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TAX INFORMATION Bulletin

CONTENTS

2 **New legislation**
Public Act 2025 No 50: Income Tax (FamilyBoost) Amendment Act 2025

4 **Determination**
S65: Spreading method to be used for some electricity price contracts for difference

9 **Standard practice statement**
Notice of withdrawal: Imaging of electronic storage media

10 **Interpretation statement**
IS 25/21: GST – taxable activity

35 **Case Summary**
CSUM 25/12: High Court refuses to grant stay of liquidation pending outcome of judicial review proceeding

38 **Technical decision summary**
TDS 25/23: Disposal of cryptoassets

Inland Revenue
Te Tari Taake

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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.

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

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Ref	Draft type	Title	Comment deadline
PUB00500	Interpretation statement	Shortfall penalties – s 141A, 141B and 141C of the Tax Administration Act 1994	31 October 2025
PUB00509	Interpretation statement	Income tax implications of providing sponsorship	21 November 2025
PUB00505	Interpretation statement	Income tax – deductibility of repairs and maintenance expenditure – general principles	28 November 2025
PUB00515	Interpretation statement	GST treatment of supplies of payment processing or facilitation services to merchants	8 December 2025

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IN SUMMARY

New legislation

Public Act 2025 No 50: Income Tax (FamilyBoost) Amendment Act 2025

This new legislation adjusts the FamilyBoost tax credit settings to increase the number of families eligible for the scheme and the quarterly payment amount.

2

Determination

S65: Spreading method to be used for some electricity price contracts for difference

This determination relates to the financial arrangement spreading method that a company (Company A) is to use to return income and expenditure in relation to certain off-market contracts for difference in respect of the wholesale price of electricity.

4

Standard practice statement

Notice of withdrawal: Imaging of electronic storage media

SPS 10/02 *Imaging of electronic storage media*, which appeared in the *Tax Information* Vol 22, No.7 (August 2010), has been withdrawn.

9

Interpretation statement

IS 25/21: GST – taxable activity

This interpretation statement sets out the Commissioner's view on the meaning of "taxable activity". The Commissioner has discussed this concept in numerous public items, but generally in a specific context such as subdivisions of land, horse racing or horse breeding. This statement is of more general application. It replaces GST on disposal of assets used principally in making exempt supplies *Tax Information Bulletin* Vol 1, No 7 (January 1990), 6 and Whether an activity is a GST taxable activity or a hobby *Tax Information Bulletin* Vol 6, No 14 (June 1995), 5.

10

Case summary

CSUM 25/12: High Court refuses to grant stay of liquidation pending outcome of judicial review proceeding

The Commissioner commenced liquidation proceedings against KD Transport Limited (KD). KD requested relief under s 177 of the TAA which the Commissioner declined. KD sought judicial review of the Commissioner's decision declining its proposal for relief and also applied to stay the liquidation proceeding, pending determination of its judicial review application. The stay application needed an extension of time as it was made outside the five working day period prescribed in the High Court Rules. The application for an extension of time was dismissed, and the Associate Judge made an order liquidating KD.

35

Technical decision summary

TDS 25/23: Disposal of cryptoassets

This item summarises an adjudication about the acquisition and disposal of cryptoassets (including staking rewards) and whether the amounts derived are income.

38

NEW LEGISLATION

This section of the TIB covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council. These commentaries are first published on the **Tax Policy website** shortly after any new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes.

Public Act 2025 No 50: Income Tax (FamilyBoost) Amendment Act 2025

Sections MH 3 and MH 5 of the Income Tax Act 2007

Summary of amendment

These amendments adjust the FamilyBoost tax credit settings to increase the number of families eligible for the scheme and the quarterly payment amount.

Effective date

The amendments take effect for fees incurred on and from 1 July 2025.

Background

FamilyBoost is a childcare tax credit administered by Inland Revenue that offers financial assistance to families incurring early childhood education fees not covered by other government support.

FamilyBoost is assessed and paid on a household and quarterly basis. The maximum payment was previously $975 per quarter, based on 25% of the maximum claimable fees of $3,900 a quarter. Eligibility is subject to a quarterly household income test, with payments beginning to abate at a household income of $35,000 per quarter (equivalent to $140,000 a year). The abatement rate was 9.75%, and families became ineligible once quarterly income reached $45,000 (equivalent to $180,000 a year).

