primary producers would expect to experience from time-to-time would not be enough, on its own, to meet the criteria. Although some degree of "hardship" may be on the horizon, the taxpayer will need to be able to show how that event will, or is likely to, lead to them experiencing "serious hardship".
57. It may be hard to show where money is deposited into the scheme and then asked to be withdrawn at the same time or shortly after. In that situation, the financial impact of an early withdrawal will only be the tax deferral and cash-flow benefits.
58. Section EH 16 of the Act provides that a refund under s EH 15 is allocated to the accounting year the Commissioner receives the application for the refund in, unless either of these two situations apply:
    - The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
    - A late application is received. That is:
      - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
      - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
59. Where the Commissioner does not accept the late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year the application was made in.
60. Sections CB 27 and EH 16 provide that the taxpayer must return the refund as income in the applicable accounting year.
61. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

Thinning operations income equalisation scheme

Section EH 64 – Deposit

62. The minimum deposit is $200. Deposit amounts cannot exceed a taxpayer's net income derived from carrying out thinning operations in the accounting year the deposit is accepted. Any interest received from lending or investment activities will not form part of the deposit.
63. Where the net profit has been paid as a salary to company shareholders, the Commissioner is not likely to reassess the company's income tax return and amend the salary paid to an income equalisation deposit. She will apply her discretion in the manner set out in SPS 18/01: Retrospective adjustments to salaries paid to shareholder-employees and *SPS 16/01: Requests to amend assessments*.
64. An eligible taxpayer may make a deposit into the thinning operations income equalisation scheme for an accounting year at any time during the accounting year or within the specified period for the accounting year.

65. Section EH 64(4)(c) allows the Commissioner to accept a late deposit, ie, a deposit made within a time after the end of the specified period for an accounting year in a case or class of cases allowed by the Commissioner. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.
66. If the taxpayer makes the deposit within or after the specified period the taxpayer must, at the time of making the deposit, notify the Commissioner that the deposit is for that accounting year.
67. Where the Commissioner does not accept a late deposit, it may, subject to consultation with the taxpayer, be applied to the accounting year the deposit was made in.
68. Sections DQ 3 and EH 67 provide that the taxpayer can claim a deduction for the amount of the deposit in the accounting year.
69. No deduction is allowed until the deposit is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allow the deduction.

Section EH 71 – Refund on request

70. A taxpayer may apply, in writing, for a refund from the thinning operations income equalisation scheme under s EH 71. If the taxpayer wants a refund of some or all of the amount in the scheme, and none of the other relevant refund provisions in the Act apply, the Commissioner must refund the amount applied for. This is to the extent the refund can be made up of one or more deposits that have been in the scheme for at least one year.
71. Section EH 72 provides that a refund under s EH 71 is allocated to the accounting year the Commissioner receives the application for the refund in, unless either of these two situations apply:
    - The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
    - A late application is received. That is:
        - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
        - the taxpayer chooses that the refund be treated as income in the accounting year to which the longer period relates, in which case the refund is allocated as income to the accounting year nominated by the taxpayer (refer to [91] to [102] for discussion on how the Commissioner will apply this discretion).
72. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be allocated to the accounting year in which the application was made.
73. Sections CB 27 and EH 72 provide that the taxpayer must return the refund as income in the applicable accounting year.
74. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

Section EH 73 – Refund for development or recovery

75. A taxpayer may apply, in writing, for an early refund from the thinning operations income equalisation scheme in specific circumstances under s EH 73:
    - The Commissioner must refund an amount that has been in the scheme for more than six months to an eligible taxpayer to enable them to undertake planned development or maintenance work for their forestry business.
    - The Commissioner must refund an amount regardless of the length of time it has been in the scheme to an eligible taxpayer to enable them to:
        - avoid suffering serious hardship; or
        - do anything else the Commissioner determines, in a case or class of cases, is a purpose a refund should be given for.
76. If requests for refunds made on the grounds that they will be used to avoid serious hardship, the taxpayer will need to be able to explain to the Commissioner how the refund will be applied to avoid serious hardship.
77. That may be hard to show where money is deposited and a refund request is made at the same time or shortly after. In that situation the financial impact will only be the tax deferral and cash-flow benefits.

78. The Commissioner has the discretion to allow a refund from the thinning operations income equalisation scheme, regardless of the length of time the deposits have been in the account, for the taxpayer to do anything the Commissioner determines in a case or class of cases is a purpose for which a refund should be given. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.

79. Section EH 74 provides that a refund under s EH 73 is allocated to the accounting year in which the Commissioner receives the application for the refund, unless either of these two situations apply:

- The application is received within the specified period for an accounting year and the taxpayer chooses that the refund is to be treated as income in the accounting year the specified period relates to. In this case the refund is allocated as income to the accounting year the specified period relates to.
- A late application is received. That is:
  - the application is received within a longer period after the end of the specified period for an accounting year that is allowed by the Commissioner in a case or class of cases, and
  - the taxpayer chooses that the refund be treated as income in the accounting year the longer period relates to. In this case the refund is allocated as income to the accounting year nominated by the taxpayer. Refer to [91] to [102] for discussion on how the Commissioner will apply this discretion.

80. Where the Commissioner does not accept a late application, the refund may, subject to consultation with the taxpayer, be applied to the accounting year in which the application was made.

81. Sections CB 27 and EH 74 provide that the taxpayer must return the refund as income in the applicable accounting year.

82. The refund may not be allocated as income to an accounting year until the application for a refund is physically received and accepted by the Commissioner. If this occurs after the taxpayer's income tax return has been filed, the Commissioner will reassess the return to allocate the refund as income.

Commissioner's discretion – "a case or class of cases"

83. As stated above, the Commissioner has the discretion to accept a deposit into or an application for a refund from the applicable income equalisation scheme after the specified period for an accounting year.

Relevant case law

84. The Courts have established some principles around the exercise of a statutory discretion that require the Commissioner to act reasonably in applying her discretion and consider the merits of the taxpayer's particular circumstances and explanation.

85. The Commissioner must exercise her discretion reasonably, as stated by Lord Wrenbury in *Roberts v Hopwood* [1925] AC 578, as follows:

> A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.

86. When exercising her discretion, the Commissioner must consider each case on its own merits. This is supported by the Court of Appeal's decision in L*awton v Commissioner of Inland Revenue* [2003] 2 NZLR 48 in which the Court held that the Commissioner had not properly exercised his discretion in respect of s 30(2) of the Income Tax Act 1976, which provided that the Commissioner may accept a late objection, on the basis that there had been a failure to consider and properly weigh the merits of the taxpayer's late objection.

87. Justice Glazebrook, delivering the unanimous judgment of the Court, quoted the Court of Appeal's previous decision in *CIR v Wilson* (1976) 17 NZTC 12,512:

> … the merits of a proposed objection must be considered unless the explanation for the lateness of the objection is so inadequate that this is unnecessary.

88. The Court also found that the taxpayer had given a full and credible explanation for the lateness of the objection. Justice Glazebrook stated:

> … In such a case, unless this explanation was palpably untrue or quite unjustified, it would be rare for the explanation to be deemed so inadequate that the merits need not be examined.

89. Another principle established by the Court is that the Commissioner may make policies, but the policies cannot be overly rigid. This is highlighted in *Gisborne Mills Ltd v CIR* (1989) 11 NZTC 6,194. Justice Robertson found that the Commissioner is required to weigh the particular circumstances which exist in each individual case, rather than adhere to policy:

> The test is whether, by the rigid and inflexible application of policy, there has been a reasoned exercise of the discretion …
>
> In my view, however the discretion required him to weigh the particular circumstances which existed … In as much as none of these exceptional matters appear to have been addressed because of the preoccupation with the policy issue, I am forced to the conclusion that there has been a failure by the Commissioner to exercise the discretion which Parliament has given him. …
>
> I find therefore, that the respondent has abused his powers by refusing to consider the specific circumstances of this case.

What is reasonable?

90. What needs to be considered is how the Commissioner should exercise her discretion, with reference to the principles established by the Courts.

Late deposits and applications for a refund

91. In most instances, the taxpayer's financial position for an accounting year will not be known until the taxpayer's set of accounts and tax return have been completed. At this point, the decision on whether to make a deposit to the applicable income equalisation scheme, and of how much, may be made.

92. So an eligible taxpayer could reasonably be expected to make a deposit into or request a refund from the applicable income equalisation scheme for a particular accounting year at the time of filing their tax return, provided the tax return is filed by the due date.

93. However, it may not be possible or practicable for the deposit or application to be sent to the Commissioner with the tax return. It may also take a tax agent a period of time to arrange for the deposit or application for a refund to be sent to Inland Revenue. So eligible taxpayers should be allowed a reasonable period of time after either:
    - the taxpayer's income tax return due date, or
    - the date the taxpayer's income tax return was filed on to forward the deposit or application to Inland Revenue.

94. The Commissioner considers it is reasonable to apply her discretion and accept late deposits and late applications for a refund in relation to the applicable income equalisation scheme by the earlier of:
    - one month from the date of filing the tax return for that accounting year; and
    - one month from the date the tax return for that accounting year is due to be filed.

95. If the specified period for an accounting year is longer than the extended timeframe set out in [94] the taxpayer may still make the deposit or application for a refund within the specified period. The Commissioner is not likely to further extend this to provide a late deposit or late application for a refund unless exceptional circumstances apply. Refer [91] to [102] for discussion of exceptional circumstances.

96. Taxpayers without a tax agent who require an extension of time to file their income tax return should refer to *SPS 09/03: Extension of time applications from taxpayers without tax agents*.

Examples

Making a late deposit with an extension of time arrangement

A taxpayer has a tax agent. The taxpayer has a balance date of 31 March. The taxpayer's income tax return due date for the 2018 accounting year is 31 March 2019, incorporating an extension of time arrangement. The taxpayer's income tax return was filed on 31 October 2018.

The specified period for making deposits into the applicable income equalisation scheme ends on 30 September 2018, which is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year—1 April 2018 to 30 September 2018
- the period from the end of the accounting year to one month after the tax return is due—1 April 2018 to 30 April 2019.

For a deposit to be accepted for the 2018 accounting year, the taxpayer must make the deposit within the discretionary extended timeframe, ie, by 30 November 2018, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—30 November 2018
- one month from the date that the tax return for that accounting year is due to be filed—30 April 2019.

In the same scenario, if the taxpayer's income tax return was filed on 1 May 2019, a deposit would need to be paid by 30 April 2019, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—1 June 2019
- one month from the date that the tax return for that accounting year is due to be filed—30 April 2019.

In the above scenarios, if there are valid reasons why the taxpayer cannot make the deposit within the specified period or discretionary extended timeframe for an accounting year, the Commissioner will consider the merits of the taxpayer's situation on a case-by-case basis and may still accept the late deposit.

Making a late deposit without an extension of time arrangement

A taxpayer with a 30 June 2018 balance date, with no extension of time arrangement, must file their income tax return by 7 October 2018. The taxpayer filed their income tax return on 30 September 2018.

The specified period for making deposits into the applicable income equalisation scheme ends on 7 November 2018, which is the shorter of:

- the period of six months after the end of the accounting year that corresponds to the tax year – 1 July 2018 to 31 December 2018, and
- the period from the end of the accounting year to one month after the tax return is due—1 July 2018 to 7 November 2018.

The taxpayer should make the deposit by the end of the specified period, ie, 7 November 2018. This is a later date than would be allowed by applying the discretionary extended timeframe, ie 31 October 2018, which is the earlier of:

- one month from the date of filing the tax return for that accounting year—30 October 2018
- one month from the date that the tax return for that accounting year is due to be filed—7 November 2018.

However, if there are valid reasons why the taxpayer cannot make the deposit by 7 November 2018, the Commissioner will consider the merits of the taxpayer's situation on a case-by-case basis and may still accept the late deposit.

Early applications for a refund

97. The Commissioner will allow applications for an early refund for unforeseen development, ie, development work not anticipated when the deposit was made, which arose through an adverse event (for example, a flood, drought, fire, livestock disease). Unforeseen development is not confined to deductible development expenditure and may also include any capital expenditure that will result in increased production.

Adverse events

98. If an event is classified as an adverse event, the Commissioner may extend the timeframe for eligible taxpayers to make a deposit or request an early refund from the main income equalisation scheme under ss EH 4 and EH 15(3)(c). Note that a taxpayer must still explain how the adverse event has affected them before these provisions can apply.
99. Where the Commissioner extends her discretion due to an adverse event being declared, this is published on Inland Revenue's website: **www.ird.govt.nz/business-income-tax/income-equalisation/special-provisions/**

Exceptional circumstances

100. Where an eligible taxpayer makes a late deposit, or an application for an early refund or a late application for a refund outside of the circumstances detailed above, it may still be accepted by the Commissioner. Each request will be considered on a case-by-case basis, taking into account the merits of the taxpayer's particular situation.
101. Reasons to accept a late deposit, an application for an early refund, or a late application for a refund could include, but are not limited to:
    - a taxpayer receiving incorrect advice from their tax agent, or
    - a taxpayer experiencing a sudden or unexpected change in circumstances.
102. However, these examples are not indicative of situations when a late deposit, an application for an early refund, or a late application for a refund will automatically be accepted. All factors must be considered before the Commissioner accepts the deposit as being made in the requested tax year.

This Standard Practice Statement is signed on 16 May 2019.

Rob Wells
Manager, Technical Standards OCTC

SPS 19/04: Late Filing Penalties

This statement also appears in the *Tax Information Bulletin* Vol 31, No 6 (July 2019).

Introduction

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement sets out the Commissioner's practice for imposing late filing penalties under section 139A and 139AAA of the Tax Administration Act 1994 (TAA).

The New Zealand tax system is based on voluntary compliance. It relies on taxpayers voluntarily meeting the Inland Revenue obligations under the tax laws, for example, by filing tax returns by the due date. Sections 139A and 139AAA impose a penalty on a taxpayer for not filing certain returns by the due date. The purpose of the penalty is to promote voluntary compliance and to ensure penalties for breaches are imposed impartially and consistently. The penalties also cover costs related to following up outstanding returns.

Note that this statement only discusses penalties in respect of late filed returns. It is not intended to cover penalties for late payments of tax. The legislation covering each of these penalties types is different.

All section references set out in this statement are to the Tax Administration Act 1994. Sections 139A and 139AAA are set out in the appendix to this statement.

Application

This Statement applies from 30/05/2019 and replaces Standard Practice Statement 12/02 *Late filing penalty*, published in *Tax Information Bulletin* Volume 24, No 5 (June 2012).

