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Inland Revenue
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YOUR OPPORTUNITY TO COMMENT

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

You can find a list of the items we are currently inviting submissions on as well as a list of expired items at **www.taxtechnical.ird.govt.nz** (search keywords: public consultation).

Email your submissions to us at **public.consultation@ird.govt.nz** or post them to:

Public Consultation
Tax Counsel Office
Inland Revenue PO Box 2198
Wellington 6140

You can also subscribe at **www.taxtechnical.ird.govt.nz/subscribe** to receive regular email updates when we publish new draft items for comment.

IN SUMMARY

New legislation

COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 2

The COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 was passed under urgency and enacted on 25 March 2020.

The Act includes amendments aimed at assisting the broader economic recovery from COVID-19 and measures to provide relief to taxpayers financially impacted by COVID-19.

This edition of the Tax Information Bulletin also includes changes introduced by Order in Council including an update to New Zealand's list of reportable jurisdictions; updates to the double tax agreement with Switzerland and the tax information exchange agreement with Guernsey; new use of money interest rates and an amendment in relation to native forest blocks of land.

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NEW LEGISLATION

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

COVID-19 RESPONSE (TAXATION AND SOCIAL ASSISTANCE URGENT MEASURES) ACT 2020

DEPRECIATION DEDUCTIONS FOR NON-RESIDENTIAL BUILDINGS

(Sections DB 65, EE 31, EE 35, EE 37, EE 38, EE 60, EE 61, EE 64, EE 67, EZ 13, EZ 14 and YA 1 of the Income Tax Act 2007)

These amendments reinstate a positive depreciation rate for long-lived non-residential buildings from the beginning of the 2020–21 income year.

Background

The depreciation rate for long-lived buildings was set to zero from the beginning of the 2011–12 income year. Long-lived buildings have an estimated useful life of 50 years or more. Buildings with a shorter estimated useful life have continued to be depreciable. The adjusted tax value of these buildings remained in the owner's tax accounts.

There was a transitional rule for building owners who had not previously separated out items of fit-out from the building. This rule allowed deductions for a portion of the building's value each year.

New Zealand's position of a zero-depreciation rate for almost all buildings is unusual internationally. International studies have generally found that buildings do depreciate. The Tax Working Group reviewed and recommended changes to these tax settings. The Government has accepted the Group's recommendation to reinstate depreciation for industrial and commercial buildings. However, the Government did not support reinstating depreciation on residential buildings because the data shows these buildings have a slower rate of economic depreciation.

Key features

Depreciation deductions for non-residential buildings are allowed from the beginning of the 2020–21 income year. The amendments apply to non-residential buildings owned at the beginning of the 2020–21 income year or acquired after the beginning of that year. This includes capital improvements. New definitions of "non-residential building" and "residential building" have been added.

The depreciation rate for a building with an estimated useful life of 50 years or more is 2% diminishing value or 1.5% straight line.

Application date

The amendments apply for the 2020–21 and later income years.

Detailed analysis

Setting a positive depreciation rate reinstates depreciation deductions for long-lived non-residential buildings from the beginning of the 2020–21 income year. While these buildings have always been depreciable property, they were subject to a zero percent depreciation rate. From the beginning of the 2020–21 income year the depreciation rate for long-lived non-residential buildings is either 2% diminishing value or 1.5% straight line.

Opening tax book value

The depreciation rate for long-lived buildings was set to zero from the beginning of the 2011–12 income year. The adjusted tax value of such buildings was effectively suspended at this point. Now a positive depreciation rate applies to long-lived non-residential buildings, owners of these assets can begin to claim depreciation deductions.

For buildings acquired after the end of the 2010–11 income year, the opening value for the 2020–21 income year is the:

- adjusted tax value at the end of the 2010–11 income year, less fit-out deductions taken under the section DB 65 transitional rule (if applicable); plus
- non-deductible capital expenditure incurred on that building from the end of the 2010–11 income year to the start of the 2020–21 income year.

For buildings acquired after the end of the 2010–11 income year, the opening value for the 2020–21 income year is the:

- cost of the building; plus
- non-deductible capital expenditure incurred on the building from the time it was acquired until the beginning of the 2020–21 income year.

Depreciation recovery

If a building is sold, the amount of depreciation recovery income continues to be calculated taking into account total depreciation deductions taken before 2011–12 (if any). As a result of these amendments, the depreciation recovery calculation for non-residential buildings disposed of after the beginning of the 2020–21 income year will also need to account for depreciation deductions in the 2020–21 and future income years.

Non-residential buildings

Section YA 1 is amended. Two new definitions have been inserted and the definition of "building" has been repealed. A "non-residential building" is any building that is not a "residential building".

A "residential building" is defined as:

- a "dwelling" as defined in Section YA 1; and
- a building in which accommodation is ordinarily provided for periods of less than 28 days at a time if the building, together with other buildings on the same land, has less than four units intended for separate occupation.

The definition of "dwelling" encompasses owner-occupied houses and apartments, and houses and apartments subject to residential tenancies.

The second limb of the definition of residential building ensures there is certainty that the definition of "residential building" includes buildings such as a bach that the owner uses but also rents out on a short-term basis, and also buildings used exclusively for short-term accommodation provided by owners such as Airbnb properties. These may be within the definition of "dwelling", but this amendment puts beyond doubt that those buildings remain subject to the zero depreciation rate. The less-than four units provision excludes larger commercial premises such as motels from being treated as residential buildings.

Repeal of the 2010 transitional rule

As a result of reinstating a positive depreciation rate for non-residential buildings, the transitional building fit-out rule introduced as part of the 2010 reforms is no longer required. Accordingly, section DB 65 has been repealed. As noted above, the adjusted book value of the building is required to be adjusted for past section DB 65 deductions.

Special depreciation rate

The ability to apply for and be granted a special depreciation rate from the Commissioner has been restored for non-residential buildings.

INCREASE IN THE PROVISIONAL TAX THRESHOLD

(Sections RC 3, RC 4, RC 6, RC 9, RC 13, RC 14, RC 16, RM 12, and YA 1 of the Income Tax Act 2007)

This amendment permanently increases the residual income tax threshold for being required to pay provisional tax from $2,500 to $5,000. As a result, a number of taxpayers are no longer required to make provisional tax payments throughout the year. This will assist those businesses with cashflow issues during the COVID-19 outbreak and beyond.

Background

Section RC 3(1)(a) of the Income Tax Act 2007 previously provided that a person whose residual income tax in an income year is more than $2,500 was required to pay provisional tax. This threshold is used several times throughout subpart RC and elsewhere, such as for dealing with:

- voluntary provisional tax payments;
- the standard uplift method;
- provisional tax instalments; and
- the GST ratio method.

The threshold referred to in these sections, and others, has been changed in accordance with the implementation of this measure (with the exception of a terminating provision in section RZ 1).

Provisional tax is paid in three equal instalments over an income year. The requirement to make these payments imposes compliance costs on taxpayers. It also has an impact on cashflow as provisional tax instalments comprise cash that a taxpayer is unable to use during the year before terminal tax is due.

This measure removes around 95,000 taxpayers from the provisional tax regime.

Key features

This measure changes the threshold for paying provisional tax so that fewer taxpayers are required to pay provisional tax instalments throughout the year. For taxpayers with residual income tax of between $2,500 and $5,000, instead of paying provisional tax throughout the income year, they will now only have to pay by 7 February following the end of the income year.

Example 1: Increase in the provisional tax threshold

Jenny is a tour guide who provides tours of the Lord of the Rings filming location sites around Wellington through her company Jenstar Tours Limited (JTL). She gets the majority of her customers from tourist ships visiting Wellington. In the 2019–20 income year, JTL's tax liability was $8,000, but because of the recent changes to restrict tourist ships in response to COVID-19, JTL's tax liability in 2020–21 is expected to be half of that amount.

The Government's change to the provisional tax threshold from $2,500 to $5,000 means that JTL is not a provisional taxpayer for the 2020–21 income year. Instead of paying tax in instalments throughout the 2020–21 income year, JTL will not have to pay tax until 7 February 2022, which improves its cashflow during the year.

Application date

The amendment applies for the 2020–21 and later income years.