Key features

The amendments to the FamilyBoost settings:

- increase the percentage of early childhood education expenses claimable from 25% to 40%, raising the maximum quarterly payment from $975 to $1,560, and
- reduce the abatement rate from 9.75% to 7%, increasing the maximum qualifying household income per quarter from $45,000 to $57,286.

Detailed analysis

The amendments aim to increase the assistance provided through the FamilyBoost tax credit to help ease the cost-of-living pressures on families facing early childhood education fees.

The amendments retain the existing FamilyBoost parameters but adjust certain settings to expand eligibility and raise the maximum quarterly payment. The following tables compare the previous and new settings and the new maximum payments for households earning over $35,000 per quarter.

Table 1: Comparison of previous and new settings

	Previous settings	New settings
Maximum claimable fees per quarter	$3,900	$3,900
Tax credit rate	25%	**40%**
Maximum quarterly payment	$975	**$1,560**
Abatement threshold per quarter	$35,000 ($140,000 per annum)	$35,000 ($140,000 per annum)
Abatement rate	9.75 cents in the dollar	**7 cents in the dollar**
Maximum qualifying household income per quarter	$45,000 ($180,000 per annum)	**$57,286 ($229,144 per annum)**

Table 2: Maximum payment available for households with quarterly incomes above $35,000

Quarterly household income	Annual equivalent household income	Maximum amount refunded, paid quarterly
$35,000	$140,000	$1,560
$40,000	$160,000	$1,210
$45,000	$180,000	$860
$50,000	$200,000	$510
$55,000	$220,000	$160
$57,286 or more	$229,144	$0

Timing of application

The amendments apply to eligible early childhood education fees incurred on and from 1 July 2025. The first payments processed under the revised settings will be from October 2025.

Tax credit payments for fees incurred between 1 July 2024 and 30 June 2025 are not affected by these amendments and will continue to be processed under the previous FamilyBoost settings.

LEGISLATION AND DETERMINATION

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.

S65: Spreading method to be used for some electricity price contracts for difference

Issued | Tukuna: 11 September 2025

This determination relates to the financial arrangement spreading method that a company (Company A) is to use to return income and expenditure in relation to certain off-market contracts for difference in respect of the wholesale price of electricity.

Determination | Marohitanga

This determination may be cited as **Special Determination S65: Spreading method to be used for some electricity price contracts for difference**.

1 Explanation (which does not form part of the determination) | Whakamārama (ka kore i whai wāhi i te marohitanga)

1. This determination relates to the financial arrangement spreading method that a company (Company A) is to use to return income and expenditure in relation to certain off-market power purchase agreements (PPAs) in respect of the wholesale price of electricity. The PPAs are structured as contracts for difference because the electricity is not physically settled between the parties.
2. Company A entered into an off-market PPA (PPA 1) to manage its electricity pricing risk while establishing and operating a solar project (the Project). The intention behind PPA 1 was to give Company A a level of price certainty over its future electricity generation (ie, a hedge against future fluctuations in the spot price of electricity) in order to provide comfort to lenders about the financial profile of the Project over its life.
3. All electricity generated by the Project is physically submitted to the wholesale market and receives spot prices, which are set half-hourly.
4. Under PPA 1 (which has a 15-year term):
   - Company A pays the counterparty (Company B) a floating price for electricity (based on 30-minute intervals) for all electricity generated by the Project; and
   - Company B pays Company A a fixed price for all electricity generated by the Project.
5. This determination also applies to other off-market PPAs that Company A enters into in the future on the same or materially similar terms to PPA 1 to manage its electricity pricing risk in relation to additional electricity generated by later stages of the Project.
6. It is not possible to use the expected value spreading method in s EW 15F for PPA 1 and other PPAs that are in scope of this determination. The reasons for this are:
   - the long terms of the instruments;
   - the lack of market-quoted pricing data; and
   - the lack of fixed volumes of electricity by which each party's payment obligations are calculated. (Instead, the parties agree to pay each other for all electricity that the Project generates, which may vary between payment dates.)
7. Company A has adopted International Financial Reporting Standards (IFRS) to prepare its financial statements and to report for financial arrangements.