Standard practice

Summary

1. Under section 139A and 139AAA, a late filing penalty applies to:
    - annual tax returns;
    - annual ICA returns required to be filed under section 69(1) and (2)(a) by an Australian ICA company that is not required to file a return of income;
    - ACC reconciliation statements;
    - a multi-rate PIE return required under section 57B;
    - a Resident Land Withholding Tax (RLWT) statement required under section 54B;
    - employment income information;
    - GST returns (section 139AAA).
2. Except in the case of a late filing penalty for employment income information or GST returns, the Commissioner must give at least 30 days' notice to the taxpayer of the intention to impose a late filing penalty. The Commissioner must provide such a notice either in writing or by public notification to a taxpayer or group of taxpayers. If the outstanding return is filed within the 30-day period, or an extension of time is granted to file the outstanding return, the penalty will not be imposed.
3. For employment income information and GST returns, the Commissioner must notify the taxpayer that the late filing penalty is payable when a taxpayer fails to file the information or GST return on time. If the taxpayer files that same type of return (GST or employment income information) late in the succeeding 12 months, a late filing penalty will automatically be applied.
4. The amount of the late filing penalty for annual tax returns is based on the amount of net income. If the net income is:
    - below $100,000, the penalty is $50
    - between $100,000 to $1,000,000 $250
    - above $1,000,000 $500

5. The amount of the late filing penalty for employment income information and an annual ICA return required to be filed by an Australian ICA company is $250. The amount of late filing penalty for multi-rate PIE returns and RLWT statements is also $250.
6. The amount of the late filing penalty for a GST return is:
   - $250 for registered persons who account for GST using the invoice or hybrid basis;
   - $50 for registered persons who account for GST using the payments basis.

Detailed discussion

Imposing the late filing penalty

7. The Commissioner's practice is that a late filing penalty may be imposed on the following:
   - income tax returns for individuals and companies (IR3 & IR4)
   - annual ICA returns required to be filed under section 69(1) and 69(2)(a) by an Australian ICA company that is not required to file a return of income for an income year that corresponds to an imputation year (IR4J)
   - multi-rate PIE returns
   - RLWT statements
   - employment income information; and
   - GST returns.
8. A late filing penalty will be imposed in the following circumstances.

Income Tax returns

9. A late filing penalty will be imposed in respect of an outstanding IR3 or IR4 income tax return in the following circumstances:
   - the return is not filed by the due date, and is not subject to an extension of time arrangement; or
   - the return is subject to an extension of time arrangement, and is not filed by the date agreed to in that arrangement; or
   - an extension of time arrangement is withdrawn from a tax agent, and the return(s) are not filed by the date specified when the extension of time was withdrawn; or
   - the return is for a client of a tax agent with an extension of time arrangement and is not filed by the 31st of March in the year immediately following the income year to which the return applies.
10. Before imposing a late filing penalty, the Commissioner will provide written notification of at least 30 days, either by public notification or directly to the taxpayer.
11. The amount of the penalty for outstanding income tax returns is initially based on the minimum penalty of $50. Once the return is received the amount of the penalty is checked and if the net income is in a different bracket to that minimum amount, the penalty is amended. The minimum penalty remains payable if the return is subsequently filed and shows a loss.
12. The due date for payment of a late filing penalty is the later of a date specified by the Commissioner, not being less than 30 days after the date of the notice informing of the imposition of the penalty, and the terminal tax date for the tax year to which the return relates.

Annual ICA returns

13. An annual ICA return required to be filed under section 69(1) and 69(2)(a) by an Australian ICA company that is not required to file a return of income for an income year that corresponds to an imputation year (IR4J) are also subject to the late filing penalty regime. A 30-day notice will automatically be issued when the annual ICA return has not been filed by the due date.
14. Following that period, the $250 penalty is automatically imposed.

Multi-rate PIE returns

15. The late filing penalty process for these returns is the same as for annual ICA returns. The amount of the penalty is also set at $250.

Residential Land Withholding Tax statements

16. The person liable to file an RLWT statement under section 54B is liable to a late filing penalty when the statement is not filed by the due date. This is not an automated process. However, the 30-day notice will still be issued when appropriate. Note that this provision also applies when a "Nil" return is required under section 54B(2). Following that 30-day period, the $250 late filing penalty will be imposed.

Employment income information

17. From 1 April 2019, most employers must payday file requiring them to file employment income information within certain timeframes for each payday instead of filing an Employer monthly schedule (IR348).
18. While employers are getting used to the new payday filing rules Inland Revenue will take a three-stage approach to the application of any late filing penalties.
    - The first time an employer fails to file employment income information by the due date, the Commissioner may initially look to educate and assist employers to comply with this requirement.
    - Future defaults may result in the issue of a warning notice to the employer advising a late filing penalty will not be imposed this time, but in future if the information is not filed on time a late filing penalty of $250 will be imposed.
    - If, within 12 months of the warning notice being issued, a further default in filing employment income information occurs, a late filing penalty will be imposed in respect of that employment income information.

    Note that this three-stage approach, involving the first education step, is intended to apply only while employers get used to their new pay-day filing obligations. In time it is intended that Inland Revenue will revert to using a two-stage approach, involving a warning letter, and then imposing a late filing penalty if a further default occurs within 12 months.

    Taxpayers will be advised before any change to the two-stage approach is implemented.
19. The late filing penalty of $250 will be a single penalty imposed monthly regardless of how many times an employer fails to provide the employment income information during a month.
20. If, following the warning notice, the employer files all employment income information on time for 12 months and then defaults again, a further warning notice will be issued. That is, the customer has a "clean sheet" and the process restarts.
21. There is no longer a requirement for employers to file "Nil" returns when no employment occurs for a month. Inland Revenue expects to be able to determine when late filing penalties should be imposed. However, employers should advise Inland Revenue if they expect in future not to file employment income information in some months when this has previously happened.
22. The due date for payment of a late filing penalty is 30 days after the end of the month in which the information was due to be filed.

GST returns

23. The first time a registered person files the GST return late, they will be advised that if they are late in filing another of the GST returns within the next 12 months a late filing penalty will be imposed on that second late return. If the registered person files all the GST returns on time for the 12 months following a warning notice and then defaults again, a further warning notice will be issued. That is, the customer has a "clean sheet" and the process restarts.
24. The amount of the late filing penalty for GST returns are:
    - $250 if the invoice or hybrid basis is used at the time the return is due; or
    - $50 if the payments basis is used at the time the return is due.
25. The penalty is due by the 28th of the second month following the end of the relevant taxable period (or 15 February if the late return was due 15 January or 7 June if the late return was due 7 May).

Reversal or remission of late filing penalty

26. The Commissioner's practice is that the late filing penalty may be reversed if:
    - the return was filed before the date the late filing penalty was imposed, but had not been "lodged" by Inland Revenue; or
    - the return or employment income information was not required to be filed; or
    - In respect of employment income information, the taxpayer did not pay any salary or wages even though a registered employer.

27. The Commissioner's practice is that the late filing penalty may be remitted if the legislative criteria regarding the remission of penalties and interest contained in sections 183A or 183D are met. Remission of penalties and interest is discussed in Standard Practice Statement 18/04
28. The Commissioner's practice is that the late filing penalty will not be remitted if:
    - The taxpayer has an extension of time arrangement as a client of a tax agent, but the agent had not notified the Commissioner that the taxpayer was their client before the late filing penalty was imposed.
    - The taxpayer was granted an extension of time arrangement (either as a client of a tax agent or individually), after the late filing penalty was imposed.

This Standard Practice Statement is signed on 30 May 2019.

Rob Wells
Manager, OCTC Technical Standards

APPENDIX: Legislation

Tax Administration Act 1994

139A Late filing penalties

(1) This section applies to tax returns required to be furnished under sections 33, 41 to 44, and 79 (in this Part, "annual tax returns"), the annual ICA return required to be furnished under section 69(1) and (2)(a) by an Australian ICA company that is not required to furnish a return of income for a tax year, the reconciliation statement required to be provided under regulation 3 of the Accident Rehabilitation and Compensation Insurance (Earnings Definitions) Regulations 1992 or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001, and the employment income information required to be provided under sections 23E to 23J.

(2) A taxpayer is liable to pay a late filing penalty if-

(a) the taxpayer does not complete and provide on time –

(i) an annual tax return:

(ii) an annual ICA return required to be furnished under section 69(1) and (2)(a):

(iii) a reconciliation statement:

(iiib) a return required to be furnished under section 57B:

(iiic) a statement for payment of RLWT required to be provided under section 54B

(iv) their employment income information; and.

(b) The Commissioner notifies the taxpayer that the penalty is payable.

(3) The late filing penalty for an annual tax return for a taxpayer with net income-

(a) Below $100,000, is $50;

(b) Between $100,000 and $1,000,000 (both figures inclusive), is $250;

(c) Above $1,000,000, is $500.

(4) The late filing penalty for an ICA return or reconciliation statement, or employment income information is $250.

(5) Except in the case of a late filing penalty resulting from an employment income information or from a tax return required under sections 16 to 18 of the Goods and Services Tax Act 1985, the Commissioner must, not less than 30 days before imposing a late filing penalty, –

(a) Send notice to a taxpayer that a late filing penalty may be imposed if a return specified in the notice is not filed; or

(b) Publicly notify that a late filing penalty may be imposed on taxpayers who omit to file the required return.

(6) Subsections (7) to (9) apply in relation to a late filing penalty when a taxpayer fails to provide income information to the Commissioner by a due date when, for the 12-month period before the due date, the taxpayer has delivered on time all the required income information.

(7) Subject to subsection (9), the Commissioner must notify the taxpayer,-

(a) first, that a late filing penalty will be payable for a further failure to provide income information on time:

(b) secondly, that the penalty is payable when a further failure occurs after the matter referred to in paragraph (a) has been given.

(8) For employment income information, the maximum penalty that may be imposed in relation to a month, regardless of the number of failures to provide employment income information, is $250.

(9) Despite subsection (7), a taxpayer is not liable to pay a late filing penalty in relation to employment income information if the Commissioner considers that, in a particular case or class of cases, a penalty should not be imposed. However, the Commissioner's discretion may be exercised only if-

(a)

(b) it is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of two Inland Revenue software platforms, and

(c) the taxpayer's non-compliance is not serious or unreasonable.

139AAA Late filing penalty for GST returns

(1) This section applies to a tax return (a GST return) required to be furnished by a registered person under sections 16 to 18 of the Goods and Services Tax Act 1985.

(2) A registered person is liable to pay a late filing penalty if-

(a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and

(b) the GST registered person has failed to file on time a GST return due in the period-

(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and

(ii) ending before the due date; and

(c) the Commissioner notifies the registered person that the penalty is payable.

(3) The late filing penalty for a GST return for a registered person is-

(a) $250, if on the due date for filing the GST return the registered person accounts for tax payable on an invoice basis or hybrid basis; or

(b) $50, if on the due date for filing the GST return the registered person accounts for tax payable on a payment basis.

(4) The Commissioner must-

(a) give notice to the registered person that a late filing penalty will be payable for a further failure to file a GST return on time, if the registered person has filed on time all GST returns due for filing in the period-

(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and

(ii) ending before the due date; or

(b) give notice to the registered person that the penalty is payable, if the registered person has not filed on time all GST returns due for filing in the period referred to in paragraph (a).

Due date for payment of late filing penalty

The following provisions set out the due dates for payment of late filing penalties:

- Section 142 (1) - due date in respect of returns and reconciliation statements;
- Section 142(1A) - due date in respect of employment income information;
- Section 142(1B) - due date in respect of GST returns required by sections 16 to 18 of the Goods and Services Tax Act 1985.

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.

DET 19/01: Standard-cost household service for private boarding service providers

Reference

This Determination is made under section 91AA of the Tax Administration Act 1994 (the TAA). All legislative references are to the TAA unless otherwise stated.

Explanation

This Determination rescinds and replaces *Determination 05/03: Standard-Cost Household Service for Boarding Service Providers (DET 05/03)* and applies from the start of the 2019-20 income year.

This Determination may be relevant to taxpayers who provide private boarding services in their home, if they have no more than four boarders at any time during the income year.

This Determination sets standard costs that can be treated as expenditure incurred in deriving income from providing the boarding accommodation. For any income year, a taxpayer may choose to use these standard costs instead of their actual expenses, provided the criteria in this Determination are met.

The standard costs consist of three elements:

(1) **Weekly standard-cost per boarder**

This covers direct costs such as food and household bills.

This is a set weekly amount per boarder.

(2) **Annual housing standard-cost**

This covers the costs for the use of the house in providing the accommodation, such as home loan interest, rates and insurance.

This amount, if added in, is calculated under a formula set out in this Determination.

(3) **Transport standard-cost**

This covers the costs for the use of a motor vehicle in providing any transport to boarders.

This amount, if added in, is calculated under a formula (which uses Inland Revenue's kilometre rates) set out in this Determination.

A taxpayer may include some or all of these elements (if applicable).

However, if this Determination is used, **actual costs cannot be used** for expenditure covered by **any** of these elements, even if the standard-costs are not used for that particular element.

If a taxpayer chooses to use the standard costs, income from providing the private boarding service will be exempt up to the amount of those costs. Income from providing the private boarding service will only need to be returned to the extent it exceeds the standard costs.

Any additional costs related to providing the private boarding service cannot be deducted if they relate to an item covered by any of the elements comprising the standard costs.

The Commissioner makes this Determination under section 91AA, on the basis that she considers it will result in a significant reduction in compliance costs for these taxpayers, without inappropriate: risk to the revenue, demand on the Commissioner's resources, or inaccuracy for a significant number of taxpayers.

The standard costs in this Determination can only be used by natural persons. Other limitations on who can use this Determination are set out in the next section, "Scope of Determination".

Scope of Determination

Subject to the limitations below, this Determination applies to natural persons who provide private boarding services in their domestic accommodation.

This Determination does **not** apply where:

(a) the host has more than four boarders at the same time at any time during the income year:

(b) the taxpayer does not choose to apply it:

(c) the private boarding service is provided as part of a GST taxable activity of a registered person:

(d) the domestic accommodation is trust property, unless the host either:

(1) paid all of the costs represented by the annual housing standard-cost element for the income year; or

(2) does not include the annual housing standard-cost element in their standard-costs for the income year:

(e) the domestic accommodation is used in the income year to provide both a private boarding service and a short-stay accommodation service as defined in *DET 19/02: Standard-cost household service for short-stay accommodation providers* (21 May 2019) or any determination that replaces DET 19/02:

(f) any other Determination made under section 91AA is applied for the income year in relation to the provision of services that require the use of the domestic accommodation:

(g) any deductions are claimed in relation to the use of the domestic accommodation in deriving income, for any time in the income year when the private boarding service is provided.