INCREASE IN THE LOW-VALUE ASSET WRITE-OFF THRESHOLD

(Section EE 38(2) of the Income Tax Act 2007)

This amendment temporarily increases the low-value asset write-off threshold from $500 to $5,000 in the short term before decreasing this threshold to $1,000 on a permanent basis. This allows taxpayers to immediately deduct expenditure on assets that cost up to $5,000 (and subsequently $1,000) rather than depreciating them over the life of the asset. This will decrease the tax liabilities of taxpayers in the short term and therefore assist with cashflow including during the COVID-19 outbreak. It may also encourage continued investment by businesses in the short term.

Background

Since 2005, the threshold value in section EE 38(2)(b) of the Income Tax Act 2007 for low-value asset write-offs had been $500. Assets costing up to this threshold could be immediately expensed, which provides all of the tax benefit in the year the asset was purchased.

For example, capital expenditure on property that costs $2,000 exceeded the previous low-value asset write-off threshold and so was required to be depreciated over a number of years. Expenditure on an asset costing $300, however, could be immediately deducted so that all of the tax benefit was generated in the year of purchase, even if the asset lasts much longer than one year.

Key features

This measure increases the value of property that is eligible to be written off in the year of purchase from $500 to $5,000, before decreasing that threshold to $1,000. This means that expenditure on assets costing up to the new threshold can be deducted immediately, so that all of the tax benefit is claimed up front. This will provide increased cashflow in the short term.

Example 2: Increase in the low-value asset write-off threshold

Capes Comics Limited (Capes) is a comic store that sells comics and comic-related merchandise. The store's owner, Clark, wants to expand by investing in two new display cabinets worth $4,600 in total. Clark believes that this will increase his sales of high-value action figures.

However, with the COVID-19 restrictions, he is anxious about investing $4,600, especially given that he can only deduct the cost of the cabinets over time through tax depreciation (rather than immediately).

The Government's change to the low-value asset write-off threshold means that Capes can claim an immediate deduction for the cost of the cabinets. This allows Capes to reduce its tax paid this year by $1,288 (28% of $4,600), instead of that amount being spread over a number of years.

Application dates

The amendment to increase the low-value asset write-off threshold to $5,000 applies for property purchased on or after 17 March 2020. The amendment to subsequently lower this threshold to $1,000 will apply for property purchased on or after 17 March 2021.

RESEARCH AND DEVELOPMENT TAX CREDITS – BROADER ACCESS TO REFUNDS

(Sections LA 5 and LZ 14 of the Income Tax Act 2007)

The amendment to section LA 5 brings forward the application date of new broader refundability rules, so that these can apply from the first year of the R&D Tax Incentive scheme.

Background

COVID-19 has caused significant disruption to all businesses in New Zealand. There is a significant risk that this disruption could cause many R&D-performing businesses in New Zealand to reduce or stop their R&D. While ceasing R&D saves businesses money now, it means some New Zealanders will lose their jobs, fewer innovative products will be developed, and there will be a deeper and more protracted decline in economic activity. This weakens our economy's ability to recover once the global economy has stabilised.

The Taxation (Research and Development Tax Credits) Act 2019 introduced an R&D Tax Incentive regime from the 2019–20 income year ("year 1"). The R&D Tax Incentive was developed under tight timeframes, so there was insufficient time to develop comprehensive refundability rules before the legislation was enacted. As a consequence, in year 1 of the Incentive, limited refundability rules (based on another R&D scheme, the R&D Tax Loss Credit) were put in place to provide refundable credits for a small portion of eligible R&D tax credit claimants ("year 1 limited refundability rules").

The Government reviewed the R&D Tax Incentive's refundability rules in 2019 and developed some new, broader refundability rules. These new rules were put into place by the recently enacted Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020, and were originally intended to apply from the 2020–21 income year ("the year 2 broader refundability rules").

To provide cash to businesses now and encourage them to continue with their R&D despite COVID-19, this amendment brings the application date of the year 2 broader refundability rules forward to the 2019–20 income year. This is intended to enable more businesses to access refundable R&D tax credits, and provide some businesses with larger refunds than they would have obtained under the year 1 limited refundability rules.

Key features

The amendment to section LA 5 changes the rules for R&D tax credit refunds in the 2019–20 income year, to make refundable credits more accessible for businesses. It does this by bringing forward the application date of year 2 broader refundability rules to the 2019–20 income year (year 1 of the R&D Tax Incentive scheme). These rules would otherwise have applied from the 2020–21 income year (year 2 of the R&D Tax Incentive scheme).

Prior to this amendment, limited refundability rules applied in the 2019–20 income year, which only allowed businesses who met certain prescriptive criteria to access refundable credits. A $255,000 cap also applied to limit the total amount of credits that could be refunded.

The year 2 broader refundability rules, which now apply from the 2019–20 income year, remove the prescriptive refundability eligibility criteria and replace the $255,000 cap with a new refundability cap based on labour-related taxes. These new rules are aimed at enabling more businesses to access R&D tax credit refunds, and allowing more of these businesses to access greater amounts of refundable credits.

The year 2 broader refundability rules now apply by default to all claimants in the 2019–20 income year. Businesses have the option of using the previous year 1 limited refundability rules if they prefer. When filing an R&D supplementary return, each business will be asked to confirm which set of refundability rules they intend to apply to their claim.

From the 2020–21 income year onwards (year 2 of the R&D Tax Incentive scheme), all businesses are required to use the year 2 broader refundability rules.

Detailed analysis

The amendment brings forward the application date of the year 2 broader refundability rules introduced in the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020. Instead of applying from the 2020–21 income year, these new rules will apply from the 2019–20 income year.

The broader refundability rules (default option)

The year 2 broader refundability rules now apply from the 2019–20 income year (sections LA 5(4B), (5B) and (5C)). They apply by default, unless a business chooses to apply the limited refundability rules in section LZ 14 (section LA 5 (5D)).

Under these rules, a loss-making business (or a business with insufficient income tax to pay to offset its R&D tax credits against) can be eligible for R&D tax credit refunds provided it is eligible for the tax credit more generally. It can obtain R&D tax credit refunds up to a new labour-related tax cap. The cap is made up of any labour-related taxes (PAYE, ESCT, and FBT):

- paid by the business, and
- paid by companies the business is controlled by or which sit within the same wholly-owned group, if these companies have allocated amounts to the business for the purposes of the cap.

No cap applies to refundable R&D tax credits paid to levy bodies, or derived from eligible expenditure on approved research providers.

Transitional 2020–21 amount deleted

This amendment deletes the "transitional 2020–21 amount" portion of the refundability cap formula (see section 101 of the Taxation (KiwiSaver, Student Loans and Remedial Matters) Act 2020). The "transitional 2020–21 amount" is no longer needed because businesses can apply the year 2 broader refundability rules if they provide a better outcome for them in the 2019–20 income year.

Eligibility of tax-exempt entities for refundability

The amendment to LA 5(4B) means that tax exempt entities that otherwise satisfy the R&D Tax Incentive's general eligibility criteria may now be eligible for refundability in the 2019–20 income year. These entities and their associates were previously largely ineligible for refundability under the limited refundability rules.

Note that from the 2020–21 income year, entities which receive income that is tax exempt under sections CW 38, 39, 40, 41, 42 and/or 55BA of the Income Tax Act 2007 will be ineligible for the R&D tax credit. Refer to the Taxation (KiwiSaver, Student Loans and Remedial Matters) Act 2020 for more information on this exclusion.

The limited refundability rules

New section LZ 14 sets out the limited refundability rules, which businesses can choose to apply instead of the broader refundability rules if they prefer (section LA 5(5D)). A business can obtain R&D tax credit refunds under the limited refundability rules, provided it is a company and:

- is in a tax loss position, or has insufficient income tax liability to utilise all of its R&D tax credits in the 2019–20 income year;
- satisfies the R&D tax loss cash-out corporate eligibility and wage intensity criteria in sections MX 2 and MX 3;
- does not derive exempt income (other than certain exempt income from dividends), and is not associated with a person who derives exempt income;
- is not a listed company, and is not associated with a listed company; and
- does not have an outstanding tax liability.