2 Reference | Tohutoro

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

3 Scope of determination | Hōkaitanga o te marohitanga

1. This determination applies to Company A in respect of:
   - PPA 1 entered into in August 2025; and
   - other off-market PPAs that Company A enters into on the same or materially similar terms to PPA 1 to manage its electricity pricing risk in relation to additional electricity generated by later stages of the Project.
2. It is not possible to use the expected value spreading method for PPA 1, and for other future PPAs described above as being in scope of this determination. The reasons for this are the long terms of the instruments, the lack of market-quoted pricing data and the absence of any fixed volumes of electricity for calculating each party's payment obligations.
3. PPA 1 was entered into as part of the establishment of a new solar project. It was entered into "off-market" – that is, on day 1, the fair value of PPA 1 to Company A was less than zero. To calculate the initial fair value of PPA 1, Company A followed these steps:
   - It quantified the expected volume of electricity to be generated in each payment period.
   - It modelled the forward price of electricity over the term of PPA 1. It sourced this data from the ASX New Zealand Electricity Futures Contracts. The ASX data generally extends for only 3 years. After this point, Company A sourced data from Energy Link, an electricity consulting firm.
   - It calculated the present value of expected payments under PPA 1 (by reference to the expected volume of electricity, the agreed price of electricity specified in the PPA and the forward price of electricity).
4. The parties have approximately 180 cash settlements in total under PPA 1, with one cash settlement occurring each month during the term of PPA 1. The prices are set from the date on which the first generation of electricity occurs. Following that, prices increase in line with the Consumer Price Index at the date of practical completion of the Project and annually after that.
5. The fixed rate Company B pays has been set by reference to historical baseload price, adjusted for location and discounted to reflect the anticipated decrease in electricity prices for solar power compared with the forward price path for all electricity. (This arises because multiple solar facilities simultaneously change their generation of power when weather conditions change. As a result, a coordinated shift in supply occurs, which affects the price of electricity.)
6. Company A does not treat PPA 1 and other eligible PPAs as a hedge under IFRS 9.
7. For both PPA 1 and other PPAs that Company A enters into "off-market", the non zero day 1 fair value is calculated by reference to the expected cashflows over the term of the PPA with regard to the expected volume of electricity, the agreed price of electricity under the PPA, and the electricity forward price path, and applying a cost of funds discount factor. Where the contract price and day 1 fair value differ, and the day 1 fair value technique uses data that is not only from observable markets, IFRS 9 requires the deferral of the difference. This is achieved by calculating a "calibrated PPA" with a zero day 1 value by using an adjustment factor to adjust the agreed prices uniformly.
8. This determination does not apply to the counterparty to any of the above PPAs.
9. This determination is made subject to the condition that the IFRS accounting treatment of Company A's off-market PPAs does not materially alter.

4 Principle | Mātāpono

1. The PPA is a financial arrangement under s EW 3 and is not an excepted financial arrangement under s EW 5.
2. Under s EW 15C(1), a person who uses IFRS to prepare financial statements and to report for financial arrangements must use one of four methods for the financial arrangement, including a determination alternative under s EW 15E. Under s EW 15E(2)(d), the Commissioner may determine the spreading method to be applied.
3. Under s EW 29, Company A is required to calculate a base price adjustment (BPA) in the income year that the PPA matures or is terminated. The BPA will take into account all consideration Company A receives and all amounts Company A pays under the PPA.

4. This determination specifies the spreading method that Company A must apply to allocate income and expenditure in respect of PPAs that are within scope of this determination.

5 Interpretation | Whakamāoritanga

In this determination, all legislative references are to the Income Tax Act 2007, unless otherwise stated.

6 Method | Tikanga

1. Income or expenditure for an income year from the PPA is the total of:
   - the amount calculated in accordance with [5] below; and
   - the amount described at [6] below.
2. Company A will estimate the expected annual volume of electricity to be supplied in order to calculate expected cashflows. It will determine the estimate by reference to the P50 value of an electricity generation model that uses daily sunlight irradiance data for the location of the Project and the known efficiency profile of the solar panels as its input variables.
3. Company A calculates the day 1 fair value of the PPA by reference to:
   - the expected monthly volume of electricity; and
   - the expected price per unit of electricity over the relevant term based on the electricity forward price path.
4. Company A will construct a calibrated PPA with the same expected volume of electricity by adjusting the prices in the PPA by a constant factor such that the day 1 fair value of the calibrated PPA is zero.
5. Company A will recognise the day 1 fair value of the PPA spread over the term to which the day 1 fair value amount relates by:
   - subtracting payments expected under the calibrated PPA in each income year from the payments that would be expected under the PPA; and
   - discounting the difference in each income year to present value.
6. At the end of each income year, Company A will also recognise an amount equal to the difference between the net amount paid or received under the PPA and the amount calculated in [5] above, which is due to differences between the:
   - actual electricity prices and the prices in the calibrated PPA (as actual payments are made between Company A and Company B); and
   - actual volume of electricity generated by the Project and the expected volume of electricity determined at [2] above.
7. IFRS 9 also requires remeasurement of the PPA at each balance date based on the latest forward electricity prices and any change to the expected generation volumes of the Project. Any gains or losses resulting from remeasurement of the PPA at each balance date based on the latest forward electricity prices under IFRS 9 are not allocated as income or expenditure in the relevant income year for tax purposes.