Subject to any adjustment based on the annual movement of the Consumers Price Index as at the end of March each year, this Determination, unless specifically withdrawn, shall apply from the 2019-20 income year.

Interpretation

In this Determination, unless the context otherwise requires:

- expressions used have the same meanings as those in sections CW 61 and YA 1 of the Income Tax Act 2007 and section 91AA;
- **boarder** means a person provided with boarding accommodation in return for payment, but does not include a child under five years of age who accompanies a parent or guardian who is a boarder;
- **boarding accommodation** means residential accommodation provided to boarders (often students) in conjunction with regular meals and other associated care, activities and benefits that usually or commonly occur in or are derived from a domestic ("family") household, and does not include accommodation provided to residential tenants, flatmates or care home residents, nor emergency accommodation or short-stay accommodation;
- **Consumers Price Index** means the application of the annual movement of the All Groups Consumers Price Index to the weekly standard-cost per boarder;
- **domestic accommodation** means a dwelling that is, or is part of, the principal residence of any boarding service host;
- **host** means a natural person (which includes one or more natural persons living together in the same residence) who provides a private boarding service in their domestic accommodation;
- **private boarding service** means all activities involved in the provision of boarding accommodation and associated care (including, for example, the provision of meals, laundry and other services or utilities a host typically provides to boarders);
- **short-stay accommodation** means accommodation provided for up to four consecutive weeks, that is not the paying guest's ordinary residence, and does not include accommodation provided to residential tenants, boarders or care home residents, nor student or emergency accommodation;
- **standard-cost** in relation to any private boarding service, means the standard cost that has been determined by the Commissioner of Inland Revenue or calculated in accordance with the method determined by the Commissioner of Inland Revenue, for the purposes of this Determination, as referred to in section 91AA(2).

Determination

A private boarding service is a "standard-cost household service" for the purposes of section 91AA where the private boarding service involves the use of the host's domestic accommodation.

If this Determination applies, the standard costs that the taxpayer may treat as incurred by them in deriving exempt income and any assessable income from providing the standard-cost household service consist of three elements:

(1) Weekly standard-cost per boarder;

(2) Annual housing standard-cost; and

(3) Annual transport standard-cost.

For any income year, the taxpayer may include some or all of these three elements, which are defined below. However, if the domestic accommodation is trust property, the taxpayer cannot include the annual housing standard-cost element unless they have paid all of the costs represented by that element for the income year.

If the taxpayer uses this Determination, actual costs cannot be used for expenditure covered by any of the standard-cost elements, even if the standard-costs are not used for that particular element.

The total of whichever elements the taxpayer includes will be their standard-costs for the year. Income the taxpayer derives from providing the private boarding service will be exempt income up to the amount of their standard-costs for the year. Any income in excess of that amount that the taxpayer derives from providing the private boarding service will be assessable income.

Standard cost elements

The standard cost elements are as follows:

(1) The weekly standard-cost per boarder

The weekly standard-cost per boarder is *$186.

* The Commissioner will review this amount based on the annual movement of the CPI as at the end of March each year. Inland Revenue will publish any CPI adjustment to the weekly standard-cost figure in its Tax Information Bulletin and on its website.

The weekly standard-cost per boarder represents the direct cost of providing private boarding services to each boarder on a weekly basis. It covers expenditure on items and services typically provided to boarders or related to provision of the private boarding service, such as: food; linen; laundry and cleaning services; power; telephone; internet; use of bedroom chattels and general household furniture; and incidentals such as gifts, leisure and entertainment activities provided by the host.

(2) The annual housing standard-cost

The annual housing standard-cost is calculated using the following formula:

$$(a - b) \times c \times d$$

Where –

a is:

- if the host owns the domestic accommodation, 4% of the cost of the domestic accommodation (including the cost of all capital improvements);
- if the host rents the domestic accommodation, the total rent paid by the host for the domestic accommodation for the income year;
- if the domestic accommodation is trust property, the total amount of financing costs or rent, insurance, rates, and repairs and maintenance paid by the host in relation to the domestic accommodation for the income year.

b is the total accommodation supplement received by the host for the income year;

c is the number of boarders relative to the number of total occupants living in the domestic accommodation during the period of the year the private boarding services are provided, expressed as a percentage; and

d is the number of full weeks in the income year during which private boarding services were provided in the domestic accommodation, divided by 52.

The annual housing standard-cost represents the cost for the use of the domestic accommodation in providing the private boarding service and covers (as relevant) expenditure on: financing costs (eg, home loan interest), rent, insurance, rates, and repairs and maintenance.

* The Commissioner will review this amount based on the annual movement of the CPI as at the end of March each year. Inland Revenue will publish any CPI adjustment to the weekly standard-cost figure in its *Tax Information Bulletin* and on its website.

(3) The annual transport standard-cost

The annual transport standard-cost is calculated using the following formula:

kilometre rate × kilometres travelled

Where –

kilometre rate is the motor vehicle kilometre rate(s) for the income year, set and published by the Commissioner from time to time for the purposes of section DE 12 of the Income Tax Act 2007, applied firstly to business use of the motor vehicle that does not relate to the provision of the private boarding service and secondly to the "kilometres travelled" as defined in this Determination; and

kilometres travelled is the total number of kilometres travelled by the host for the income year, in a motor vehicle for which the host incurs the running costs, in trips for which the dominant purpose relates to the provision of the private boarding service.

The annual transport standard-cost represents the cost for the use of a motor vehicle in providing the private boarding service, and covers expenditure on fuel, insurance, registration, warrants of fitness, repairs and maintenance, and depreciation.

All three standard-cost elements for private boarding service hosts are calculated, or must be calculated, inclusive of GST, if any.

This Determination is made by me, acting under delegated authority from the Commissioner of Inland Revenue.

This Determination is signed on the 21st day of May 2019.

Rob Wells
LTS Manager, Technical Standards

COMMENTARY ON DETERMINATION DET 19/01

1. This commentary is intended to help you understand and apply the Determination *DET 19/01: Standard-cost household service for private boarding service providers*. It does not form part of the Determination and is not a legally binding statement.

Understanding the Determination

2. If you have a boarder in your home, the starting point is that the income you receive from them is taxable, and your expenses that relate to earning the income are deductible.

> **Note:** "Boarders" are people (often students) who live with you, essentially as part of your household. They are provided with accommodation, regular meals and other associated care, activities or benefits that are typical in a family household. Flatmates, tenants, short-stay accommodation guests and the like are not considered boarders, so are not within the scope of the Determination.

3. You can keep track of your **actual costs** associated with having the boarder (like your home loan interest or rent, utility bills, food etc), and use that as the basis for your deductions. However, most of your actual costs would only be partly deductible. This is because they are your private household costs and will only partly relate to earning the boarding income. Therefore, you would need to apportion those costs appropriately, and only deduct the relevant portion.
4. Alternatively, you may be able to use the Determination, which sets **standard costs** for your deductions. The standard costs reflect the expenses you are likely to incur in having boarders. This approach is simpler than using your actual costs and apportioning them where necessary, and for many boarding hosts this approach will mean there is no need to file a tax return (eg, if you don't have other income you need to file a tax return for).
5. If you use the standard costs in the Determination, there are **three elements** that you may be able to include:

   Element 1: Weekly standard-cost per boarder

   Element 2: Annual housing standard-cost

   Element 3: Annual transport standard-cost

6. You can include **some or all** of these elements, but you may not need to include more than one or two to cover your boarding income.

> **Note:** For most people, the total of your weekly standard-costs and your annual housing costs will be more than your boarding income. In this case, you won't need to include the boarding income in your tax return, and you won't need to add your annual transport costs (if any).
>
> See Appendix D for help estimating whether your boarding income will likely be covered by your weekly and housing standard costs.

Who can use the Determination

7. You can choose to use the standard-costs in the Determination if:
   - you are a natural person (eg, an individual not a company);
   - you did not have more than four boarders at the same time at any time during the income year;

     > For most people the income year is 1 April – 31 March

   - you do not provide the short-stay accommodation service as part of a GST taxable activity;
   - the property is not held in a trust, or if it is, you either:

     (1) paid all of the financing costs, insurance, rates, and repairs and maintenance for the property for the income year; or

     (2) do not include the annual housing standard-cost element in your standard-costs for the income year;
   - your home isn't used in the income year to provide both a private boarding service and a short-stay accommodation service (as defined in *DET 19/02: Standard-cost household service for short-stay accommodation providers* or any determination that replaces DET 19/02);
   - neither you nor anyone else applies any other standard-cost household service determination in relation to services provided in your home (for example, *DET 09/02: Standard-Cost Household Service for Childcare Providers*); and
   - no deductions are claimed in relation to the use of the domestic accommodation in deriving income, for any time in the income year when the short-stay accommodation service is provided.

Q: Why can't the Determination be used by people who have both boarders and short-stay accommodation guests in their home?

A: The standard-costs in both the boarders Determination (DET 19/01) and the short-stay accommodation Determination (DET 19/02) include amounts for the use of common areas of the home in providing the accommodation (eg, home loan interest or rent, insurance and rates, utility costs, and depreciation of household chattels).

If hosts could use one or both of the Determinations, there would be a "doubling up" of deductibility for some of the expenditure covered by the standard-costs.

Therefore, if hosts have both boarders and short-stay accommodation guests in their home, they must base their deductions on their actual expenses, apportioned appropriately.

Your options

8. If you meet the above criteria, you may choose to use either the "standard-cost basis" or the "actual-cost basis". These approaches are summarised in figure 1.

Figure 1: Difference between standard-cost basis and actual-cost basis

The standard-cost basis		The actual-cost basis
Use some or all of the standard-cost elements in the Determination (summarised at [2]) as the amount you can offset against your income from providing the private boarding service. You can't use any of your actual expenses for items covered by any of the standard-cost elements (whether or not you've included that element).	**OR**	If you take this approach, you deduct your actual expenses related to earning the boarding income. Many expenses will need to be apportioned, because they partly relate to having boarders and are partly just your private household costs.

9. As noted in [3] and Figure 1, if you choose to use the actual-cost basis, some of your expenses will need to be apportioned, as they will not relate solely to the provision of the boarding service (for example, food, power bills, and home loan interest). You will need to apportion these sorts of expenses on a fair and reasonable basis – for example, having regard to things like the period of year during which you have boarders, the average number of boarders relative to the total number of occupants in your home, and the floor areas of different parts of your home.
10. For each income year, provided you meet the criteria in [7], you need to decide which approach you want to use. If you do not meet the criteria for a particular year, you will not have a choice about which approach to use for that year – you will have to use the actual-cost basis for your deductions.
11. Whether you use the standard-cost basis or the actual-cost basis, you need to keep sufficient records to support your tax position (see [49]).

Income tax implications of using the standard-cost basis

12. If you choose to use the standard-cost basis:
    - Income you make from providing the private boarding service will be **exempt income** up to the amount of the standard-costs calculated under the Determination.
    - Any income in excess of those costs that you make from providing the private boarding service will be **assessable income**, and you will need to include it in a tax return.
    - If your income from providing the private boarding service does not exceed the standard-costs, you will not need to file a tax return on account of providing the private boarding service, but you may need to for some other reason (for example, if you have other income or losses).
    - You will not be able to deduct your actual costs for items of expenditure covered by any of the elements comprising the standard-costs, even if the standard-costs are not used for that particular element (the items covered by each of the standard-cost elements are noted in the next section "Standard-cost elements and what items they cover").
    - Any additional cost that does **not** relate to an item covered by any of the elements comprising the standard-costs in the Determination and is not a capital cost would only be deductible to the extent it has a sufficient connection to deriving income and is not private in nature. If a cost relates both to earning income and the private use of your home, an appropriate apportionment would need to be made.

Standard-cost elements and the items they cover

(1) The weekly standard-cost per boarder

13. The weekly standard-cost per boarder represents the direct day-to-day expenses involved in having boarders.
14. This is a set amount per boarder – for the 2019-20 income year it is **$186 per boarder per week**, subject to CPI adjustment. Inland Revenue will CPI adjust the weekly standard-cost amount each year for inflation and publish the updated amount in its *Tax Information Bulletin* and on its website.
15. As noted in the Determination, the weekly standard-cost per boarder covers expenditure on items and services typically provided to boarders or related to provision of the private boarding service such as: food; linen; laundry and cleaning services; power; telephone; internet; use of bedroom chattels and general household furniture; and incidentals such as gifts, leisure and entertainment activities provided by the host.
16. The weekly standard-cost per boarder has been calculated based on data from Statistics New Zealand, current market values of chattels typically provided for boarders' use by private boarding service hosts, and estimates of bedroom sizes relative to average New Zealand house sizes (based on data from Quotable Valuation NZ).
17. The weekly standard-cost per boarder in the Determination is not intended as a guide to the amount hosts can or should charge for the private boarding service, but rather reflects the expenditure Inland Revenue considers likely to be incurred by hosts for the items covered by the weekly standard-cost element.
18. If your income from boarders is **no more than** the weekly standard-cost per boarder, you won't have to return any boarding income, or do any calculations – the income will be treated as exempt.
19. If your boarding income is **more than** the weekly standard-cost element, you can choose to either:
    - File a tax return for the year that includes the amount of boarding income over the amount of your total weekly standard-costs.

      or
    - Calculate your "annual housing standard-cost" and/or your "annual transport standard-cost" and add either or both of those to your weekly standard-costs. See "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" for help with this.

    If you choose to do this, the total of whichever elements you include will be your total standard-costs for the income year. You will only need to return boarding income to the extent (if any) it exceeds your total standard-costs for the year.

(2) The annual housing standard-cost

20. The annual housing standard-cost reflects that there is a cost involved in you using your home to provide the private boarding service.
21. As noted in the Determination, the annual housing standard-cost covers (as relevant) expenditure on financing costs (eg, home loan interest), rent, insurance, rates, and repairs and maintenance.
22. If you add this element, use the **formula** on page 5 of the Determination to calculate a figure that represents these costs. Page 4 of "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" will help you calculate these costs.
23. While there is a calculation to perform, using the Determination and calculating this element to include in your standard-costs may be a simpler approach than identifying and apportioning your actual costs – which you would have to do if you use the actual-cost basis rather than the Determination.
24. The annual housing standard-cost calculation is based on:
    (a) the actual cost to you of acquiring and making capital improvements to your home, or the cost of renting your home;
    (b) the average number of boarders relative to the number of total occupants living in your home during the period of the year you had boarders (expressed as a percentage); and
    (c) the proportion of the income year during which you had boarders.
25. The discussion from paragraph [26] explains what you include in terms of your costs – depending on whether you own your home, rent your home, or it is trust property, and whether you receive an accommodation supplement. Appendix A explains who should be counted as a boarder or an occupant, and the examples in Appendix C illustrate how to work out the average number of boarders relative to total occupants and the proportion of the income year during which you had boarders.