Only the first $255,000 of the business's R&D tax credits is refundable, which is the equivalent of $1.7 million of eligible expenditure. Any remaining R&D tax credits may be carried forward to the 2020–21 income year if the entity is eligible for the Incentive that year and the shareholder continuity requirements in section LY 8 are met.

Choosing between the year 1 and year 2 refundability rules

Businesses may choose to use the limited refundability rules or the broader refundability rules in the 2019–20 income year, but they cannot use both. Only the broader refundability rules are available from the 2020–21 income year.

Example 3: Applying the broader refundability rules

Moppy's Chicken Factory ("Moppy") has brought forward tax losses from the 2018–19 income year. It claims R&D tax credits in the 2019–20 income year, but does not have enough income tax to pay to use all of its credits. Moppy determines that it will be able to receive more refundable R&D tax credits if it applies the broader refundability rules, because it has $500,000 of surplus R&D tax credits and has paid $500,000 of PAYE in the 2019–20 income year (so its refundability cap is $500,000).

Moppy files its income tax and R&D supplementary returns soon after 31 March 2020. It advises Inland Revenue that it would like to apply the broader refundability rules. Inland Revenue processes Moppy's claim and refunds Moppy $500,000 of R&D tax credits.

USE OF MONEY INTEREST REMISSION

(Section 183ABAB of the Tax Administration Act 1994)

Use of money interest (UOMI) is charged when a taxpayer fails to make a payment of tax on time. This measure adds to existing legislative mechanisms that allow UOMI to be remitted. However, these pre-existing legislative mechanisms are not fit for purpose to respond to an event such as COVID-19.

The amendment allows Inland Revenue to remit interest on a late payment if the taxpayer's ability to make the payment on time was significantly adversely affected by the COVID-19 outbreak. This would include both when a taxpayer is physically unable to make a tax payment on time and when a taxpayer's financial capability to pay tax on time is adversely affected because of the economic nature of the COVID-19 outbreak.

Background

The purpose of UOMI is to encourage taxpayers to pay their tax on time and compensate the Government for the loss of use of money from taxpayers underpaying their tax. It applies to all tax types administered by Inland Revenue, including income tax and GST. UOMI also applies to underpayments of tax that are withheld at source, such as PAYE and RWT. UOMI also applies to Working for Families debt.

In certain circumstances the Commissioner may remit UOMI on a late tax payment. For the remission of interest in response to emergency events, the pre-existing rules provided for an Order in Council process to allow the Commissioner to remit UOMI where a taxpayer is "physically prevented" from making a payment. However, the Commissioner could not remit interest for a taxpayer that was financially unable to make a payment on time because of the emergency event.

The pre-existing rules around remitting UOMI in emergency events were directed at situations or events where public safety is of paramount concern because of the risk of injury or death, typically due to a natural disaster. This statutory framework was not fit for purpose to respond to the nature of the economic shock of COVID-19 where a taxpayer may be financially unable to pay their tax on time.

Key features

Interest remission

New section 183ABAB allows the Commissioner of Inland Revenue to remit use of money interest if a taxpayer's ability to make a tax payment on time is significantly adversely affected by an outbreak of COVID-19. This includes both where a taxpayer has been physically unable to make a payment on time, for example, because they have been quarantined and do not have the ability to make the payment electronically while quarantined, and where a taxpayer's financial capability to make a payment on time has been adversely affected because of the economic impacts of COVID-19.

For interest to be remitted the taxpayer must ask for it to be remitted and the Commissioner must be satisfied that the taxpayer has asked for the relief as soon as practicable and made the payment of tax as soon as practicable. The interest would not be remitted until the core tax debt has been paid.

Further guidance on how the Commissioner will determine if a taxpayer's ability to make a payment on time has been significantly adversely affected by COVID-19 is available at **ird.govt.nz/covid-19/manage-my-tax/penalties-and-interest**

Sunset provision

The Commissioner's ability to remit interest only applies for the 24 months following the enactment date of 25 March 2020. However, this period can be extended by an Order in Council made on the recommendation of the Minister of Revenue. This Order in Council would need to be made within the initial 24 months during which the Commissioner can remit interest.

The extension to the time limit would expire after the period given by the order or 6 months after the order came into force if the order did not specify a time limit. However, the time limit could be extended further by subsequent Orders in Council so long as they are made before the date on which the preceding order would expire.

In recommending the making of an Order in Council, the Minister of Revenue would need to be satisfied that the ability of taxpayers to pay tax on time is likely to continue to be significantly adversely affected by COVID-19 beyond the expiry of the time limit.

Application dates

The Commissioner's ability to remit interest has applied since 25 March 2020. However, the Commissioner may remit interest that has accrued on tax payments due on or after 14 February 2020.

Unless extended by Order in Council, the Commissioner's ability to remit interest will expire after 24 March 2022.

INFORMATION SHARING

(Schedule 7, part C, clause 23B Tax Administration Act 1994)

The amendment enables Inland Revenue to share taxpayer information with other government departments to assist the efficient and effective delivery of the Government's COVID-19 response.

Background

Currently, tax legislation requires Inland Revenue staff to keep taxpayer information confidential unless a specific legislative exception authorises the disclosure. Current exceptions in the tax legislation enable Inland Revenue to share information with specific agencies. These existing exceptions will be used, where possible, to share information with other agencies to assist in the response to the COVID-19 outbreak.

However, there may be situations where, as a result of the outbreak, it is desirable for Inland Revenue to share information with other agencies with which Inland Revenue does not have any existing arrangements or where the existing arrangements are not flexible enough to allow the required sharing to occur.

A similar provision to this one applied during the Canterbury earthquake and allowed Inland Revenue to share information with other government agencies as part of the government's response to the Earthquake. This amendment is modelled on that provision.

Key features

The amendment inserts a new clause 23B into schedule 7 of the Tax Administration Act to allow Inland Revenue to share information with other government agencies in order to respond to the COVID-19 outbreak. This provision is targeted, time limited, and only used when existing legislative provisions are not adequate to share information.

The other agencies Inland Revenue could share information about persons or entities with are government departments, the New Zealand Police, ACC, and Kāinga Ora – Homes and Communities. The information would only be shared for the purpose of enabling those agencies to provide assistance to individuals and businesses, to fulfil any obligation or function, or exercise any power in response to the COVID-19 outbreak. The information shared would not be available for use in administering other assistance not related to COVID-19.

The information that could be shared would be both individual and non-individual information and may include, but is not limited to, identifying information, contact and location information, financial information, and family information. The provision would also enable information to be shared to enable the government agency to undertake compliance activity related to that COVID-19 assistance.

This provision will be used, for example, to share information with the Ministry of Social Development to assist in determining employers' entitlement to the wage subsidy and in auditing claims to counter fraud.

Currently, tax legislation requires those persons who have access to taxpayer information to keep that information confidential and not disclose or use it for a purpose other than that for which it was provided. This requirement would also apply to the information sharing to assist the response to the COVID-19 outbreak.

As a safeguard, Inland Revenue retains a discretion as to whether to share information and sharing would only occur where the information is readily available, it is reasonable and practicable to share, and it is not undesirable to share the information.

Application dates

The amendment applies from the date of announcement of the change, being 17 March 2020.

The amendment will apply for a period of two years only unless extended by an Order in Council. This would allow the Government to continue sharing information, if required, in response to COVID-19 after the two-year period.

REMOVAL OF HOURS-TEST FROM THE IN-WORK TAX CREDIT

(Sections MA 7, MD 9, MD 10 & YA 1 of the Income Tax Act 2007)

The In-Work Tax Credit is an income-tested cash payment of $3,770 per year to working families with children (plus an additional $780 per child for 4th and subsequent children). This amendment will remove the requirement for recipient families to normally be working at least 20 hours per week as a sole parent or a combined 30 hours per week as a couple.

Background

Currently, families that work a fluctuating number of hours from week-to-week or are unable to increase their hours of work do not receive the In-Work Tax Credit for weeks that they do not work – 20 hours for sole parents or 30 hours for couples. The number of families working reduced hours, or an unpredictable and varying number of hours, will increase as New Zealand's economy feels the impact of COVID-19.

Application date

The amendments apply from 1 July 2020.