7 Example | Tauira

This example illustrates how to apply the method set out in this determination.

The figures and values used in this example are indicative only and cannot be relied on as an indication of the expected cashflows under a PPA.

Company A and Company B have agreed to enter into a PPA on the following terms:

- term of PPA: 5 years;
- annual volume of electricity to be supplied: all electricity generated by the Project;
- fixed price per MWh of electricity: $100; and
- agreed price to enter into the PPA: $0.

Calculating the initial fair value of this PPA involves:

- estimating the annual volume of electricity to be supplied by reference to the P50 value of a model that uses daily sunlight irradiance data for the location of the Project and the known efficiency profile of the solar panels as its input variables;

- modelling the forward price of electricity over the term of the PPA using data sourced from the ASX New Zealand Electricity Futures Contracts and from Energy Link, an electricity consulting firm; and
- comparing the agreed electricity price (of $100 per MWh) with an electricity forward price path.

In this example, the expected annual volume of electricity is 100 MWh.

The calculated day 1 fair value of the PPA is a loss of $500 (because the electricity price path expects the average price of electricity over the term of the PPA to exceed $100 per MWh).

Under IFRS 9, a calibrated PPA is constructed with:

- prices increased by an adjustment factor of 1.2 (compared with the actual PPA); and
- the annual volume of electricity set at 100 MWh (ie, the same as the estimated annual volume in the actual PPA),

such that the day 1 fair value of the calibrated PPA is zero. By the end of year 5, the PPA has matured and has a fair value of 0.

For each income year, the expected cashflows under the "calibrated PPA" are compared with the expected cashflows under the PPA and then discounted to present value (to achieve the expected spread of the day 1 negative fair value of $500 as in row 1 of the table below).

From the beginning of year 1 (when the PPA was entered into) until the end of year 1, Company A generated 110 MWh of electricity compared with the estimated annual volume of 100 MWh (eg, as a result of sunnier than expected weather conditions during that year).

Company A was required to pay Company B $13,200 based on the electricity spot price over that period (ie, 110 MWh multiplied by $120/MWh). Over the same period, Company B was required to pay Company A $11,000 based on the agreed fixed price (ie, 110 MWh multiplied by ($100/MWh). This results in a net loss of $2,200 (refer year 1, rows 4 to 6 of the table).

This net loss effectively comprises the following components:

- the expected loss for year 1 of $3,000 as calculated on day 1;
- the unfavourable unexpected difference in the electricity spot price; and
- the favourable unexpected increase in the actual volume of electricity generated.

The aggregate effect of the unexpected price and volume changes (refer year 1, row 7 of the table) reduced the expected loss for year 1 (refer year 1, row 1 of the table) by $800 for the year. The sum of these amounts is the net income for Company A in year 1 (which, in practice, matches the net amount received by Company A under the PPA).

At the end of year 1, IFRS 9 also requires remeasurement of the fair value of the PPA based on the forward electricity prices at balance date. This resulted in a negative fair value of $600 (refer year 1, row 9 of the table). None of the loss is included as expenditure under the spreading method.

The table below illustrates how the spreading method applies for the remaining term of the PPA and the amounts Company A will have to allocate as income or expenditure over the term of the PPA.