Costs if you own your home

26. If you own your home, 4% of the cost of the home (including the cost of all capital improvements) is included. You have to use the purchase price from when you bought your home, not the rateable value or current market value. Capital improvements include things such as extending your home, but do not include general repairs and maintenance. The 4% figure represents the typical expenditure incurred in owning a residential property, including outgoings such as rates, insurance, home loan interest, and repairs and maintenance.

Costs if you rent your home

27. If you rent your home, the actual amount of the rent you paid for the year is included.

Costs if your home is trust property

28. If your home is trust property, you can only add in the annual housing standard-cost element if you paid all of the financing costs, insurance, rates, and repairs and maintenance for the property for the income year. If the trustees paid any of these expenses, you can't add in the annual housing standard-cost element.
29. If you paid all of the above expenses and add this element to your standard costs, the annual housing standard-cost formula requires you to use your actual expenses in relation to the property (that is, the actual amount you paid in home loan interest or rent, in insurance premiums and rates, and for repairs and maintenance).

If you receive an accommodation supplement

30. You may receive an accommodation supplement from the Ministry of Social Development (MSD). Eligibility for an accommodation supplement is assessed by MSD, based on factors such as accommodation costs, income, assets, whether you have dependents, and your employment status.
31. If you receive an accommodation supplement, it is subtracted in calculating your annual housing standard-costs under the Determination. Example C4 in Appendix C shows how receipt of an accommodation supplement affects the calculation of the annual housing standard-costs.

(3) The annual transport standard-cost

32. If you use your motor vehicle in providing the boarding service (for example, to take a boarder to activities), you may add this element to your standard-costs.
33. The annual transport standard-cost reflects that there is a cost involved in you using your vehicle in providing the private boarding service.
34. As noted in the Determination, the annual transport standard-cost covers expenditure on fuel, insurance, registration, warrants of fitness, repairs and maintenance, and depreciation.
35. If you add this element, use the **formula** on page 5 of the Determination to calculate a figure that represents the above costs. Page 5 of "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" will help you with this calculation.
36. While there is a calculation to perform, using the Determination and calculating this element to include in your standard-costs may be a simpler approach than identifying and apportioning your actual costs – which you would have to do if you use the actual-cost basis rather than the Determination.
37. The annual transport standard-cost is an annual calculation, based on:
    (a) Inland Revenue's kilometre rates for motor vehicles (which are re-set and published from time to time); and
    (b) the number of kilometres you travelled in the income year, in a motor vehicle that you pay the running costs for, for trips where the dominant purpose related to you providing the private boarding service.

> **Note:** Appendix B provides guidance on when the dominant purpose of a motor vehicle trip would relate to your provision of the private boarding service, which will be relevant if you're adding the annual transport standard-cost element.
>
> See *OS 18/01: Commissioner's statement on using a kilometre rate for business running of a motor vehicle* for more information on using Inland Revenue's kilometre rates.

Using the standard-cost basis or the actual-cost basis

The standard-cost basis

38. If you choose to use the standard-cost basis for any given income year, you do this by either:
    - Not including the exempt income in a tax return for that income year, if you are required to file a return (for example, if your boarding income is more than your standard-costs, or if you have income from another source that means you need to file a return).
        - The exempt income is your income from providing the private boarding service, up to the amount of your standard-costs calculated under the Determination.
        - If your boarding income is more than your standard-costs, you will need to include the income above the amount of your standard-costs in your return.

    or

    - Not filing a tax return for the income year, if your income from providing the private boarding service is not more than your standard-costs calculated under the Determination, and you do not otherwise have to file a return.

The actual-cost basis

39. If you choose to use the actual-cost basis, you must return all income from providing the private boarding service, and your deductions must be based on the expenses you actually incur in providing the service.

When you need to make your choice

40. You can make your choice about whether to use the standard-cost basis or the actual-cost basis at any time up to the due date for filing a return.
41. You should keep adequate records of your actual costs related to providing the private boarding service, as you may not know before the end of the income year whether you will meet the criteria to be able to use the standard-cost basis. If you cannot use the standard-cost basis (for example, if you had more than four boarders at any time during the income year), or if you choose not to, you will need those records to support claiming deductions when you file a return.

Consumers Price Index

42. Inland Revenue will make an annual adjustment to the weekly standard-cost per boarder figure, by applying the annual movement of the All Groups Consumers Price Index to the elements included in that standard-cost figure.
43. Inland Revenue will publish the revised weekly standard-cost figure, as at the end of March each year, in its *Tax Information Bulletin* and on its website.

GST

44. You cannot use the standard-costs in the Determination if you provide the private boarding service as part of a GST taxable activity. Therefore, anyone who uses the standard-cost basis will not be eligible to claim back GST charged on goods and services consumed. As such, the weekly standard-cost per boarder determined by the Commissioner has been prepared on a GST-inclusive basis. Similarly, you must calculate the annual housing standard-cost and the annual transport standard-cost (if you use them) on a GST-inclusive basis.

Reimbursements

45. If you receive reimbursements for specific additional costs not covered by the standard-costs (for example, payment received from a boarder for monthly train passes you have purchased for them), these reimbursements are not treated as income for you, and the costs are not treated as a deductible expense incurred by you.

Returning income

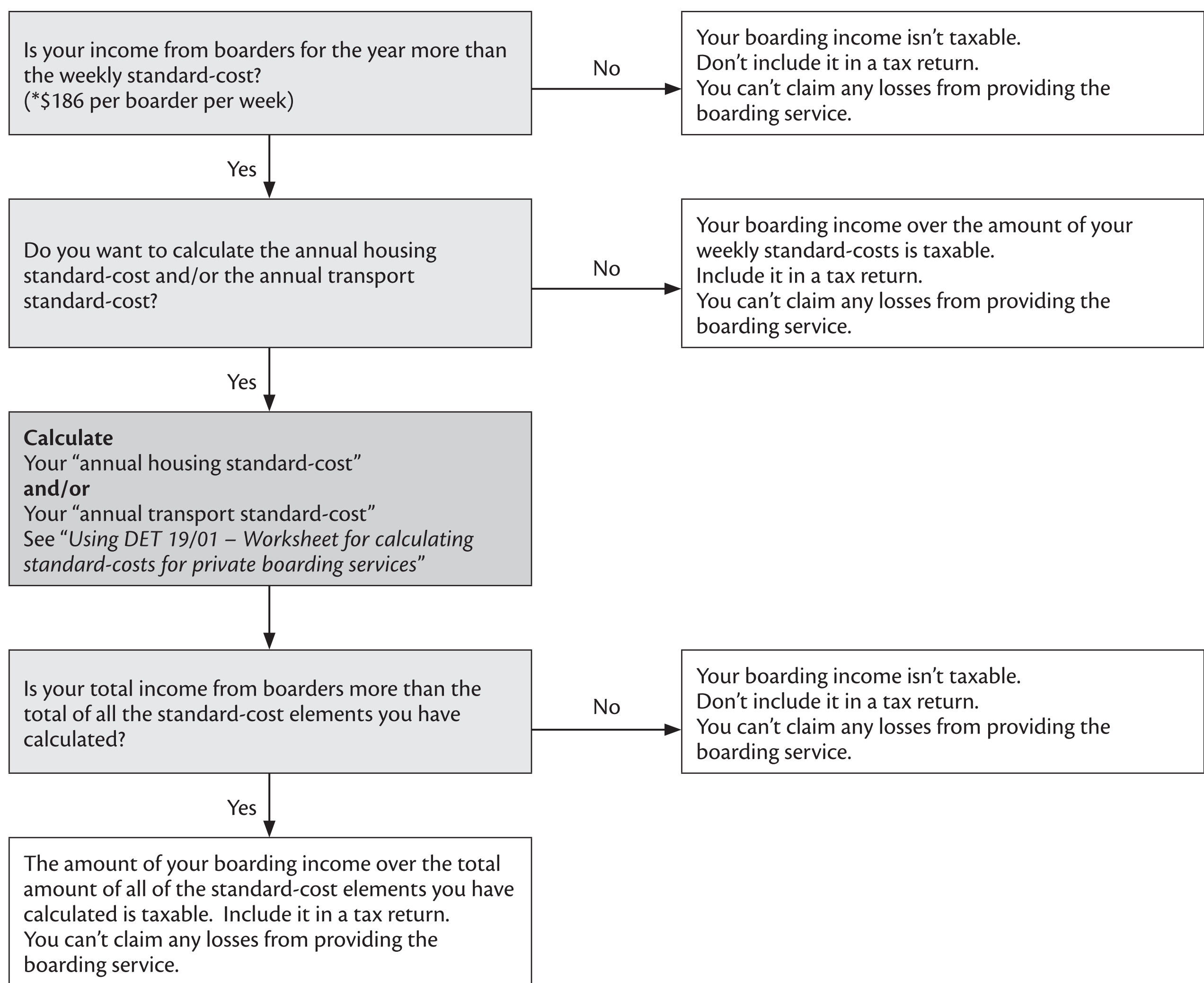
46. If you're using the Determination, whether you need to return income from providing the private boarding service depends on whether the income is more than your allowable standard-costs for the year.
47. If you're using the Determination, Flowchart 1 (on page 12) will help you work out if you need to return any boarding income.
48. Where there is more than one host providing the private boarding services, the income from boarders and the standard costs calculated under the Determination should be split evenly between the hosts, unless there are reasonable grounds for a different split.

Record keeping

49. Whether you use the Determination or not, you must keep sufficient records to support your tax position. This would include records of:
    - the number of weeks of the year you had boarders;
    - how much income you made from boarders;
    - the number of other occupants in your home during the year;
    - the cost of any capital improvements you made to the property in the year or the amount of rent you paid for the property during the year;
    - the number of kilometres you travelled in the year, in a motor vehicle that you pay the running costs for, for trips where the dominant purpose related to your provision of the private boarding service; and
    - any expenses you are able to deduct if you cannot or choose not to use the Determination.

Note: You should keep records of all expenses even if you think you will use the standard-costs in the Determination, as you may not know until the end of the year whether you will definitely be able to do so.

Flowchart 1: Using the determination – do I have to return income?



* The weekly standard-cost is set by Inland Revenue and CPI adjusted each year. For 2019-20 it has been set at $186 per boarder per week, subject to CPI adjustment.

Appendix A: Number of boarders and number of total occupants

A1. If you're including the annual housing standard-cost element, you'll need to work out what proportion of the year you had boarders, and the number of boarders and the number of total occupants living in your home during the year.

A2. The calculation involves working out the number of weeks for which boarding services were provided and (where family members come and go during the year) a fair estimate of the average number of occupants in your home during the year.

A3. Where a child accompanies a parent or guardian who is a boarder in a private boarding service arrangement:

- If the child is **under 5 years old**, don't count them as an occupant (for the annual housing standard-cost calculation) or as a boarder (for the weekly standard-cost calculation).
- If the child is **5-18 years old** and there is no separate charge for their keep, don't count them as an occupant for the annual housing standard-cost calculation.

A4. Similarly, if a host has a child under 5 years of age living with them, the child shouldn't be counted as an occupant for the annual housing standard-cost calculation.

A5. If you, as a host, have a shared-care arrangement for a child over 5 years of age, the child's occupancy should be based on the percentage of the year the child typically lives with you. For example, with a 50:50 shared-care arrangement, a child over the age of five should be counted as half (0.5) an occupant. There is no need to keep track of the number of nights in the year the child actually stayed with you – you can base the child's occupancy on whatever the typical shared-care arrangement is. If the shared-care is informal and fluid, Inland Revenue will accept a reasonable estimate based on the usual arrangements, which may be a 50:50 basis (so counting the child as half (0.5) an occupant). The same approach should be applied if you have a dependent child who is absent from the household while attending boarding school or living elsewhere for some of the year.

A6. Family visitors and guests accommodated without charge on a short-term stay are not counted as occupants (for the standard-cost calculation) or as boarders (for the weekly standard-cost calculation).

Appendix B: Dominant purpose test for claiming transport

B1. If you're including the annual transport standard-cost element, you'll need to work out the number of kilometres you are allowed to include in your calculation.

B2. The kilometres you can include in the annual transport standard-cost calculation are the total number of kilometres you travelled in the income year:

- in a motor vehicle you pay the running costs for;
- where the dominant purpose of the trip related to the provision of the private boarding service.

B3. The annual transport standard-cost reflects that there is a cost involved in you using your vehicle in providing the private boarding service.

B4. To include the annual transport standard-cost element, the requirement to provide transport to the boarder should be part of the boarding agreement. This is likely to be more common for private boarding services provided to young international students.

B5. For a trip to be included, the dominant purpose of the trip must have been to transport the boarder. It doesn't matter if other people were also transported at the same time – as long as the dominant purpose was to transport the boarder, you can claim the trip.

B6. You can't apportion the kilometres travelled in trips where the boarder was transported but this was not the dominant purpose – you may not claim any kilometres for those trips.

B7. You must maintain a log book or similar record to support the number of kilometres claimed for the year. The three-month log book test period should not be used unless it produces an accurate representative result.

Examples

B8. Examples B1 – B5 illustrate the dominant purpose test for claiming transport, using the same family situation.

Example B1

Lauren and Russell have an arrangement to house and care for an international student (Virat, age 13). Part of that arrangement requires Lauren and Russell to take Virat to local attractions. Lauren and Russell decide to take Virat to their local zoo during the weekend. They also take their own children, Oscar and Arlo. Although the whole family is being transported to the zoo, the dominant purpose of the trip is to take Virat there. Therefore, all of the kilometres travelled on the trip can be claimed.

Example B2

While Virat is in New Zealand, he attends the same school as Oscar and Arlo. Lauren and Russell usually transport Oscar and Arlo to school, so they transport Virat to school at the same time. The dominant purpose of the journey is to take their own children to school, not to transport Virat. Therefore, none of the kilometres travelled on these trips can be claimed.

Example B3

Virat plays cricket. Lauren and Russell take him to his cricket matches each weekend. These trips are related to providing the boarding services. It doesn't matter who else travels in the vehicle at the same time (for example, if Oscar and Arlo go along to watch the match). The dominant purpose of the trip is to transport Virat. Therefore, all of the kilometres travelled on these trips can be claimed.

Example B4

The family visits Grandma for her birthday and takes Virat with them for the family experience and because he is too young to be left at home alone. While the trip involves Virat, the dominant purpose of the trip is for the family to visit Grandma. Therefore, none of the kilometres travelled on the trip can be claimed.