Detailed analysis

The hours-test

Recipients of the In-Work Tax Credit are currently required to normally be working at least 20 hours per week as a sole parent or a combined 30 hours per week as a couple. This can result in families losing their entitlement to the In-Work Tax Credit in weeks where their hours have been reduced or families with unpredictable and varying hours, such as shift workers and those with multiple jobs, only being eligible for the credit in some weeks. Removing the hours test will ensure families that have their hours worked affected by COVID-19 will continue to receive the In-Work Tax Credit if they do not go onto an income tested benefit or student allowance and are earning some employment income.

Example 4

Janice is a sole parent who works two jobs and receives the In-Work Tax Credit. She is employed for 15 hours per week in one job, and 10 hours per week in another, working a combined 25 hours per week. Janice's second employer ceases operations and she is now only working 15 hours per week for the foreseeable future. From 1 July 2020 onwards, Janice would continue to receive the In-Work Tax Credit despite her weekly hours of work being reduced below 20.

WORKING FOR FAMILIES TAX CREDITS ENTITLEMENT FOR EMERGENCY BENEFIT RECIPIENTS

(Section MC 5 of the Income Tax Act 2007)

The amendment allows people on a temporary visa who would not otherwise meet the Working for Families (WFF) residency criteria, to qualify for WFF, if the Ministry of Social Development (MSD) has granted them an emergency benefit. This ensures that people on a temporary visa who are granted an emergency benefit will qualify for the same WFF components as other beneficiaries.

Background

Prior to the amendment, emergency benefit recipients with dependent children and who are on a temporary visa, did not qualify for WFF tax credits. This was because they did not meet the residency criteria for WFF. The result was a difference in the financial support that these families could access, compared with other main benefit recipients with children.

In general, to receive a main benefit (including an emergency benefit) a person must be a New Zealand citizen or permanent resident and have resided in New Zealand for at least two years since becoming a citizen or resident. However, MSD has discretion to grant an emergency benefit in other circumstances[1] when those residency criteria are not met. Existing WFF legislation did not contain any comparable discretion.

The WFF residency requirements can be met by the child or the parent.

The WFF residency requirements can be met by the child if:

- the child is ordinarily resident in New Zealand; and
- is present in New Zealand for the period of entitlement.

The WFF residency requirements can be met by the parent if:

- the parent is ordinarily resident in New Zealand; and
- has been in New Zealand for 12 months continuously at any time.

Those on a temporary visa are specifically excluded from the definition of New Zealand resident for WFF. This exclusion was intended to prevent short-term visitors from accessing WFF but not those in exceptional circumstances.

The amendment ensures that families on a temporary visa who are granted an emergency benefit are able to access a comparable level of financial support to other recipients of main benefits.

Key features

If MSD grants an emergency benefit, to a person on a temporary visa, that person will qualify for the same WFF payment as other beneficiaries. That is, they could qualify for the family tax credit and Best Start, assuming they meet the other qualifying criteria. They will not qualify for the In-Work Tax Credit or minimum family tax credit because these payments are not available to a person receiving a main benefit.

Application date

The amendment applies from 1 April 2020.

[1] These circumstances can include not being eligible for another benefit, that they are in hardship and unable to earn a sufficient livelihood.

GST ON COVID-19 RELATED SOCIAL ASSISTANCE PAYMENTS

(Section 89 of the Goods and Services Tax Act 1985)

The amendment provides that payments made by the Ministry of Social Development in relation to wages or other income, or leave taken, as a consequence of COVID-19, are not to be regarded as taxable grants and subsidies for the purposes of the Goods and Services Tax Act 1985.

Background

The Goods and Services Tax (Grants and Subsidies) Amendment Order 2020 (2020/44) added two new COVID-19 related payments made by the Ministry of Social Development to the schedule of non-taxable grants and subsidies contained in the Goods and Services Tax (Grants and Subsidies) Order 1992. The purpose of this Order was to ensure that GST-registered businesses that received these payments from the Ministry of Social Development did not need to return GST on them. This Order came into force on 24 March 2020, and consequently did not apply in respect of payments made by the Ministry of Social Development before that date.

New section 89 of the Goods and Services Tax Act 1985 is intended to ensure that GST-registered businesses that received these payments from the Ministry of Social Development before 24 March 2020 do not need to return GST on them.

Application date

The amendment came into force on 25 March 2020, the date of enactment. The amendment applies retrospectively to payments made from 17 March 2020.

WINTER ENERGY PAYMENT

(Schedule 4, Part 8, Clause (1)(a), (b) and (c) of the Social Security Act 2018)

This amendment reduced the rates of winter energy payment for 2021 and later years to $450 for single people with no dependent children (down from $900) and $700 for couples or single people with dependent children (down from $1,400). This restored the 2019 rates after a temporary doubling in the rates for 2020.

Background

In response to the economic impacts of COVID-19, the Government agreed that the annual rates of winter energy payments for 2020 would be $900 for single people with no dependent children, and $1,400 for couples or single people with dependent children. The increase is double the normal rate and was only intended to apply for the 2020 winter period (1 May to 1 October) when the impacts of COVID-19 are likely to be most pronounced.

Key features

The amendment ensures that the doubling of the winter energy payment rates for 2020 as part of the COVID-19 Recovery Package is only temporary. It reduces the rates back to their previous amounts of $450 and $700 for 2021 and later years.

Application date

The amendments to the winter energy payments rates come into force on 1 May 2021.

PARTICIPATING JURISDICTIONS FOR THE CRS APPLIED STANDARD

Determination

New Zealand's list of participating jurisdictions for the purposes of the Common Reporting Standard (CRS rules) and requirements under Part 11B of the Tax Administration Act 1994 has been amended with effect from the 1st of April 2020 as follows:

Jurisdictions to be added

Bahrain	Brunei Darussalam	Dominica
Ghana	Monaco	Saint Lucia

Full list of participating jurisdictions from 1 April 2020

Additions are highlighted in bold italics.

Anguilla	Antigua and Barbuda	Argentina
Australia	Austria	Azerbaijan
Bahrain	Barbados	Belgium
Bermuda	Brazil	British Virgin Islands
Bulgaria	Canada	Cayman Islands
China	Colombia	Cook Islands
Croatia	Curacao	Cyprus
Denmark	Dominica	Estonia
Finland	France	Germany
Gibraltar	Greece	Greenland
Guernsey	Hong Kong	Hungary
India	Indonesia	Ireland
Israel	Italy	Japan
Korea	Kuwait	Latvia
Liechtenstein	Lithuania	Luxembourg
Malaysia	Malta	Mauritius
Monaco	Montserrat	Nauru
New Zealand	Norway	Pakistan
Poland	Portugal	Qatar
Russia	Saint Kitts and Nevis	Saint Lucia
Samoa	San Marino	Saudi Arabia
Singapore	Slovak Republic	Slovenia
Spain	Sweden	Switzerland
United Arab Emirates	United Kingdom	Uruguay

For more information please refer to the Inland Revenue website: **www.taxtechnical.ird.govt.nz/determinations/crs/jurisdictions/2020-participating-jurisdictions-for-the-crs-applied-standard**

ORDER IN COUNCIL

CRS REPORTABLE JURISDICTIONS AMENDMENT REGULATIONS

New Zealand's list of reportable jurisdictions was updated on 24 February 2020, by the following Order in Council: the *Tax Administration (Reportable Jurisdictions for the Application of CRS Standard) Amendment Regulations 2020 (LI 2020/23)*.

Reportable jurisdictions are relevant to the Common Reporting Standard (CRS rules) which was enacted in New Zealand in 2017 as part of New Zealand's implementation of the G20/OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, or AEOI. Reportable jurisdictions are territories to which Inland Revenue (IRD) will provide certain information on non-residents that is reported to IRD by financial institutions in accordance with the CRS rules.

Pursuant to section 226D of the Tax Administration Act 1994 (the Act), additions and deletions to the list must be made by Order in Council. The *Tax Administration (Reportable Jurisdictions for the Application of CRS Standard) Amendment Regulations 2020* add the following six jurisdictions to New Zealand's existing list of 90 reportable jurisdictions:

- Albania
- Ecuador
- Kazakhstan
- Maldives
- Oman
- Peru

A full listing of reportable jurisdictions can be found on the IRD website and the Order in Council can be found at **legislation.govt.nz**

Application date

The additional six jurisdictions are reportable jurisdictions for reporting periods beginning on or after 1 April 2019. Section 226D(2) of the Act allows for the retroactive application of these regulations.