		Year 1	Year 2	Year 3	Year 4	Year 5
Day 1 fair value component						
1	Day 1 fair value amount spread ($)	(3,000)	(2,500)	(1,000)	5,000	1,000
Actual cashflow component						
2	Actual volume of electricity generated (MWh)	110	100	100	90	100
3	Average spot price ($/MWh)	120	110	120	90	100
4	Payment by Company A under PPA ($) *[2] x [3]*	13,200	11,000	12,000	8,100	10,000

5	Payment by Company B under PPA ($) *[2] x $100/MWh*	11,000	10,000	10,000	9,000	10,000
6	Net payment amount for Company A under PPA ($) *[5] – [4]*	(2,200)	(1,000)	(2,000)	900	0
Income/expenditure for income year						
7	Difference between net payment amount and day 1 fair value amount spread ($) *[6] – [1]*	800	1,500	(1,000)	(4,100)	(1,000)
8	**Total income ($)** ***[1] + [7]***	**(2,200)**	**(1,000)**	**(2,000)**	**900**	**0**
Remeasurement of fair value (not allocated as income or expenditure for tax purposes)						
9	Gain or loss from remeasurement at balance date ($)	(600)	500	(400)	100	0

This Determination is signed by me on the 11th day of September 2025.

Howard Davis
Group Leader | Rōia Kaihautū ā-ropu Taake
Tax Counsel Office | Te Tari Tohutohu Tāke

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.

Notice of withdrawal

9 October 2025

Withdrawal of SPS 10/02 *Imaging of electronic storage media*

SPS 10/02 *Imaging of electronic storage media*, which appeared in the *Tax Information* Vol 22, No.7 (August 2010), has been withdrawn.

SPS 10/02 was published in 2010 and has been superseded by OS 25/04 *The Commissioner of Inland Revenue's search powers* and OS 25/05 *Section 17B Notices*.

INTERPRETATION STATEMENT

This section of the *TIB* contains interpretation statements issued by the Commissioner of Inland Revenue.

These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of the assessment we consider that the earlier advice is not consistent with the law.

Some interpretation statements may be accompanied by a fact sheet summarising and explaining the main points. Any fact sheet should be read alongside its corresponding interpretation statement to completely understand the guidance. Fact sheets are not binding on the Commissioner. Check **taxtechnical.ird.govt.nz/publications** for any fact sheets accompanying an interpretation statement.

IS 25/21: GST – taxable activity

Issued | Tukuna: 8 October 2025

This interpretation statement considers the meaning of "taxable activity" in s 6 of the Goods and Services Tax Act 1985.

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

REPLACES | WHAKAKAPIA

- GST on disposal of assets used principally in making exempt supplies *Tax Information Bulletin* Vol 1, No 7 (January 1990), 6.
- Whether an activity is a GST taxable activity or a hobby *Tax Information Bulletin Vol 6, No 14* (June 1995), 5.

Summary | Whakarāpopoto

1. This interpretation statement sets out the Commissioner's view on the meaning of "taxable activity". The Commissioner has discussed this concept in numerous public items, but generally in a specific context such as subdivisions of land, horse racing or horse breeding. This statement is of more general application.
2. The concept of taxable activity is one of the key building blocks of GST. Among other things it affects the need to charge GST on a supply under section 8 and determines the need to register for GST under section 51. As such, it is considered useful that the Commissioner provide his view of the meaning of "taxable activity".
3. Section 6 defines "taxable activity". The key elements discussed in this interpretation statement are:
    - what constitutes an "activity" (from [12]);
    - when an activity is being "carried on" (from [16]);
    - what "continuously or regularly" means (from [18]);
    - the significance of the words "whether or not for a pecuniary profit" (from [32]);
    - what is meant by the requirement that the activity "involves or is intended to involve, in whole or in part, the supply of goods and services … for a consideration" (from [34]);
    - the reference to the activity being "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club" (from [39]);
    - the inclusion of public authorities, local authorities and public purpose Crown-controlled companies (at [42]);
    - the application of section 6(2) ("anything done in connection with the beginning or ending … of a taxable activity") (from [43]); and
    - the exclusions from the definition of "taxable activity" in section 6(3), particularly the exclusions for any activity carried on essentially as a private recreational pursuit or hobby (sections 6(3)(a) and 6(3)(aa)) (from [66]).