Example B5

Trips to the local supermarket are simply part of the normal weekly shop for the family groceries, irrespective of whether specific items may have also been purchased for the boarder at the supermarket (for example, because Virat needed more toiletries). The dominant purpose of these trips isn't related to the provision of the boarding services. Therefore, none of the kilometres travelled on these trips can be claimed.

Appendix C: Examples of using the standard-costs in the Determination

For all these examples, it is presumed that the eligibility criteria for the Determination are met, and the taxpayer has decided to use the standard-cost basis.

Note: These examples use the weekly standard-cost amount of $186 that's been set for the 2019-20 income year, subject to CPI adjustment. Inland Revenue will make a CPI adjustment to the weekly standard-cost figure each year, and will publish the revised figure as at the end of March each year.

The following example illustrates a situation where only the weekly standard-cost is used.

Example C1 – Boarding income less than weekly standard-cost

Lynn has one student boarding in her home. The boarder pays $180 per week for the full year. Lynn doesn't have any other boarders.

As the weekly board Lynn receives is less than the determined weekly standard-cost per boarder ($186), Lynn isn't required to return the income.

Example C2 – Multiple boarders with income less than weekly standard-cost

Bailey and Lorin are both university students. They live at home with their parents, and each pays $100 per week for board. There are no other private boarders. As the board Bailey and Lorin's parents get is less than the determined weekly standard-cost per boarder ($186) they aren't required to return the income.

Example C3 – Incorporating annual housing standard-cost for own property

Gavin owns his family's home, which he purchased five years ago for $550,000. He hasn't made any capital improvements to the property.

Gavin and his partner Jenny have one boarder, who pays $250 per week for the full year. Gavin and Jenny also have a teenage son who lives with them full time, so there is a total of 4 occupants in the home for the year.

As the weekly board exceeds the weekly standard-cost per boarder ($186), Gavin uses the worksheet "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" and calculates the annual housing standard-cost element as follows:

$$(a - b) \times c \times d$$

a Because Gavin owns his home, "a" is 4% of the cost of the home: 4% of $550,000 = $22,000.

b Gavin doesn't receive an accommodation supplement, so "b" is 0.

c The average number of boarders relative to the total number of occupants for the period the boarder is there (the whole year) is 1 out of 4, so "c" is 25%.

d The boarder is accommodated for the full year, so "d" is 1 (the number of weeks in the year the boarder is there (52) divided by 52 weeks in the year).

Therefore, Gavin calculates that his annual housing standard-cost is $5,500:

($22,000 – 0) × 25% × 1 = $5,500

Gavin adds together the weekly standard-cost he is allowed per week per boarder ($186 × 52 = $9,672) and his annual housing standard-cost of $5,500. The total standard-cost Gavin uses, combining these elements, is **$15,172**.

The total board Gavin and Jenny receive for the year is $13,000 ($250 × 52). As this is less than the total standard-cost Gavin has calculated, he and Jenny aren't required to return any of the boarding income – it is exempt income.

Example C4 – Incorporating annual housing standard-cost for rented property with accommodation supplement

Suzie rents her home, paying $450 per week in rent. She receives an accommodation supplement of $20 per week.

Suzie has an international student boarding for a six-month period during the year. Suzie has an 8-year-old child, who lives with her full time. Therefore, for the six-month period the boarder is staying, there are three occupants in the household, and for the other six-month period there are two. The boarder pays $200 per week in board.

As the weekly board exceeds the weekly standard-cost per boarder ($186), Suzie uses the worksheet "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" and calculates the annual housing standard-cost element as follows:

$$(a - b) \times c \times d$$

a Because Suzie rents her home, "a" is the total rent she paid in the year: $450 × 52 = $23,400.

b Suzie received an accommodation supplement in the year, so "b" is the total amount of the accommodation supplement for the year: $1,040.

c The average percentage of boarders relative to total occupants for the period the boarder is there (half of the year) is 33.33% – this is "c".

d The boarder is accommodated for half of the year, so "d" is 0.5 (the number of weeks in the year the boarder is there (26) divided by 52 weeks in the year).

Therefore, Suzie calculates that her annual housing standard-cost is $3,726.29:

($23,400 – $1,040) × 33.33% × 0.5 = $3,726.29

Suzie adds together the weekly standard-cost she is allowed per week per boarder ($186 × 26 = $4,836) and her annual housing standard-cost of $3,726.29. The total standard-cost Suzie uses, combining these elements, is **$8,562.29**.

The total board Suzie receives for the year is $5,200 ($200 × 26). As this is less than the total standard-cost Suzie has calculated, she isn't required to return any of the boarding income – it is exempt income.

Example C5 – Incorporating annual housing standard-cost for multiple boarders for own property

Meredith owns her home, which she purchased 20 years ago for $100,000. She hasn't made any capital improvements to the property.

Over the year, Meredith and her partner Mai have three boarders, who live in the household at different periods of the year. One permanent boarder pays $180 per week for the full year, and two boarders each pay $250 per week for six months (26 weeks) in the second half of the year. There are three occupants in the household for half of the year, increasing to five in the second half of the year when the two additional boarders are there. Meredith and Mai don't provide any transport services to the boarders as part of the private boarding service arrangements.

The total board received for the year was $22,360:

$$(\$180 \times 52) + (\$250 \times 26 \times 2) = \$22,360$$

The weekly-standard cost Meredith is allowed is $19,344:

$$(\$186 \times 52) + (\$186 \times 26 \times 2) = \$19,344$$

As the total board received exceeds the weekly standard-cost, Meredith uses the worksheet "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" and calculates the annual housing standard-cost element as follows (calculating each six-month period separately, because the number of boarders differed in each period):

$$(a - b) \times c \times d$$

a Because Meredith owns her home, "a" is 4% of the cost of the home: 4% of $100,000 = $4,000.

b Meredith doesn't receive an accommodation supplement, so "b" is 0.

c For the first six-month period (when there is just one boarder), the average percentage of boarders relative to total occupants, "c", is 33.33%.

For the second six-month period (when there are three boarders), the average percentage of boarders relative to total occupants, "c", is 60%.

d For the first six-month period (when there is just one boarder), the number of full weeks the boarder is there is 26 (the whole six-month period), so "d" is 0.5 (26 divided by 52). Likewise for the second six-month period (during which there are also boarders for 26 weeks).

Therefore, Meredith calculates that her annual housing standard-cost is $1,860:

For the first six-month period: ($4,000 – 0) × 33% × 0.5 = $660

For the second six-month period: ($4,000 – 0) × 60% × 0.5 = $1,200

Therefore, total annual housing standard cost = $1,860

Meredith adds together the weekly standard-cost she is allowed ($19,344) and her annual housing standard-cost of $1,860. The total standard-cost Meredith uses, combining these elements, is **$21,204**.

As noted above, the total board Meredith and Mai receive for the year is $22,360. As this is more than the total standard-cost Meredith has calculated, she and Mai must return any boarding income that exceeds the total standard-costs. Therefore, the amount to be returned is $1,156 ($22,360 – $21,204).

Although Meredith owns the home, the boarding services are provided by both Meredith and Mai, so the amount to be returned should be split so each returns half ($578).

The following example illustrates a situation where the weekly standard-cost, the annual housing standard-cost and the annual transport standard-cost are all used.

Note: This example uses the kilometre rates that have been set for the 2018-19 income year. Inland Revenue adjusts the kilometre rates each year, and publishes the revised figures as at the end of March each year on the Inland Revenue website.

Example C6 – Incorporating all three standard-costs for own property

Matai and Roimata provide boarding services to Joan and her four-year-old son for $250 per week. Matai and Roimata and their two children aged under five occupy the home full time, and Matai's teenage daughter from a previous relationship lives with them 50% of the time. Matai's teenage daughter is counted as "half" an occupant (0.5), because she lives there half the time.

Joan doesn't have a car, so part of the boarding arrangement is that Roimata will drive Joan to her work and Joan's son to day-care, and pick them up at the end of the day. This is a 5km round-trip for each drop off and pick up – so a total of 10km for each day Joan works. Joan worked on 240 days during the year. Roimata keeps a log book for the year, recording the days on which she makes these trips. Roimata's car travels less than 14,000 kilometres during the year.

Matai purchased the home for $150,000 ten years ago. He hasn't made any capital improvements to the property. Matai and Roimata receive no accommodation supplement.

In this situation, one boarder pays $250 per week for board for the full year – Joan's son is not counted as a boarder as he is under five years old. The household is treated as consisting of 3.5 total occupants – Matai, Roimata and Joan, and Matai's daughter as "half" an occupant. The three children under five years old are not counted as occupants.

As the weekly board exceeds the weekly standard-cost per boarder ($186), Matai and Roimata use the worksheet "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" and calculate the annual housing standard-cost element as follows:

$$(a - b) \times c \times d$$

a Because Matai owns the home, "a" is 4% of the cost of the home: 4% of $150,000 = $6,000.

b Matai and Roimata don't receive an accommodation supplement, so "b" is 0.

c The average percentage of boarders relative to total occupants for the period the boarder is there (the whole year), "c", is 28.57%.

d The boarder is accommodated for the full year, so "d" is 1 (the number of weeks in the year the boarder is there (52) divided by 52 weeks in the year).

Therefore, Matai and Roimata calculate that their annual housing standard-cost is $1,714.20:

$$(\$6{,}000 - 0) \times 28.57\% \times 1 = \$1{,}714.20$$

Matai and Roimata add together the weekly standard-cost they are allowed per week per boarder ($186 × 52 = $9,672) and their annual housing standard-cost of $1,714.20. The total of these two elements is **$11,386.20.**

The total board Matai and Roimata receive for the year is $13,000 ($250 × 52). As this is more than the weekly standard-cost element and the annual housing standard-cost element combined ($11,386.20), Matai and Roimata calculate their annual transport standard-cost. They can add this element as Roimata provides transport to Joan (and her son) as part of the boarding arrangement. The dominant purpose of the trips, dropping Joan to work and her son to day-care and picking them up again at the end of the day, is related to the provision of the private boarding service, so the kilometres travelled on these trips can be claimed for.

Matai and Roimata use the worksheet "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" and calculate the annual transport standard-cost element as follows:

kilometre rate × kilometres travelled

kilometre rate The relevant motor vehicle kilometre rates for the year (set by the Commissioner of Inland Revenue) are 79 cents per km for the first 14,000 km, and 30 cents per km for any kilometres over 14,000 km.

kilometres travelled The total kilometres travelled where the dominant purpose of the trip related to providing the boarding services is 2,400 km (10km on each day Joan worked multiplied by the 240 days on which she worked).

Therefore, Matai and Roimata calculate that their annual transport standard-cost is $1,896:

$$2{,}400 \times 0.79 = \$1{,}896$$

Matai and Roimata add together their weekly standard-cost of $9,672, their annual housing standard-cost of $1,714.20, and their annual transport standard-cost of $1,896. The total of the three elements is **$13,282.20**.

As noted above, the total board Matai and Roimata receive for the year is $13,000 ($250 × 52). As this is less than the total standard-cost Matai and Roimata have calculated, they aren't required to return any of the boarding income – it is exempt income.

Appendix D: Examples of checking a boarding rate to see if you're likely to have tax obligations for your boarding income

For all these examples, it is presumed that the eligibility criteria for the Determination are met, and the taxpayer has decided to use the standard-cost basis.

Note: These examples use the weekly standard-cost amount of $186 that's been set for the 2019-20 income year, subject to CPI adjustment. Inland Revenue will make a CPI adjustment to the weekly standard-cost figure each year, and will publish the revised figure as at the end of March each year.

D1. The examples in Appendix C show how to calculate whether there is a tax liability at the end of the year. However, you may want to check in advance of getting a boarder that the rate you plan to charge will likely be covered by your weekly and housing standard-costs, so you can be reasonably confident about whether you'll have tax obligations for your boarding income at the end of the tax year.

D2. While you can estimate this, bear in mind that **you may end up having tax obligations** at the end of the year for some of your boarding income if any of the following things happen:

- the number of occupants of your home **who aren't boarders** (and who are over 5 years of age) **increases** during the year;
- your rent (if you rent your home) **decreases** during the year; or
- you **start receiving** an accommodation supplement during the year, or get an **increase** in any accommodation supplement you already receive.

D3. The following examples explain how you can estimate whether the rate you plan to charge a boarder will likely be covered by your weekly and housing standard-costs, so you can be reasonably confident about whether you'll have tax obligations for your boarding income at the end of the tax year.

Example D1 – Hosts own their home

Ashan and Lisa have decided to get a boarder, as they have a spare room. They are planning to charge about $280 per week in board. They would prefer not to have any tax obligations at the end of the year for the boarding income, so they want to estimate if their likely standard-costs would cover their boarding income if they set the board at that level.

Ashan and Lisa bought their home for $460,000. They do not receive an accommodation supplement. Provided it is just Ashan, Lisa and the boarder living in the house, and Ashan and Lisa do not start receiving an accommodation supplement, the housing standard-cost that could be used for each week the boarder is there would be $117.

This is calculated as follows:

- For hosts who own their home, the housing standard-cost is based on 4% of the cost of the property.
- 4% of $460,000 = **$18,400**.
- With Ashan, Lisa and one boarder living in the house, ⅓ of the $18,400 (or **$6,133**) would be the annual housing standard-cost Ashan and Lisa could use if the boarder was there for 52 weeks.
- The annual amount of **$6,133** can be converted to a weekly amount, by dividing it by 52.
- On a weekly basis, the housing amount would therefore be **$117**.
- When this is added to the weekly standard-cost of $186, Ashan and Lisa's total estimated standard-cost converted to a weekly amount would be **$303 per week** ($186 + $117).

This would mean that Ashan and Lisa's proposed boarding charge of $280 per week would be covered by their estimated standard-costs ($303 per week). Provided the circumstances don't change during the year (in particular, see the three bullet points at para D2), Ashan and Lisa can be confident they would not have any tax obligations for their boarding income if the board is set at the level they are proposing. Ashan and Lisa would not need to work out their transport standard-costs as their income from boarding is covered by the weekly costs and housing costs.

Example D2 – Hosts own their own home and may wish to keep track of transport (if provided) to add on the transport standard-cost

This example assumes the same facts as Example 1, but with Ashan and Lisa having two teenage children who still live at home. Because there are more occupants in the home, the housing standard-cost would be less than in Example 1. This reflects that the housing expenses are effectively split between the number of occupants in the house. With the boarder being one of five people living in the house, only ⅕ of the total housing cost figure in the formula could be used.