DOUBLE TAX AGREEMENTS (GUERNSEY) AMENDMENT ORDER 2020

DOUBLE TAX AGREEMENTS (SWITZERLAND) ORDER 2020

New Zealand's Double Tax Agreement (DTA) with Switzerland and Tax Information Exchange Agreement (TIEA) with Guernsey have been updated. These updates are part of a wider programme to include provisions designed to prevent abuse and improve dispute resolution across New Zealand's wider double taxation agreement network. These provisions arose from the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) initiative.

New Zealand ratified the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) in 2018. The majority of New Zealand's double taxation agreements were updated under the MLI's mechanism. However, the Switzerland DTA and the Guernsey TIEA fell outside of the scope of the MLI. New Zealand has therefore signed Protocols amending the DTA with Switzerland and the TIEA with Guernsey. The Protocols relate solely to BEPS minimum standards and best practice provisions and update these agreements bilaterally. They include model treaty provisions to prevent tax treaty abuse and to improve dispute resolution as recommended by the OECD and G20.

Application date(s)

The Double Tax Agreements (Guernsey) Amendment Order 2020 and the Double Tax Agreements (Switzerland) Order 2020 entered into force on the 26th of March 2020. The Protocols will enter into force through the exchange of diplomatic notes between the parties.

Detailed analysis

New Zealand-Switzerland Double Taxation Agreement

This Protocol ensures that the DTA meets the BEPS minimum standards and contains best practice provisions. In particular, the new Protocol includes the following:

- A five-year time limit on profit adjustments attributable to associated enterprises or permanent establishments. The restriction will not apply in cases of fraud, gross negligence or wilful default.
- A requirement for tax authorities to make corresponding transfer pricing adjustments.
- An ability for taxpayers to present their case to the tax authority of their residence jurisdiction.
- The introduction of a principal purpose test, which will deny the benefits where one of the principal purposes of a tax arrangement is to benefit from the DTA.
- An update to the provisions relating to the elimination of double taxation to ensure that Switzerland is not required to provide an exemption from Swiss tax for New Zealand sourced income that is exempt or subject to a lower withholding rate under the provisions of the DTA.
- The introduction of arbitration provisions to support the existing mutual agreement procedure.

New Zealand-Guernsey Tax Information Exchange Agreement

This Protocol ensures that the DTA meets the BEPS minimum standards and contains best practice provisions. Important features of the new Protocol include:

- An amendment to broaden the availability of the mutual agreement procedure and to enable the taxpayer's case to be presented to the competent authority of the jurisdiction in which they are resident; and
- The introduction of a principal purpose test, which will deny the benefits where one of the principal purposes of a tax arrangement is to benefit from the TIEA.

CHANGES TO USE OF MONEY INTEREST RATES

The use of money interest rates on underpayments and overpayments of taxes and duties have changed in line with market interest rates. The new rates are:

- Underpayment rate: 7.00% (previously 8.35%)
- Overpayment rate: 0.00% (previously 0.81%)

The new rates came into force on 8 May 2020. The Taxation (Use of Money Interest Rates Setting Process) Amendment Regulations 2020 came into force on 9 April 2020 and prevented the overpayment rate from going negative.

The use of money interest rates are reviewed regularly to ensure they are in line with market interest rates. The new rates are consistent with the Reserve Bank of New Zealand's floating first mortgage new customer housing rate and the 90-day bank bill rate.

The rates were changed by Order in Council on 4 May 2020.

Taxation (Use of Money Interest Rates) Amendment Regulations 2020 (LI 2020/76)

FORESTS (PAYMENT OF MONEY) ORDER 2020

A payment to landowners for permanently protecting native forest with high conservation values on their land can be exempted from income tax if the appropriate Order in Council is made.

An Order in Council, made under the Forests Amendment Act 2004 (see Tax Information Bulletin Vol 16, No 8, p19), grants an income tax exemption in relation to payments made by the Nature Heritage Fund to the owner of blocks of land in the Rowallan Survey District and Alton Survey District. The payments, made over the course of October 2016 to November 2019, were in exchange for the owner entering into a conservation covenant over the blocks of land.

The Order in Council, which came into effect on 23 April 2020, is part of the Government's SILNA (South Island Landless Natives Act 1906) Policy Package announced in 2002.

(Forests (Payment of Money) Order 2020 (2020/46))

Addendum to *Tax Information Bulletin* Vol 32 No 4 - Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020

DISCLOSURE OF INFORMATION ABOUT REPRESENTATIVES

Addendum

The following item was omitted from coverage of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 in the Tax Information Bulletin Vol 32 No 4.

Schedule 7, part A, clause 3(3) of the Tax Administration Act 1994

The provision that enables the Commissioner of Inland Revenue to disclose information to associations or groups that represent tax agents has been extended to also allow the Commissioner to disclose information about representatives to associations or groups that represent them.

Background

The Tax Administration Act 1994 imposes an obligation on the Commissioner of Inland Revenue to keep sensitive revenue information confidential. This means that the Commissioner is not able to disclose sensitive revenue information unless the disclosure meets the requirements of one of the permitted disclosures under the Tax Administration Act 1994.

The Commissioner has been able to disclose information about tax agents (or persons purporting to be tax agents) to associations and groups that represent them in certain circumstances. This reflects the fact that the Commissioner, in her interactions with tax agents in administering the tax and social policy systems she is responsible for administering, may become aware of information that the associations and groups that represent tax agents are not aware of. The Commissioner can therefore share this information in defined circumstances, which helps protect the integrity of the tax system.

The Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 introduced "representatives" as a new category of third party and intermediary to the Tax Administration Act 1994. Representatives are defined in section 124D of the Tax Administration Act 1994, and are intended to include the likes of bookkeepers, who may represent their clients for PAYE and GST related matters (but not for income tax). At the time this category was introduced, no corresponding amendments were made to expand the scope of the permitted disclosure that enables the Commissioner to disclose information about tax agents to also allow the Commissioner to disclose information about representatives to associations and groups that represent them. There is no reason that representatives should be treated differently to tax agents in these circumstances.

Key features

The key feature of the amendment enables the Commissioner to disclose information relevant to a decision to remove a person's approval as a representative under the Tax Administration Act 1994 to professional bodies.

Application date

The amendment applies from 23 March 2020, the date of Royal assent.

Detailed analysis

Clause 3(3) in part A, schedule 7 of the Tax Administration Act 1994 enables the Commissioner of Inland Revenue to, despite the general requirement that she keep sensitive revenue information confidential, disclose information about a person to an association or group if all of the following criteria are met:

- the person is, or purports to be, a member of an association or group as a representative in terms of section 124D(2) of the Tax Administration Act 1994;
- the members of the association or group are subject to a professional code of conduct and a disciplinary process that enforces compliance with that code of conduct; and
- the information being disclosed by the Commissioner is relevant to a decision of the Commissioner to either disallow, or refuse, a person's approval as a representative (or is information that would, in the Commissioner's opinion, be relevant to such a decision).

LEGISLATION AND DETERMINATIONS

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

Determination EE002: Payments to employees for working from home costs during the COVID-19 pandemic

Application

This Determination is a temporary response to the COVID-19 pandemic and applies to payments made for the period from 17 March 2020 to 17 September 2020.

Background

Some employers have made, or intend to make, payments to employees to reimburse costs incurred by their employees as a result of the employees working from home during the COVID-19 pandemic. Inland Revenue has been asked to clarify the tax treatment of such payments.

It is also acknowledged that many employers will not be in a financial position to make additional payments to employees during the COVID-19 pandemic. This Determination is not intended to suggest that employers should make such payments to employees.

Under s CW 17 of the Income Tax Act 2007, such payments may be exempt income for the employees. The amount that can be paid as exempt income for expenditure incurred by an employee depends on various factors. One of the factors is the extent to which the employee would be able to claim a deduction for the expenditure if the employment limitation did not apply. The employment limitation is the rule that prevents an employee from claiming most deductions for expenditure incurred in deriving employment income. This deductibility test means that there needs to be a connection between the expenditure and the performance of the employee's job. It also means that the expenditure cannot be private expenditure or expenditure of a capital nature (however, an amount can be paid for depreciation loss).