Introduction | Whakataki

4. In most cases it is clear if a person has a taxable activity. The level of activity and manner in which that activity is conducted usually clearly indicates whether the statutory test of "taxable activity" is met. However, there are cases where it is not clear whether the test is met, and this interpretation statement provides guidance for those cases.
5. The meaning of taxable activity (including the exclusions in section 6(3)) has been addressed in many statements including:
   - GST on disposal of assets used principally in making exempt supplies *Tax Information Bulleti*n Vol 1, No 7 (January 1990): 6[1];
   - Whether an activity is a GST taxable activity or a hobby *Tax Information Bulletin* Vol 6 No 14 (June 1995): 5[1];
   - Difference between a taxable activity (GST) and a business activity (income tax) *Tax Information Bulletin* Vol 7 No 3 (September 1995): 8;
   - QB 17/04: Goods and services tax — whether a racing syndicate can be a registered person (question we've been asked, 19 May 2017);
   - QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home? (question we've been asked, 20 May 2019);
   - IS 20/04: Goods and services tax – GST treatment of short-stay accommodation *Tax Information Bulletin* Vol 32 No 6 (July 2020): 69;
   - IS 21/04: Income tax and GST – deductions for businesses disrupted by the COVID-19 pandemic *Tax Information Bulletin* Vol 33 No 9 (October 2021): 8 ;
   - IS 23/05: GST – Section 5(6D): Payments in the nature of a grant or subsidy *Tax Information Bulletin* Vol 35 No 7 (August 2023): 37;
   - QB 22/07: Income tax and goods and services tax – treatment of bloodstock breeding *Tax Information Bulletin* Vol 34 No 9 (October 2022): 22;
   - BR Pub 23/01: Goods and services tax – directors' fees *Tax Information Bulletin* Vol 35 No 3 (April 2023): 15;
   - BR Pub 23/02: Goods and services tax – fees of board members not appointed by the Governor General or Governor-General in Council *Tax Information Bulletin* vol 35 No 3 (April 2023): 18;
   - BR Pub 23/03: Goods and services tax – fees of board members appointed by the Governor General or Governor-General in Council *Tax Information Bulletin* vol 35 No 3 (April 2023): 21;
   - QB 23/07: GST – directors and board members providing their services through a personal services company *Tax Information Bulletin* Vol 35 No 8 (September 2023): 43; and
   - QB 24/04: When is a subdivision project a taxable activity for GST purposes? *Tax Information Bulletin* Vol 36 No 7 (August 2024): 42.
6. Where a particular issue relates to one of topics covered in the statements listed above that specific advice should also be referred to.
7. The meaning of taxable activity has also been addressed in a large number of decisions of the Taxation Review Authority (TRA) and New Zealand courts. This interpretation statement refers to many of these cases (and they are listed in the **References**).
8. As a preliminary point it is worth observing that a GST registered person may have more than one separate taxable activity but will only have one GST registration[2]. On the other hand, a person may have multiple GST registrations for different taxable activities if they are conducted through different legal entities. For example, a natural person may own a company running a retail store, a separate company running a restaurant, and have a farming operation in their own name. However, a person is not able to artificially split one taxable activity into multiple entities to keep the activity below the GST registration threshold (currently $60,000 per annum).
9. It is also worth observing that the term "taxable activity" is not limited to activity in New Zealand. (But the imposition of GST under section 8, and GST registration in section 51, do relate to supplies made in New Zealand.)

1 This is one of the two statements that will be withdrawn by this interpretation statement.

2 See, for example, *Case R38* (1994) 16 NZTC 6,212 and section 51(1)(a) which provides a person is liable to register for GST where the value of supplies "in the course of carrying on **all** taxable activities" exceeds $60,000 in a 12-month period.

10. It is not possible in an interpretation statement to provide precise guidance for all fact situations that could possibly arise; instead, the statements of legal principle in this statement, together with the examples provided, provide a starting point from which to analyse specific fact situations.

Analysis | Tātari

11. Taxable activity is defined in section 6. Section 6(1) is the principal definition:

> (1) For the purposes of this Act, the term taxable activity means—
>
> (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
>
> (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority or public purpose Crown-controlled company.

"Activity"

12. The starting point of the definition of taxable activity is that an "activity" must be carried on by any person. The New Zealand courts and TRA have commented on the meaning of activity on many occasions.[3]