The housing standard-cost that could be used for each week the boarder is there would be $70.77.

This is calculated as follows:

- For hosts who own their home, the housing standard-cost is based on 4% of the cost of the property.
- 4% of $460,000 = **$18,400**.
- With Ashan, Lisa, their two teenage children and one boarder living in the house, ⅕ of the $18,400 (or **$3,680**) would be the annual housing standard-cost Ashan and Lisa could use if the boarder was there for 52 weeks.
- The annual amount of **$3,680** can be converted to a weekly amount, by dividing it by 52.
- On a weekly basis, the housing amount would therefore be **$70.77**.
- When this is added to the weekly standard-cost of $186, Ashan and Lisa's total estimated standard-cost converted to a weekly amount would be **$256.77 per week** ($186 + $70.77).

This would mean that Ashan and Lisa's proposed boarding charge of $280 per week would not be covered by their estimated weekly and housing standard-costs ($256.77 per week). Ashan and Lisa therefore may have tax obligations for some of their boarding income if the board is set at the level they are proposing.

Adding on transport costs

If Ashan and Lisa's boarding agreement requires them to provide transport to the boarder, they may wish to keep track of the number of kilometres for which they could claim the transport standard-costs. Eligible trips are those where the dominant purpose of the trip was to transport the boarder.

At the end of the year, Ashan and Lisa could then calculate their **annual transport standard-cost** (see "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" for help with this).

That amount could then be **added** to Ashan and Lisa's **total weekly standard-costs for the year** and their **annual housing standard-costs** (see "*Using DET 19/01 – Worksheet for calculating standard-costs for private boarding services*" for help with calculating these amounts at the end of the year).

The total of these three elements would be Ashan and Lisa's **total standard-costs** for the year.

If Ashan and Lisa's boarding income was:

Less than (or equal to) their total standard-costs	→	They would **not** have any tax obligations for their boarding income.
More than their total standard-costs	→	Their boarding income **over** the amount of their **total standard-costs** would be taxable and must be included in their tax returns (split between them).

Example D3 – Host rents their home and receives an accommodation supplement

Sandra lives alone and has decided to get a boarder to help with her expenses. She is planning to charge about $240 per week in board. She would prefer not to have any tax obligations at the end of the year for the boarding income, so she wants to estimate if her likely standard-costs would cover her boarding income if she set the board at that level.

Sandra rents her home for $320 per week. She receives an accommodation supplement of $100 per week. Provided it is just Sandra and the boarder living in the house, and Sandra's accommodation supplement does not increase, the housing standard-cost that could be used for each week the boarder is there would be $110.

This is calculated as follows:

- For hosts who rent their home, the housing standard-cost is based on their total rent for the year, **minus** the total accommodation supplement they received for the year.
- Sandra's total annual rent, at $320 per week, would be **$16,640** ($320 × 52).
- The total accommodation supplement she would receive for the year, at $100 per week, would be **$5,200** ($100 × 52).
- Sandra's expected total rent minus her expected total accommodation supplement for the year would be **$11,440** ($16,640 – $5,200).
- With Sandra and one boarder living in the house, ½ of the $11,440 (or **$5,720**) would be the annual housing standard-cost Sandra could use if the boarder was there for 52 weeks.
- The annual amount of **$5,720** can be converted to a weekly amount, by dividing it by 52.
- On a weekly basis, the housing amount would therefore be **$110**.
- When this is added to the weekly standard-cost of *$186, Sandra's total estimated standard-cost converted to a weekly amount would be **$296 per week** ($186 + $110).

This would mean that Sandra's proposed boarding charge of $240 per week would be covered by her estimated standard-costs ($296 per week). Provided the circumstances don't change during the year (in particular, see the three bullet points at para D2), Sandra can be confident she would not have any tax obligations for her boarding income if the board is set at the level she is proposing.

DET 19/02: Standard-cost household service for short-stay accommodation providers (21 May 2019)

This Determination is made under section 91AA of the Tax Administration Act 1994 (the TAA). All legislative references are to the TAA unless otherwise stated.

Explanation

This Determination may be relevant to taxpayers who provide short-stay accommodation services in their home, if they do not rent out rooms for more than 100 nights in the year.

This Determination sets standard costs that can be treated as expenditure incurred in deriving income from providing the short-stay accommodation service. For any income year, a taxpayer can choose to use these standard costs instead of their actual expenses, provided the criteria in this Determination are met.

If a taxpayer chooses to use the standard costs, income from providing the short-stay accommodation service will be exempt up to the amount of those costs. Income from providing the accommodation will only need to be returned to the extent it exceeds the standard costs. Any additional costs related to providing the accommodation cannot be deducted if they relate to an item covered by the standard costs.

The Commissioner makes this Determination under section 91AA, on the basis that she considers it will result in a significant reduction in compliance costs for these taxpayers, without inappropriate: risk to the revenue, demand on the Commissioner's resources, or inaccuracy for a significant number of taxpayers.

The standard costs in this Determination can only be used by natural persons. Other limitations on who can use this Determination are set out in the next section, "Scope of Determination".

Scope of Determination

Subject to the limitations below, this Determination applies to natural persons who provide short-stay accommodation services in their domestic accommodation.

This Determination does **not** apply where:

(a) the short-stay accommodation service is provided for more than 100 room rental nights during the income year:

(b) the taxpayer does not choose to apply this Determination:

(c) the short-stay accommodation service is provided as part of a GST taxable activity of a registered person:

(d) the domestic accommodation is trust property, unless for the income year the host paid all of the costs for the use of the domestic accommodation in providing the short-stay accommodation service, including (as relevant): financing costs (eg, home loan interest), rent, insurance, rates, and repairs and maintenance:

(e) the domestic accommodation is used in the income year to provide both a short-stay accommodation service and a private boarding service as defined in *DET 19/01: Standard-cost household service for boarding service providers* (21 May 2019) or any determination that replaces DET 19/01:

(f) any other Determination made under section 91AA is applied for the income year in relation to the provision of services that require the use of the domestic accommodation:

(g) any deductions are claimed for actual costs incurred in relation to the use of the domestic accommodation to provide accommodation to others, such as flatmates, for any time in the income year when the short-stay accommodation service is provided.

Subject to any adjustment based on the annual movement of the Consumers Price Index as at the end of March each year, this Determination, unless specifically withdrawn, shall apply from the 2019-20 income year.

Interpretation

In this Determination, unless the context otherwise requires:

- expressions used have the same meanings as those in sections CW 61 and YA 1 of the Income Tax Act 2007 and section 91AA;
- **Consumers Price Index** means the application of the annual movement of the All Groups Consumers Price Index and the House Price Index, as appropriate, to the elements included in the nightly standard-cost per room rental night;

- **domestic accommodation** means a dwelling that is, or is part of, the principal residence of any short-stay accommodation host;
- **guest** means a person or persons provided with short-stay accommodation in return for payment;
- **host** means a natural person (which includes one or more natural persons living together in the same residence) who provides a short-stay accommodation service in their domestic accommodation;
- **room rental night** means a night that short-stay accommodation is provided to a guest, in a bedroom set aside for the exclusive use of the guest, with each bedroom in which such accommodation is provided being counted separately;
- **short-stay accommodation** means accommodation provided for up to four consecutive weeks, in a dwelling that is not the guest's ordinary residence, and does not include accommodation provided to residential tenants, boarders or care home residents, nor student or emergency accommodation;
- **short-stay accommodation service** means all activities involved in the provision of short-stay accommodation and associated services (including, for example, the provision of breakfast, pantry staples, laundry and other services or utilities a host typically provides to guests in the short-stay accommodation in return for payment);
- **standard-cost** in relation to any short-stay accommodation service, means the standard cost that has been determined by the Commissioner of Inland Revenue or calculated in accordance with the method determined by the Commission of Inland Revenue for the purposes of this Determination, as referred to in section 91AA(2).

Determination

A short-stay accommodation service is a "standard-cost household service" for the purposes of section 91AA where the short-stay accommodation service involves the use of the host's domestic accommodation.

If this Determination applies, the standard costs that are treated as incurred by the taxpayer in deriving exempt income and any assessable income from providing the standard-cost household service are calculated using the formula:

(Total room rental nights × nightly standard-cost) – accommodation supplement

Where –

Total room rental nights is the total of all room rental nights for the income year (which cannot exceed 100);

Nightly standard-cost is:

(i) where a short-stay accommodation host owns their domestic accommodation, ***$50**; or

(ii) where a short-stay accommodation host rents their domestic accommodation, ***$45**; and

Accommodation supplement is the total accommodation supplement received by the short-stay accommodation host for the income year multiplied by the total room rental nights divided by 365.

The nightly standard-cost covers:

- the cost for the use of the domestic accommodation in providing the short-stay accommodation service, including (as relevant) financing, rent, insurance and rates; and
- expenditure on items and services typically provided to short-stay accommodation guests or related to provision of the service, such as breakfast, pantry staples, linen, bathroom and laundry facilities, cleaning, power, telephone, internet, bedroom chattels and general household furniture, and advertising and host service fees.

The standard-costs for short-stay accommodation hosts are calculated inclusive of GST, if any.

Income derived from providing the short-stay accommodation service is exempt income under s CW 61 up to the amount of the standard-costs calculated by using the formula in the Determination. Any income derived from providing the short-stay accommodation service in excess of the amount of the standard costs as determined by using the formula is assessable income.

This Determination is made by me, acting under delegated authority from the Commissioner of Inland Revenue.

This Determination is signed on the 21st day of May 2019.

Rob Wells
LTS Manager, Technical Standards

* The Commissioner will review these amounts based on the annual movement of the CPI as at the end of March each year. Inland Revenue will publish any CPI adjustment to the nightly standard-cost figures in its *Tax Information Bulletin* and on its website.

COMMENTARY ON DETERMINATION DET 19/02

1. This commentary is intended to help you understand and apply the Determination *DET 19/02: Standard-cost household service for short-stay accommodation providers*. It does not form part of the Determination and is not a legally binding statement.

Understanding the Determination

2. If you have short-stay accommodation guests in your home, the starting point is that the income you receive from them is taxable, and your expenses that relate to earning the income are deductible.

> **Note**: "short-stay accommodation" is accommodation provided for up to four consecutive weeks in a dwelling that's not the guest's ordinary residence. This accommodation is often provided through peer-to-peer platforms such as Airbnb or Bookabach.
>
> It doesn't include accommodation provided to tenants, boarders or care home residents, or student or emergency accommodation. All of those things are outside the scope of the Determination.

3. You can keep track of your **actual costs** associated with having short-stay accommodation guests (like home loan interest or rent, utility bills, depreciation of chattels etc), and use that as the basis for your deductions. However, most of your actual costs would only be partly deductible. This is because they are your private household costs and will only partly relate to earning the short-stay accommodation income. Therefore, you would need to apportion those costs appropriately, and only deduct the relevant portion.
4. Alternatively, if you have short-stay accommodation guests in your home, you may be able to use the Determination, which sets **standard costs** for your deductions. The standard costs reflect the expenses you are likely to incur in having short-stay accommodation guests. This approach is simpler than using your actual costs and apportioning them where necessary, and for some hosts this approach will mean there is no need to file a tax return (eg, if you don't have other income you need to file a tax return for).

Who can use the Determination?

5. You may choose to use the standard-costs in the Determination if:
   - you are a natural person (eg, an individual not a company);
   - you rent out a room or rooms in your home to guests for short-stay accommodation (no more than four consecutive weeks);
   - you don't rent out rooms for more than 100 nights in the income year (counting each room that is rented out separately – see page 3);

     > For most people the income year is 1 April – 31 March

   - the property isn't held in a trust, or if it is you paid all of the costs for the income year for the use of the domestic accommodation in providing the short-stay accommodation service, including (as relevant): financing costs (eg, home loan interest), rent, insurance, rates, and repairs and maintenance;
   - you don't provide the short-stay accommodation service as part of a GST taxable activity;
   - your home isn't used in the income year to provide both a short-stay accommodation service and a private boarding service (as defined in *DET 19/01: Standard-cost household service for boarding service providers* or any determination that replaces DET 19/01;
   - neither you nor anyone else applies any other standard-cost household service determination in relation to services provided in your home (for example, *DET 09/02: Standard-cost household service for childcare providers*); and
   - no one claims deductions for actual costs incurred in relation to the use of your home to provide accommodation to others, such as flatmates, for any time in the income year when the short-stay accommodation service is provided.

> **Counting "room rental nights"**
>
> If you rent out more than one bedroom, each bedroom rented out is counted separately in working out the "room rental nights". This is because the standard-costs are based on a proportion of average household costs that reflects having guests in one room.
>
> For example, if you rent out your whole 5-bedroom house for 7 nights, that counts as 35 room rental nights. If you rent out 1 bedroom for 40 nights and another bedroom for 30 nights, that counts as 70 room rental nights.

Q: Why can the standard-costs only be used by people who have 100 or fewer rental nights?

A: The Commissioner's power to set standard-costs to reduce compliance costs has limits around it. One of those is that the Commissioner has to be satisfied that the determination wouldn't result in inappropriate risk to the revenue or inappropriate inaccuracy for a significant number of taxpayers.

The standard-costs include an amount for the use of the home in providing the accommodation (ie, home loan interest or rent, insurance and rates), based on average national costs. The actual costs will vary significantly from one property to another. However, if the average costs are used for a limited number of nights, the extent to which a particular taxpayer's actual costs will vary from the average is limited.

Having a cap on the number of nights' accommodation therefore ensures the use of average housing costs won't create an inappropriate risk to the revenue or inappropriate inaccuracy for a significant number of taxpayers.

Your options

6. If you meet the criteria listed in [5], you may choose to use either the "standard-cost basis" or the "actual-cost basis":

The standard-cost basis

Use the standard-costs in the Determination as the amount you can offset against your income from providing the short-stay accommodation service.

You can't use any of your actual expenses for items covered by the standard-costs.

OR

The actual-cost basis

If you take this approach, you deduct your actual expenses related to earning the short-stay accommodation income.

Many expenses will need to be apportioned, because they partly relate to having guests and are partly your private household costs.

7. As noted above, if you choose to use the actual-cost basis, some of your expenses will need to be apportioned, as they would not relate solely to the rental activity (for example, home loan interest and power bills). There is guidance on what types of expenses need to be apportioned, and how you should do this, in *QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?*

8. For each income year, provided you meet the criteria to use the standard-cost basis, you need to decide which approach you want to use. If you don't meet the criteria for a particular year, you will not have a choice about which approach to use for that year – you will have to use the actual-cost basis for your deductions.