Employers may find it administratively difficult to establish the extent to which expenditure is incurred by employees in deriving employment income or is private in nature.

Employers may also find it difficult to establish or estimate the expenditure each employee has incurred or is likely to incur.

This Determination is intended to remove some of this difficulty and reduce compliance costs for employers by providing some safe harbours. You do not have to apply this Determination. You can calculate tax-free allowance and reimbursement amounts under s CW 17 based on your own reasonable estimates or actual employee costs.

Last year (December 2019), the Commissioner issued Determination EE001, which provides guidance on arrangements where employees agree to use their own telecommunication devices and usage plans (or just their usage plans) for their employment. EE001 sets out proportions of expenditure or loss that the Commissioner will accept as being exempt income of an employee. The proportions differ depending on whether a device or usage plan is used by the employee principally for employment. EE001 also provides a *de minimis* rule which treats a payment made to an employee of up to $5 per week as exempt income of the employee. All that is required for this *de minimis* rule to apply is that there is an arrangement where the employee will provide their own telecommunications tools and usage plan, or just their usage plan, and the employee agrees to use these for their employment.

Determination EE001 can be used in relation to payments made to employees for mobile phone and internet costs incurred by employees working at home.

This Determination (Determination EE002) applies to working from home costs not already covered by Determination EE001. Determination EE002 can be relied on in addition to Determination EE001.

As noted above, this Determination is a temporary response to the COVID-19 pandemic only. It applies for a 6-month period and the treatment it provides depends on an employee continuing to work from home (in a more than minor way) as a result of COVID-19.

Determination

This Determination (EE002) is made under s 91AAT of the Tax Administration Act 1994 and s CW 17(2C) and (2D) of the Income Tax Act 2007.

For this Determination to apply:

- An employer must make a payment to an employee.
- The payment must be for expenditure or a loss incurred (or likely to be incurred) by the employee.
- The expenditure or loss must be incurred by the employee in deriving their employment income and not be private or capital in nature (the capital limitation does not apply to an amount of depreciation loss).
- The payment must be made because the employee is doing their job and the employee must be deriving employment income from performing their job.
- The expenditure or loss must be necessary in the performance of the employee's job.
- The expenditure or loss must be incurred by the employee as a result of the employee being required to work from home because of the COVID-19 pandemic.

This Determination can apply to an employee who is partly working from home and partly outside of their home, provided that the home-based work is more than minor. For example, the Determination can apply to an employee who works at the employer's premises on alternative days to cater for physical distancing policies.

Exclusions

This Determination does not apply to:

- Expenditure on account of an employee.
- Any payments made for a period after an employee ceases to work from home.
- An amount paid under a salary sacrifice arrangement.
- To a payment made to an employee to compensate the employee for the conditions of their service.

This Determination is not binding on employers or employees

This Determination is not binding on employers or employees. An employer or employee may treat a different amount paid to the employee as exempt if they have evidence to demonstrate that in their circumstances some other amount is appropriately treated as exempt income.

Weekly threshold

Under this Determination, where an employer pays an employee who is working from home due to the COVID-19 pandemic (an "affected employee") an allowance, up to $15 per week of the amount paid can be treated as exempt income of the employee. The same treatment can be applied to an equivalent amount paid for a different period of time, eg $30 per fortnight or $65 per month.

This amount is in recognition of general expenditure (eg, additional heating costs) that an affected employee may incur when working from home, other than:

- Depreciation loss, which is separately addressed in this Determination.
- An expenditure or loss covered by Determination EE001.

The treatment of this weekly threshold amount can apply in addition to both the treatment of an amount paid in accordance with Determination EE001 and the treatment of the cost of furniture and equipment that applies under this Determination.

For example, if an employer pays an employee $20 per week for working from home expenses, $15 of this can be treated as exempt income under this Determination (EE002) and $5 can be treated as exempt income under Determination EE001 (if the *de minimis* option in EE001 is chosen).

For this treatment to apply, the employer does not need to collect information about the actual expenditure incurred by the employee or make any estimate of expenditure incurred or likely to be incurred by the employee.

Payments for the cost of furniture and equipment

The following recognises that an employee might incur a depreciation loss on home office furniture or equipment, which the employee would be able to claim as a deduction, but for the employment limitation.

Because of the low-value asset rule, for many assets, the depreciation loss is likely to be equal to the cost of the asset. Note that the threshold for low-value assets was recently amended. For assets purchased before 17 March 2020 the threshold is $500. For assets purchased on or after 17 March 2020 and before 17 March 2021 the threshold is $5,000 (note that the threshold will decrease to $1,000 on 17 March 2021).

This Determination provides two options. An employer may apply either:

- the safe harbour option, or
- the reimbursement option.

Safe harbour option

Under the safe harbour option, an employer can treat up to $400 of an amount paid to an employee for furniture and equipment costs as exempt income.

The safe harbour option saves an employer from having to identify the costs that their employees have or are likely to incur and from having to make judgements about the extent to which the furniture or equipment is used by employees for their employment.

If an employer adopts this safe harbour option, it cannot treat any other allowance or reimbursement payment for furniture or equipment as exempt income.

The reimbursement option

The following applies to reimbursement payments made to employees for the cost of furniture or equipment purchased by employees.

Under this reimbursement option, an amount paid by an employer to an affected employee will be exempt income of an employee if:

- The amount is for furniture or equipment purchased by the employee.
- The amount is equal to or less than the deduction that the employee could have for depreciation loss on the asset (or the cost of the asset, in the case of a low-value asset) for the income year, but for the employment limitation.

The deduction that the employee could have for an asset and, therefore, the amount that can be paid as exempt income, depends on the extent to which the employee uses the asset for their employment. This means that the amount that can be paid as exempt income will be equal to a proportion of the depreciation loss on the asset (or a proportion of the cost of the asset in the case of a low-value asset).

Applying s CW 17, where there is evidence that an asset will be used exclusively for employment purposes, 100% of the depreciation loss on the asset (the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee. Further, under this Determination:

- For an employee who uses an asset principally for their employment, an amount of up to 75% of the depreciation loss on the asset (the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.
- For an employee who does not use an asset principally for their employment, an amount of up to 25% of the depreciation loss on the asset (the cost of the asset, in the case of a low-value asset) can be paid as exempt income of the employee.

The reimbursement option will require an employer to identify the cost of the asset for which the reimbursement is paid so that they can calculate the above proportion. An employer will also need to determine whether the asset is being used exclusively, principally or less than principally for employment. For assets that are not low-value assets (which are likely to be uncommon), the employer will also need to apply the relevant depreciation rate to calculate the depreciation loss.

Whether an asset is used exclusively for employment purposes will depend on the circumstances. Employers need to use their judgement.

It is acknowledged that the reimbursement option could be onerous in some cases, eg where an employer has many employees. That is why the safe harbour option has also been provided.

A written statement (an email or expense claim application is sufficient) from an employee to their employer that the employee intends to use an asset for their employment, and whether principally or not, will be sufficient to establish such use.

Overlap with Determination EE001

For depreciation losses on telecommunications devices, employers cannot apply the reimbursement option in this Determination (EE002) in addition to the treatment available in Determination EE001.

Summary of options available under Determinations EE001 and EE002

The options available under Determinations EE001 and EE002 are summarised in the following table. Note that the table does not detail all the requirements of the Determinations. The table must be read together with the Determinations themselves.

What is the payment for?	How much is treated as exempt income?	When can I use this option?	What evidence do I need to keep?
Furniture or equipment	Up to $400 maximum ("safe harbour")	The safe harbour amount is the only amount paid for furniture and equipment	No evidence required
	25% of cost of item*	Item is used at least partly for job	• Evidence of the employee's costs • Evidence that the item is used for the employee's job
	75% of cost of item*	Item is used mainly for job	• Evidence of the employee's costs • Evidence that the item is used **mainly** for the employee's job
	100% of cost of item*	Item is used exclusively for job	• Evidence of the employee's costs • Evidence that the item is used exclusively for the employee's job
Telecommunication usage plan costs	Up to $5 per week	Plan used for job	No evidence required
	25% of employee's costs	Cost is at least partly for job	• The employee's costs • Evidence that the cost is for the employee's job
	75% of employee's costs	Cost is mainly for job	• The employee's costs • Evidence that the cost is **mainly** for the employee's job
	100% of employee's costs	Cost is exclusively for job	• The employee's costs • Evidence that the cost is **exclusively** for the employee's job
Other expenditure	Up to $15 per week	The $15 per week amount is the only amount paid for other expenditure	No evidence required

* Assuming the item is a low-value asset. For items that are not low-value assets, the percentage is applied to the amount of depreciation loss.

This Determination is signed by me on the 24th of April 2020.

Susan Price
Group Leader
Tax Counsel Office

S63: Spreading of income and expenditure under an agreement for the sale and purchase of assets

This Determination may be cited as *Special Determination S63: Spreading of income and expenditure under an agreement for the sale and purchase of assets.*

1 Explanation (which does not form part of the determination)

1. The Vendor and the Purchaser entered into an agreement for the sale and purchase of assets and an interest in a joint venture (the Agreement) on 2 December 2019.
2. The Agreement provides for the consideration to be calculated quarterly and by reference to:
    - a fixed instalment amount; plus
    - an amount based on volume of outputs produced by the assets; plus
    - a share of revenue from the sale of products generated from, or use of, the assets; less
    - certain costs incurred in holding the assets and in deriving revenue.
3. The total consideration payable by the Purchaser and the duration of the Agreement are unknown, due to the uncertain nature of outputs produced by the assets and the unique nature of the Agreement.
4. An adjustment calculated by reference to net working capital and employee entitlements was required to be calculated and paid by the Vendor to the Purchaser or by the Purchaser to the Vendor soon after the completion date (the Adjustment).
5. This determination prescribes the method for spreading the payments made under the Agreement.

2 Reference

This determination is made under s 90AC(1)(bb) of the Tax Administration Act 1994.

3 Scope of determination

1. This determination applies to the Purchaser and the Vendor in relation to the Agreement. Under the Agreement the Purchaser acquired certain assets and an interest in a joint venture (the Property) in consideration for a quarterly payment calculated by reference to:
    - a fixed instalment amount; plus
    - an amount based on volume of outputs produced by the assets; plus
    - a share of revenue from the sale of products generated from, or use of, the assets; less
    - certain costs incurred in holding the assets and in deriving revenue.
2. The total consideration payable by the Purchaser and the duration of the Agreement are unknown, due to the uncertain nature of outputs produced by the assets and the unique nature of the Agreement. The Agreement can result in payments being made by the Vendor to the Purchaser.
3. The Agreement also provided for the acquisition of other specific assets (which are not part of the Property referred to in para 3.1) by the Purchaser in exchange for a one-off Adjustment to be paid soon after the completion date.
4. The Purchaser and the Vendor both use International Financial Reporting Standards (IFRSs) to prepare financial statements and to report for financial arrangements.
5. Both parties must apply the method specified in this determination.

4 Principle

1. The Agreement is a "financial arrangement" under s EW 3 and is an "agreement for the sale and purchase of property or services" under s YA 1. The Agreement is not an "excepted financial arrangement" under s EW 5.
2. The Adjustment is an "excepted financial arrangement" under s EW 5(22). Any amount that is solely attributable to an excepted financial arrangement described in ss EW 5(17) to (25) that is part of a financial arrangement, is an amount that is taken into account under the financial arrangements rules (s EW 6(3)). This determination specifies that amounts payable in relation to the Adjustment do not need to be spread under the financial arrangements rules.
3. Section EW 15C(1) does not apply to the Agreement, because the financial arrangement is an agreement for the sale and purchase of property or services that is not a "foreign ASAP" (as defined in s YA 1). Accordingly, one of the methods in s EW 151(2) must be used to allocate an amount of income or expenditure to an income year. A method that is available under s EW 151(2)(c) is a determination made by the Commissioner.
4. The parties have agreed a lowest price for the Property. This is the value of the Property for the purposes of s EW 32. The lowest price has been separated into:
   - a lowest price for the Property (the Property Lowest Price); and
   - a lowest price for the Adjustment (the Adjustment Lowest Price).
5. Under s EW 29, in the income year in which the final payment is due under the Agreement, each Party will be required to undertake a base price adjustment (BPA) calculation.

5 Interpretation

In this determination, unless the context otherwise requires:

- All legislative references in this determination are to the Income Tax Act 2007, unless otherwise stated.

6 Method

1. The Adjustment amounts do not need to be spread under the financial arrangements rules.
2. In each income year prior to the year in which a BPA is required, each Party is only required to recognise income under the Arrangement to the extent that:
   - the Party receives a net payment from the other Party in that income year;
   - the payment received by the Party is not the Adjustment; and
   - the cumulative net amount of all of the consideration received and paid by the Party in that income year and all preceding income years for the Property (excluding the Adjustment) exceeds the Property Lowest Price.
3. In each income year prior to the year in which a BPA is required, each Party may only recognise expenditure under the Arrangement to the extent that:
   - the Party makes a net payment to the other Party in that income year;
   - the payment made to the Party is not the Adjustment; and
   - the cumulative net amount of all of the consideration paid and received by the Party in that income year and all preceding income years for the Property (excluding the Adjustment) exceeds the Property Lowest Price.
4. In the income year in which the final payment is due under the Agreement, each Party will be required to undertake a BPA calculation.

7 Example

The following examples illustrate the application of the method set out in this determination.

The figures and values used in these examples are indicative only and cannot be relied on as an indication of the expected cashflows under the Agreement.

Example A

This example is based on the following:

- The Parties have agreed a Property Lowest Price of $20 million;
- The Vendor receives $2 million in year 1 for the Adjustment;
- The Vendor receives the following payments from the Purchaser for the Property:
  - $8 million in year 1;
  - $10 million in year 2;
  - $10 million in year 3; and
  - $6 million in year 4.
- The Agreement terminates in year 4.
- The Vendor does not make any payments to the Purchaser.

No part of the Adjustment needs to be spread under the financial arrangements rules.

In relation to the Property, the Vendor will recognise income and expenditure from the Agreement as follows (excluding the Adjustment):

	Year 1	Year 2	Year 3	Year 4
Cumulative cash received/(paid)	$8 million	$18 million	$28 million	$34 million
Income/ expenditure) recognised in income year	$0	$0	$8 million	$6 million (Determined under the BPA)

In relation to the Property, the Purchaser will recognise income and expenditure from the Agreement as follows:

	Year 1	Year 2	Year 3	Year 4
Cumulative cash received/(paid)	($8 million)	($18 million)	($28 million)	($34 million)
Income/ expenditure) recognised in income year	$0	$0	($8 million)	($6 million) (Determined under the BPA)

Example B

This example is based on the following:

- The Parties have agreed a Property Lowest Price of $20 million;
- The Vendor receives $2 million in year 1 for the Adjustment;
- The Vendor has received the following payments from Purchaser for the Property:
  - $15 million in year 1;
  - $0 million in year 2;
  - $8 million in year 3
  - $4 million in year 4; and
  - $6 million in year 5.
- The Purchaser receives a payment of $5 million for the Property from the Vendor in year 2.
- The Agreement terminates in year 5.

No part of the Adjustment needs to be spread under the financial arrangements rules.

LEGISLATION AND DETERMINATIONS

In relation to the Property, the Vendor will recognise income and expenditure from the Agreement as follows (excluding the Adjustment):

	Year 1	Year 2	Year 3	Year 4	Year 5
Cumulative cash received/(paid)	$15 million	$10 million	$18 million	$22 million	$28 million
Income/ expenditure) recognised in income year	$0	$0	$0	$2 million	$6 million (Determined under the BPA)

In relation to the Property, the Purchaser will recognise income and expenditure from the Agreement as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Cumulative cash received/(paid)	($15 million)	($10 million)	($18 million)	($22 million)	($28 million)
Income/ expenditure) recognised in income year	$0	$0	$0	($2 million)	($6 million) (Determined under the BPA)

This determination is signed by me on the 24th day of April 2020.

Howard Davis
Group Leader, Tax Counsel Office
Inland Revenue

Kilometre rates for the business use of vehicles for the 2020 income year

Instead of making a claim for the business use of a motor vehicle based on the actual costs, a taxpayer may elect to have a deduction for the business use portion based on a kilometre rate method.