Income tax implications of using the standard-cost basis

9. If you choose to use the standard-cost basis:

- Income you make from providing the short-stay accommodation service will be **exempt income** up to the amount of the standard-costs calculated by using the formula in the Determination.
- Any income in excess of those costs that you make from providing the short-stay accommodation service will be **assessable income**, and you will need to include it in a tax return.
- If your income from providing the short-stay accommodation service does not exceed the standard-costs, you will not need to file a tax return on account of providing the accommodation, but you may need to for some other reason (for example, if you have other income or losses).
- You will not be able to deduct any additional costs related to providing the accommodation, if they relate to an item covered by the standard-costs (the items covered by the standard-costs are noted from [10] below).
- Any additional cost that does **not** relate to an item covered by the standard-costs in the Determination and is not a capital cost is only deductible to the extent it was incurred in deriving assessable income and is not private in nature. If a cost relates to both earning income and the private use of your home, an appropriate apportionment needs to be made.

Items covered by the standard-costs

10. The nightly standard-costs set out in the Determination represent the average costs likely to be incurred by short-stay accommodation hosts per room rental night.

11. The nightly standard-costs for the 2019-20 income year are:

- where a short-stay accommodation host owns their domestic accommodation, **$50**, subject to CPI adjustment.
- where a short-stay accommodation host rents their domestic accommodation, **$45**, subject to CPI adjustment.

12. As noted in the Determination, the nightly standard-costs cover:
    - the cost for the use of the domestic accommodation in providing the short-stay accommodation service, including (as relevant) financing, rent, insurance and rates;
    - expenditure on items and services typically provided to short-stay accommodation guests or related to provision of the service, such as breakfast, pantry staples, linen, bathroom and laundry facilities, cleaning, power, telephone, internet, bedroom chattels and general household furniture, and advertising and host service fees.
13. The nightly standard-costs are based on average costs relating to the use of domestic accommodation. The costs have been calculated based on data from Statistics New Zealand, current market values of chattels that short-stay accommodation hosts typically provide for use by guests, and estimates of bedroom sizes relative to average New Zealand house sizes (based on data from Quotable Valuation NZ).
14. The nightly standard-costs in the Determination are not intended as any guide to the amounts that hosts can or should charge on a nightly basis for the short-stay accommodation service, but rather reflect the expenditure Inland Revenue considers hosts are likely to incur.
15. If you consider that the relevant nightly standard-cost does not reflect the higher costs incurred in your situation, you can choose to use the actual-cost basis. Whether you use the standard-cost basis or the actual-cost basis, you need to keep sufficient records to support your tax position (see [28]).

Using the standard-cost basis or the actual-cost basis

The standard-cost basis

16. If you choose to use the standard-cost basis for any given income year, you do this by either:
    - Not including the exempt income (ie, income from providing the short-stay accommodation service, up to but not exceeding the standard-costs calculated under the Determination) in a tax return for that income year, if you are required to file a return.

    OR

    - Not filing a tax return for the income year, if the income you make from providing the short-stay accommodation service does not exceed the standard-costs calculated under the Determination, and you don't otherwise have to file a return.

The actual-cost basis

17. If you choose to use the actual-cost basis, you must return all income from providing the short-stay accommodation service, and your deductions must be based on the expenses you actually incur in relation to providing the service. There is guidance on how the income tax rules apply in *QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?*

When you need to make your choice about the cost approach

18. You can make your choice about whether to use the standard-cost basis or the actual-cost basis at any time up to the due date for filing a return.
19. You should keep adequate records of your actual costs related to providing the short-stay accommodation service, as you may not know before the end of the income year whether you will meet the criteria to be able to use the standard-cost basis. If you cannot use the standard-cost basis (for example, if you had more than 100 room rental nights in the year), or if you choose not to use the standard-cost basis, you will need those records to support deductions you claim when you file a return.

Consumers Price Index

20. Inland Revenue will make an annual adjustment to the nightly standard-cost figures, by applying the annual movement of the All Groups Consumers Price Index and the House Price Index, as appropriate, to the elements included in the nightly standard-cost per room rental night.
21. Inland Revenue will publish the revised nightly standard-cost figures, as at the end of March each year, in its *Tax Information Bulletin* and on its web

GST

22. You cannot use the standard-costs in the Determination if you provide the short-stay accommodation service as part of a GST taxable activity. Therefore, anyone who uses the standard-cost basis will not be eligible to claim back GST charged on goods and services consumed. As such, the standard-cost components determined by the Commissioner have been prepared on a GST-inclusive basis.

If you receive an accommodation supplement

23. You may receive an accommodation supplement from the Ministry of Social Development. The Ministry assesses eligibility for an accommodation supplement, based on factors such as accommodation costs, income, assets, whether you have dependents, and your employment status.

24. If you receive an accommodation supplement, it is subtracted in calculating the standard-costs under the Determination. Example 4 (page 12) shows how the receipt of an accommodation supplement affects the calculation of the standard-costs.

If you receive an accommodation allowance, benefit or other assistance from MSD, you need to let them know about your rental income, so they can ensure you're receiving the correct amounts.

Reimbursements

25. If you receive reimbursements for specific additional costs not covered by the standard-costs (for example, payment received from the guest for telephone toll calls), these reimbursements are not treated as income, and the costs are not treated as a deductible expense incurred by you.

Returning income

26. Whether you need to return income from providing the short-stay accommodation service depends on whether the income is more than your allowable standard-costs for the year, and whether you choose to use the Determination.

27. Table 1 (on page 9) will help you decide whether to consider using the Determination. If you want to use the Determination, Flowchart 1 (on page 10) will help you work out if you are eligible to do so. Flowchart 1 also summarises what you need to do to meet your income tax obligations.

Record keeping

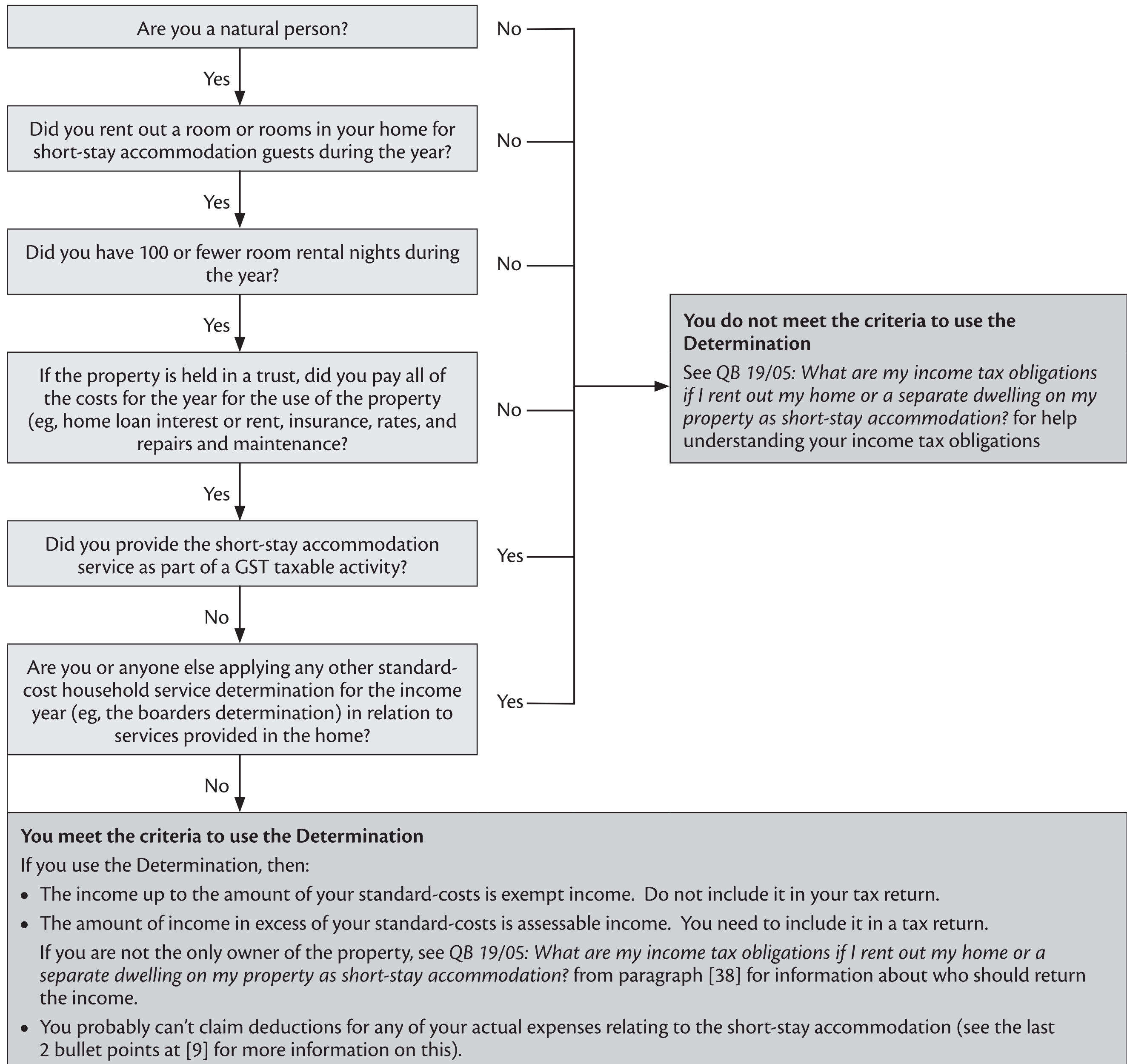
28. Whether you use the Determination or not, you must keep sufficient records to support your tax position. This would include records of the number of nights you rent out rooms, how much income you make from this, and any expenses you are able to deduct if you can't use the Determination or choose not to.

Note: You should keep records of all expenses even if you think you will use the Determination, as you may not know until the end of the year whether you will definitely be able to use the Determination.

Table 1: Should I consider using the standard-costs in the Determination?

Question	Yes (✔) No (✘)	Action
1. Is your income from providing the short-stay accommodation service equal to or less than the standard-cost amount?	✔	You may like to consider using the standard-costs in the Determination. See Flowchart 1 to check if you are eligible to do so.
	✘	Consider question 2.
2. Are you prepared to work out your expenses based on actual costs, because you think your expenses will be greater than the standard-costs?	✔	Consider using the standard rules, which are explained in QB 19/05: *What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?* But if you don't want to use the standard rules, see Flowchart 1 to check if you are eligible to use the Determination.
	✘	Consider using the Determination. See Flowchart 1 to check if you are eligible to use the determination.

Flowchart 1: Am I eligible to use the Determination, and what do I have to do for tax purposes?



You meet the criteria to use the Determination

If you use the Determination, then:

- The income up to the amount of your standard-costs is exempt income. Do not include it in your tax return.
- The amount of income in excess of your standard-costs is assessable income. You need to include it in a tax return.
  If you are not the only owner of the property, see QB 19/05: *What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?* from paragraph [38] for information about who should return the income.
- You probably can't claim deductions for any of your actual expenses relating to the short-stay accommodation (see the last 2 bullet points at [9] for more information on this).

EXAMPLES OF USING THE STANDARD-COST BASIS

In all of the following examples, it is presumed that the eligibility criteria for the Determination are met, and the taxpayer has decided to use the standard-cost basis.

Note: These examples use the nightly standard-cost amounts of $50 / $45 that have been set for the 2019-20 income year, subject to CPI adjustment. Inland Revenue will make CPI adjustments to the nightly standard-cost figures each year, and will publish the revised figures as at the end of March each year.

Example 1

Andy and Stuart own their home and rent out their study with a fold-out couch as short-stay accommodation when there are large events at the nearby stadium. The room is rented out for 15 nights during the income year, for $48 a night.

The total income Andy and Stuart made for the income year from providing the short-stay accommodation service was $720.

Andy and Stuart decide to use the standard-costs in the Determination. Using the formula in the Determination, they calculate that their standard-costs are $750 (15 room rental nights × $50 nightly standard cost).

Because the income Andy and Stuart make from renting out the room is less than their standard-costs, the income is all exempt. They don't need to return the income or calculate their actual expenses.

Example 2

Ngaire and Jared own their home and rent out the two spare bedrooms as short-stay accommodation. The bigger room was rented out for 60 nights during the income year, for $80 a night. The smaller room was rented out for 20 nights during the income year, for $55 a night.

The total income Ngaire and Jared made for the income year from providing the short-stay accommodation service was $5,900 (60 nights × $80 plus 20 nights × $55).

Ngaire and Jared decide to use the standard-costs in the Determination. Using the formula in the Determination, they calculate that their standard-costs are $4,000 (80 room rental nights × $50 nightly standard cost).

The income Ngaire and Jared make from renting out the rooms, up to the amount of their standard-costs ($4,000), is exempt. Ngaire and Jared need to include the income over that amount ($1,900) in their tax returns. They own the house jointly, so this amount needs to be split between them – with each of them returning half of it.

Ngaire and Jared cannot claim deductions for any of their actual expenses relating to providing the short-stay accommodation service, as all the expenses they incurred in providing the accommodation are covered by the standard-costs.

Example 3

Cole rents a two-bedroom apartment. Cole went overseas for a three-week holiday during the income year, and his landlord gave him permission to rent out the apartment while he was on holiday. Cole rented out the apartment for 18 nights while he was away, to a family visiting their relatives. The rent was $150 a night.

The total income Cole made from the income year from providing the short-stay accommodation service was $2,700 (18 nights × $150).

Cole decides to use the standard-costs in the Determination. Using the formula in the Determination, he calculates that his standard-costs are $1,620 (36 room rental nights (counting each bedroom separately) × $45).

The income Cole makes from renting out the apartment, up to the amount of his standard-costs ($1,620), is exempt. Cole needs to include the income over that amount ($1,080) in his tax return.

Cole can't claim deductions for any of his actual expenses relating to providing the short-stay accommodation service, as all the expenses he incurred in providing the accommodation are covered by the standard-costs.

Example 4

Kasey owns her home and rents out the sleepout as short-stay accommodation. The sleepout was rented out for 55 nights during the income year, for $85 a night. Kasey receives an accommodation supplement of $30 per week ($1,560 for the year).

The total income Kasey made for the income year from providing the short-stay accommodation service was $4,675 (55 nights × $85).

Kasey decides to use the standard-costs in the Determination. Using the formula in the Determination, she calculates her standard-costs as follows:

> ***(Total room rental nights × nightly standard-cost) – accommodation supplement***
>
> Kasey has 55 total room rental nights.
>
> The nightly standard-cost that applies for her is $50.
>
> The "accommodation supplement" figure Kasey has to put into the formula is the total accommodation supplement she received for the income year multiplied by the total room rental nights divided by 365. This is:

$$\$1,560 \times \frac{55}{365} = \$235.07$$

So, applying the formula, Kasey's standard-costs for the year are $2,514.93:

(55 room rental nights × $50 nightly standard cost) – $235.07 accommodation supplement

The income Kasey makes from renting the sleepout out, up to the amount of her standard-costs ($2,514.93), is exempt. Kasey needs to include the income over that amount ($2,160.07) in her tax return.