In accordance with Section DE 12 of the Income Tax Act 2007, the Commissioner can to set the kilometre rates for the business use of vehicles as an alternative method for business to claim motor vehicle running costs. As the Commissioner relies on third-party information to set the kilometre rates and that information is not yet available to us due to COVID-19, we cannot review the present rates. The 2019 kilometre rates will continue to apply for the time being.

We will review the rate once we get the information from our third-party. Meantime, taxpayers can file returns and if there is a material change once we do set the new rates, they may adjust their 2020 motor vehicle expense claims under s 113 or s 113A.

Employers may continue to use the current rates as a reasonable estimate of expenditure incurred by an employee for the business use of a private motor vehicle, until these rates are reviewed.

The current rates are:

Vehicle type	Tier one rate	Tier two rate
Petrol or diesel	79 cents	30 cents
Petrol hybrid	79 cents	19 cents
Electric	79 cents	9 cents

Operational Statement 19/04 provides further information on the use of the kilometre rates.

2020 CPI adjustment to DET 09/02: Standard-cost household service for childcare providers

In accordance with Section 91AA of the Tax Administration Act 1994, the Commissioner advises adjustments have been made to the standard-cost amounts for the 2020 income year (1 April 2019 to 31 March 2020), as follows:

- Hourly standard cost (per child) $3.70
- Annual fixed administration and record keeping standard-cost $361.00

These amounts reflect the annual movement of the Consumers Price Index for the twelve months to March 2020, which showed an increase of 2.5%.

2020 CPI adjustment to DET 19/01: Household boarding service providers

In accordance with Section 91AA of the Tax Administration Act 1994, the Commissioner advises adjustments have been made to the standard-cost amount for the 2020 income year (1 April 2019 to 31 March 2020), as follows:

- Weekly standard-cost (per boarder) $191.00

This amount reflects the annual movement of the Consumers Price Index for the twelve months to March 2020, which showed an increase of 2.5%.

2020 CPI adjustment to DET 19/02: Short-stay accommodation

In accordance with Section 91AA of the Tax Administration Act 1994, the Commissioner advises adjustments have been made to the standard-cost amounts for the 2020 income year (1 April 2019 to 31 March 2020), as follows:

Daily standard-cost (for each guest)

- Owned dwelling $51.00
- Rented dwelling $46.00

These amounts reflect the annual movement of the Consumers Price Index for the twelve months to March 2020, which showed an increase of 2.5%.

2020 CPI adjustment to OS 19/03: Square metre rate for the dual use of premises

In accordance with Section DB 18AA of the Income Tax Act 2007, the Commissioner advises that the square metre rate for the 2020 income year (1 April 2019 to 31 March 2020) is set at $42.75. The amount reflects the annual movement of the Consumers Price Index for the twelve months to March 2020, which showed an increase of 2.5%.

LEGAL DECISIONS – CASE SUMMARIES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, Court of Appeal, and the Supreme Court.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

Court of Appeal upholds High Court decision that clarifies when Commissioner's Notice of Response is due following s 89K decision

Case	Peter William Mawhinney as Trustee of the Doug Vesey Trust v Commissioner of Inland Revenue [2020] NZCA 112
Decision date	29 April 2020
Legislative References	Goods and Services Tax Act 1985 Tax Administration Act 1994, ss 89AB, 89AC, 89D(5), 89H(2), 89K, 138P Taxation Review Authorities Act 1994, s 26A Interpretation Act 1999, ss 7, 18
Legal terms	Deemed acceptance; response period

Summary

The Commissioner's Notice of Response ("NOR") was filed within two months of the decision by the Taxation Review Authority ("the Authority") that the Commissioner should have accepted the Doug Vesey Trust's ("Trust") Notice of Proposed Adjustment ("NOPA") out of time pursuant to s 89K of the Tax Administration Act ("TAA"). The Court of Appeal upheld the finding of Peters J that the Commissioner's NOR was filed in time and there was no deemed acceptance of the Trust's NOPA.

Impact

The judgment makes it clear the Commissioner's NOR is not required until two months after the conclusion of s 89K challenge proceedings. There is no valid NOPA until the hearing authority determines that the Commissioner should have accepted a taxpayer's NOPA out of time. The Commissioner is not required to issue a "protective" NOR in these circumstances.

Facts

A GST return was filed by the Trust on 5 November 2008 for the period ended 31 October 2008, claiming a refund of $625,000.

On 16 April 2013, the Commissioner issued a Notice of Assessment (NOA) in respect of that return. She assessed the refund due for the period as "nil".

In order to be within the four month response period the Trust was required to issue a NOPA in response by 16 August 2013. A NOPA was not issued until 30 March 2015 but was accompanied with a request under s 89K that the Commissioner accept the NOPA out of time.

By letter dated 29 April 2015, the Commissioner notified the Trust that she refused to accept the NOPA and that, as a consequence, the Trust was deemed to have accepted the Commissioner's NOA.

In May 2016 the Authority held that the Commissioner ought to have not refused the Trust's late NOPA and set aside the Commissioner's refusal. The Commissioner then issued a NOR within two months of the Authority's decision.

This led to the second hearing before the Authority. The Trust argued that the Commissioner's NOR was out of time and, by s 89H(2), the Commissioner was deemed to have accepted the Trust's NOPA and must refund the GST claimed.

Amendments to ss 89AB and 89AC of the TAA came into force on 24 February 2016 (amendments).

The Authority held the amendments applied and were determinative of the issues. Peters J upheld that decision. The Trust appealed that decision to the Court of Appeal.

Issues

Whether the Commissioner's NOR was issued in or out of time. That depends on when the Commissioner's two-month response period started to run – from 30 March 2015 as the appellant claims, or from May 2016 as the Commissioner claims and as the Authority and High Court held.

The Trust argued that s 89AC may not be given retrospective application, for to do so would be to deprive it of a right to which it was entitled under the pre-amendment legislation.

Decision

The Court stated that on its face, s 89AC took effect on 24 February 2016, before the Authority revived the Trust's NOPA. The question is whether the amendment ought to be interpreted to exclude cases where a taxpayer's NOPA had already been issued but was late, and hence ineffective.

The Court referred to the Court of Appeal decision in *Foodstuffs (Auckland) Ltd v Commerce Commission* which held that the general approach to retrospectivity strikes a balance between giving effect to reforms and protecting vested rights, if any, that are in jeopardy by the new legislation, [2002] 1 NZLR 353 (CA).

The Court then referred to the Court of Appeal decision in *Crown Health Financing Agency v P* which held that the law adopts a general principle that the presumption against retrospectivity applies to substantive rights but not those that are procedural in nature, unless a contrary intention is expressed in the legislation itself, [2008] NZCA 362.

The Court stated that it cannot be doubted that the legislation in this case preserved the Trust's substantive right to have its claim to a GST refund determined on the merits and noted the Trust did not dispute this.

The Trust's argument was that what it lost was the right to invoke s 89H(2), under which the Commissioner is deemed to accept an adjustment contained in a NOPA when she fails to reject it within time. The Court found this argument wholly without merit for two reasons:

- First, s 89AC is procedural in nature. Therefore there in no good reason to limit its application to disputes commenced after it came into force, because it does not deprive taxpayers of the substantive right to have their tax liabilities determined on the merits.
- Second, s 89AC achieves no more than what it implicit in the scheme of the TAA. The Commissioner was not required to file a NOR by 30 April 2015. At that date her obligation to do so or face the consequences had not been triggered, for the appellant's NOPA was late and of no effect. The much later decision of the TRA excused the taxpayer's failure to file its NOPA in time. It would be remarkable if the legislature intended that a decision relieving the taxpayer of the consequences of its own failure to act within time should deny the Commissioner the right to contest the taxpayer's claim.

About this document

Case summaries are brief notes of decisions made by the Taxation Review Authority, the High Court, Court of Appeal, Privy Council, and the Supreme Court. These summaries do not set out Inland Revenue policy, nor do they represent our attitude to the decision.

REGULAR CONTRIBUTORS TO THE TIB

Tax Counsel Office

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

Legal Services

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

Technical Standards

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

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

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