Kasey can't claim deductions for any of her actual expenses relating to providing the short-stay accommodation service, as all the expenses she incurred in providing the accommodation are covered by the standard-costs.

National Average Market Values of Specified Livestock Determination 2019

Note to this determination

This note does not form part of the national average market values of specified livestock determination 2019 (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 (capital stock)" 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 (red, wapiti and elk) 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 2019 determination.

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

National Average Market Values of Specified Livestock Determination 2019

This determination may be cited as "The National Average Market Values of Specified Livestock Determination, 2019".

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 2018-2019 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 2018-2019 income year, are as set out in the following table.

Type of livestock	Class of livestock	Average Market Value per Head $
Sheep		
	Ewe hoggets	135.00
	Ram and wether hoggets	125.00
	Two-tooth ewes	214.00
	Mixed-age ewes (rising three-year and four-year old ewes)	190.00
	Rising five-year and older ewes	164.00
	Mixed-age wethers	124.00
	Breeding rams	338.00
Beef Cattle	***Beef breeds and beef crosses:***	
	Rising one-year heifers	717.00
	Rising two-year heifers	1097.00
	Mixed-age cows	1355.00
	Rising one-year steers and bulls	844.00
	Rising two-year steers and bulls	1209.00
	Rising three-year and older steers and bulls	1513.00
	Breeding bulls	3407.00
Dairy Cattle	***Friesian and related breeds, Jersey and other dairy breeds:***	
	Rising one-year heifers	685.00
	Rising two-year heifers	1274.00
	Mixed-age cows	1513.00
	Rising one-year steers and bulls	497.00
	Rising two-year steers and bulls	901.00
	Rising three-year and older steers and bulls	1246.00
	Breeding bulls	1789.00
Deer	***Red deer, wapiti, elk, and related crossbreeds:***	
	Rising one-year hinds	384.00
	Rising two-year hinds	559.00
	Mixed-age hinds	595.00
	Rising one-year stags	441.00
	Rising two-year and older stags (non-breeding)	662.00
	Breeding stags	2324.00

Type of livestock	Class of livestock	Average Market Value per Head $
Deer (continued)	***Other breeds:***	
	Rising one-year hinds	206.00
	Rising two-year hinds	274.00
	Mixed-age hinds	321.00
	Rising one-year stags	230.00
	Rising two-year and older stags (non-breeding)	314.00
	Breeding stags	650.00
Goats	***Angora and angora crosses (mohair producing):***	
	Rising one-year does	66.00
	Mixed-age does	93.00
	Rising one-year bucks (non-breeding)/wethers	51.00
	Bucks (non-breeding)/wethers over one year	62.00
	Breeding bucks	368.00
	Other fibre and meat producing goats (Cashmere or Cashgora producing):	
	Rising one-year does	58.00
	Mixed-age does	88.00
	Rising one-year bucks (non-breeding)/wethers	54.00
	Bucks (non-breeding)/wethers over one year	68.00
	Breeding bucks	313.00
	Milking (dairy) goats:	
	Rising one-year does	299.00
	Does over one year	414.00
	Breeding bucks	427.00
	Other dairy goats (culls)	73.00
Pigs		
	Breeding sows less than one year of age	245.00
	Breeding sows over one year	309.00
	Breeding boars	462.00
	Weaners less than 10 weeks of age (excluding sucklings)	84.00
	Growing pigs 10 to 17 weeks of age (porkers and baconers)	148.00
	Growing pigs over 17 weeks of age (baconers)	195.00

This determination is signed by me on the 22nd day of May 2019.

Rob Wells
Manager
OCTC, Technical Standards

2019 Kilometre rates for business use of motor vehicles

The Commissioner is required to set and publish kilometre rates in accordance with section DE 12(4) of the Income Tax Act 2007, that can be used to calculate the expenditure or loss on the proportion of business use of a motor vehicle, based on the total kilometres travelled.

The following kilometre rates apply for the 2018/2019 income year for motor vehicle expenditure claims when an election has been made to use the kilometre rate method upon acquiring a motor vehicle or when a motor vehicle is first used for business purposes.

2018/2019 Kilometre Rates		
Vehicle Type	**Tier One Rate**	**Tier Two rate**
Petrol or Diesel	79 cents	30 cents
Petrol Hybrid		19 cents
Electric		9 cents

The Tier One rate is a combination of the vehicles fixed and running costs. The Tier One rate applies for the business portion of the first 14,000 kilometres travelled (includes private use travel) by the motor vehicle in a year. After which the Tier Two rates which includes only the running costs, applies for the business portion of any travel more than 14,000kms in a year.

The kilometre rate may also be applied by an employer as a reasonable estimate of expenditure incurred for reimbursement of an employee for the business use of a private motor vehicle for employment business-related use. Where the employee maintains a logbook, or other evidence that establishes the proportion of employment use for an income year, the calculation of the exempt portion of reimbursement may be based on the kilometre rate set by Inland Revenue. The Tier One rate can be applied for the business portion of the first 14,000 kms (total) travelled by the vehicle in each income year, after which the Tier Two rates will apply.

Operational Statement OS 18/01: Commissioner's statement on using a kilometre rate for business running of a motor vehicle, provides further advice on how the kilometre rates are to be applied.

2019 Square metre Rate

The Commissioner is required to set and publish square metre rates in accordance with section DB 18AA(5) of the Income Tax Act 2007, that can be used to calculate the expenditure on the proportion of business use of a building that is used partly for business and other purposes.

A square metre rate of $41.70 will apply to the business use portion of a building for the 2018/2019 income year. This adjustment reflects the annual movement of the Consumers Price Index for the twelve months to March 2019, which showed an increase of 1.5%.

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.

High Court clarifies that the insuring of an identified risk is not a financial service and the premia paid are not exempt from tax pursuant to ss 3(1)(h) and 3(1)(l) of the Goods and Services Tax Act 1985

Case	*Provident Insurance Corp Ltd v The Commissioner of Inland Revenue* [2019] NZHC 995
Decision date	8 May 2019
Act(s)	Goods and Services Tax Act 1985, s 3 and 14; Interpretation Act 1999, s 5; Evidence Act 2006, s 25
Keywords	Financial services; insurance policies; premia; indemnity; security; payment of principal, interest of other amount whatever

Summary

The Court found that the premia paid in insurance policies where the policy covers an identified risk for a borrower's loan repayments on the occurrence of a specified insured event, or a policy which covers the difference between the total loss-pay out received from a motor vehicle insurer and any outstanding loan where a car is written off, were not exempt from tax under the financial services exemption.

Facts

Provident Insurance Corporation Limited ("Provident") is a specialist insurance company offering a range of products connected with the automotive industry. These products are designed to mitigate risk in relation to the repayment obligations for credit contracts for the purchase of motor vehicles, including:

1. the Credit Contract Indemnity ("CCI") policy which covers a borrower's loan repayments upon the occurrence of specified insured events; and
2. the Guaranteed Asset Protection ("GAP") policy which, in the event a vehicle is written off in an accident, will cover the difference between the total loss pay-out received from a comprehensive motor vehicle insurer and any outstanding loan balance.

In addition to the CCI and GAP policies, Provident also offers mechanical breakdown insurance and comprehensive motor vehicle insurance. Provident accepts that GST is payable in respect of the premia it receives under these two types of policy. However, Provident asserts that the CCI and GAP policies fall within the financial services exemption set out in s 3(1) of the GST Act.

Preliminary matter – admissibility of expert evidence

Before the Court could consider the substantive issue at hand, a preliminary issue regarding the admissibility of a brief of evidence needed to be decided. The evidence consisted largely of expressions of opinion of an expert for Provident. The Court considered s 25 of the Evidence Act 2006 determines whether the evidence was admissible or not.

The Court noted that as there was no dispute of relevant fact in these proceedings, it did not need to "ascertain any fact". The issue was whether the Court was likely to obtain substantial help from the opinions of the expert in relation to other evidence in the proceeding. The Commissioner of Inland Revenue ("the Commissioner") also called an expert in tax policy, solely in case the Court held that the evidence of Provident's expert witness was admissible.

The Commissioner submitted that the Courts have consistently expressed their disapproval of legal submissions being included in witness statements in similar proceedings, (*Commissioner of Inland Revenue v BNZ Investments Ltd* [2009] NZCA 47, (2009) 19 PRNZ 553 at [28]), and objected to the fact that the brief of evidence introduced into evidence a number of documents such as a GST commentary/guide prepared for the insurance industry (*GST Co-ordinating Office Handbook on the Fire and General Insurance Industry* (April 1986)), and three Government discussion documents on GST (Inland Revenue *GST: A Review* (March 1999); Inland Revenue *GST and Financial Services* (October 2002); and Tax Working Group *Future of Tax: Interim Report* (20 September 2018)). The Commissioner submitted that the Court only takes into account a limited number of sources of extrinsic materials such as Hansard, Bills, explanatory notes to Bills or reports from Parliament's Select Committee. The Commissioner also referred to the disapproval expressed by the Supreme Court in *Penny v Commissioner of Inland Revenue* [2011] NZSC 95, [2012] 1 NZLR 433 at [32] ("*Penny v Commissioner of Inland Revenue*") of the practice of including what are legal submissions in the brief of expert taxation witnesses.

The Court noted that there were no "facts of consequence" to the determination of these proceedings that were required to be ascertained. The Court did not accept that the decision in *Lin v Commissioner of Inland Revenue* [2017] NZHC 969, (2017) 28 NZTC 23-016 ("*Lin v Commissioner of Inland Revenue*") is authority for the proposition that New Zealand Courts accept expert tax witnesses giving their opinions about the policy underpinning a provision in New Zealand tax legislation that the Court is required to interpret. The Court of Appeal in *Lin v Commissioner of Inland Revenue* followed the practice referred to in *Commissioner of Inland Revenue v JFP Energy* [1990] 3 NZLR 536 (CA) at 54 per Richardson J.

The Court held that the Australian case law referred to by counsel for Provident did not seem to relate directly to the type of evidence in issue here, and to the extent that there was any divergence in approach between the Australian and New Zealand Courts on this issue, his Honour preferred the approach outlined by the Supreme Court in *Penny v Commissioner of Inland Revenue*.

The Court also noted that the evidence of Provident's expert witness was, in large part, legal submission and that no exception could have been taken to it if the evidence had been presented by counsel.

The Court held that the evidence of both Provident and the Commissioner's expert witnesses amounted to legal submissions. His Honour was accordingly unable to place any weight on it and held it to be inadmissible.

Decision

The Court held that Provident had not shown that, on the balance of probabilities, the Commissioner's assessments were wrong. The Court held as follows:

1. The purpose of the GST Act is to levy a consumption tax on the widest possible range of goods and services with as few exceptions as possible.
2. Payment of interest and principal are not payments for the supply of goods and services and were intended to be exempt. As a consumption tax, the purpose of GST was not to tax savings, resulting in the exemption of, for example, life insurance policies, retirement schemes and the like.
3. To reduce the "self-supplier of services" bias that could be included within an exempt interest charge, the definition of financial services was drafted so as to include services in the nature of brokerage and intermediary services provided other than by financial institutions. However, the reasons behind that exemption do not apply in relation to an insurance policy that is separately priced and provided by a different party to the party who charges interest under the credit contract.
4. Apart from brokerage and intermediary services, it was not the purpose of Parliament to exempt services connected with the provision of financial services but not themselves financial services.
5. There is no identifiable policy underlying s 3(1) of the Act that differs from the overall policy of the Act set out above.
6. The nature of a supply for GST purposes is determined by the contractual relationship between the supplier and the recipient of the supply. The fact that the services supplied may benefit another party in relation to a contract of financial services did not transform what were, in this case, insurance services provided pursuant to a contract of insurance into exempt financial services.
7. In its natural sense, a contract of indemnity is between two parties, one of whom contracts to make good the losses sustained by the other as a result of loss caused by a third party. This is fundamentally different to a contract of insurance where the insurer agrees, for the payment of a premium, to pay money to, or for the benefit of, the other party to the contract in the event of the happening of an insured event, see *Chitty on Contracts* (33rd ed, Sweet and Maxwell, London, 2015) Vol 2 at [44-001].

8. If Parliament had intended the use of the word "security" in a very general sense such as "something that secures or makes safe" or "anything that makes the money more assured in its payment or more readily recoverable", then the words surrounding it in s 3(1)(h) of the GST Act (guarantee, indemnity and bond) would be unnecessary as they could all be described as something "that makes money more assured in its payment or more readily recoverable".
9. The word "security" is clearly capable of bearing the meaning "security over real or personal property". Placement of the word in the context of words such as guarantee, indemnity and bond support the interpretation that the narrow or particular meaning of "security" in accordance with the Black's Law Dictionary definition was intended.
10. The principles articulated by the Court of Appeal in *Wilson & Horton Ltd v Commissioner of Inland Revenue* [1996] 1 NZLR 26 (CA) at 33, were determinative. The financial service in question was the provision of a contract of insurance. The parties were the insurer and the insured. A contract of insurance was not a credit contract. Although the financier may have had certain claims against the insurer pursuant to the Contract and Commercial Law Act 2017, that was a different issue as to whether the insurer was party to the credit contract. The credit contract was solely between the financier and the insured. The insurer obtained no rights in respect of it. There was no contract of indemnity between the insurer and the financier, and the fact that the financier might have benefited as a result of the provision of insurance services to the insured did not result in the insurer supplying exempt services to the financier.
11. In analysing whether or not the service provided by Provident amounted to the payment of interest or principal pursuant to ss 3(1)(ka) and 3(1)(l), it was necessary to reflect on the nature of the insurance contracts. The premium was payable by the insured at the commencement of the insurance contracts. It was that premium that was subject to GST. There was no further or additional premium payable if an insured event occurred. In many, perhaps most, of the policies, there would not be any insured event and there would be no payment by Provident on behalf of the insured to a finance company. The service being provided was insuring the identified risk, which was not a financial service. In that respect, the service provided by Provident under the CCI and GAP policies was identical to the service it provided under its other policies.
12. Just as in *Commissioner of Inland Revenue v Databank Systems Ltd* [1990] 3 NZLR 385 (PC), the supplier of the service that is connected to, or involved in, a financial service provided by someone else is not itself the supplier of a financial service.

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