13. In *Case 14/2016* (2016) 27 NZTC 17,547, the TRA summarised the case law on the meaning of activity:

> [63] … Firstly, there must be an activity. The GST Act does not define what an "activity" is. The courts have held that "activity" is a broad concept involving a combination of tasks undertaken, or a course of conduct pursued by the taxpayer. An activity cannot be entirely passive.
>
> [64] In *Newman* v *Commission of Inland Revenue*, Fraser J looked to the dictionary for a definition of activity and stated:
>
> > The New Shorter Oxford English Dictionary 1993 ascribes a number of varying meanings or shades of meaning, none of which is exactly apposite to the word in its context in s 6. The nearest, I think, is "an occupation, a pursuit" and (in the plural) "things that a person, animal or group chooses to do". In its context here I think the word means a course of conduct or series of acts which a person has chosen to undertake or become engaged in.
>
> [65] A similar statement was made by the Court of Appeal in *Commissioner of Inland Revenue* v *Bayly* where Richardson P stated:
>
> > In its standard dictionary usage, "activity" is "the state of being active; the exertion of energy, action" (Oxford English Dictionary). In the context of ss 6 and 8 it points to a combination of tasks undertaken, or course of conduct pursued by the registered person and whether or not it amounted to a business, trade or profession in the ordinary sense.
>
> [66] The Court of Appeal in *CIR* v *Newman* rejected an approach that dissects what is done into a series of sequential steps, and Gault J stated:
>
> > While it is clear that it is the activity which must be continuous rather than the supply of goods, the definition must be construed as a whole bearing in mind also s 6(2) and against the scheme of the Act. Similarly in my view the activity for consideration against the definition must be viewed as a whole, realistically as it is carried on. There is a risk of introducing artificiality by engaging in a dissection of what essentially is a single activity into component acts to assess whether it meets the definition. Such an approach was rejected in a different context in *Dallow Industrial Properties Limited* v *Curd* [1967] 2 All ER 30 at p 33.
>
> Accordingly although an activity may comprise a series of acts or a combination of tasks, it is the overall activity which must meet the definition in s 6(1) of the GST Act, not its component parts.

14. As a result, the word activity has a very broad meaning, but a single act cannot be divided into its component parts to assess whether it meets the definition. This warning from the cases on activity is also made in the case law in respect of the meaning of "continuously or regularly" (see discussion from [18]).

15. The case law indicates that establishing whether or not there is an activity is not likely to be a significant issue. It is whether the activity satisfies the requirements of section 6(1) that is generally at issue.

3 *Case P83* (1992) 14 NZTC 4,553 at 4,558, *Newman v CIR* (1994) 16 NZTC 11,229 (HC) at 11,233, *CIR v Bayly* (1998) 18 NZTC 14,073 (CA) at 14,078, and *Case 14/2016* (2016) 27 NZTC 17,547.

"Carried on"

16. The activity in section 6(1) needs to be "carried on". Richardson J addressed the meaning of carried on in *Newman v CIR* (1995) 17 NZTC 12,097 (CA) at 12,100:

> To come within s 8(1) and s 51 the supply must be in the course or furtherance of a taxable activity carried on by the registered person. **"Carrying on" has been described as "the habitual pursuit of a course of conduct" (*Premier Automatic Ticket Issues Ltd v Federal Commissioner of Taxation* (1933) 50 CLR 268 at p 298); and as implying "a repetition of acts, and excluding the case of an association formed for doing one particular act which is never to be repeated"** (***Smith*** v ***Anderson*** **(1880) 15 Ch D 247 at pp 277, 278)**. In that context and against that statutory scheme which I have outlined, s 6 goes on to require that the activity be one that is so carried on "continuously or regularly". The legislation is directed at a course of conduct which can fairly be described as being carried on continuously or regularly. As I see it, it is not a matter of importing any overlay of commercial dealing or of trying to draw a distinction between the divestment of commercial assets and private assets. Rather it is whether the process engaged in, whatever the asset or its location or the occupation of the taxpayer, comes within the statutory language. The application of the test to the particular circumstances will necessarily involve questions of fact and degree.
>
> [Emphasis added.]

17. Richardson J's interpretation of carrying on indicates that the activity in question in section 6(1) involves a habitual pursuit and repetition of acts. In this regard, his Honour's interpretation ties in with the next part of the definition, the requirement that the activity be carried on continuously or regularly.

"Continuously or regularly"

18. The requirement that the activity be carried on continuously or regularly is probably the element of section 6 that has given rise to the greatest number of TRA and court decisions.

19. The cases make it clear that the words continuously or regularly relate to the carrying on of the activity and not to the supply of goods and services.[4] Hence, an activity could be continuous or regular even where very few supplies are made or even none. In *Newman*, at both the High Court and Court of Appeal, the example was given of a continuous activity involving the construction and proposed sale of just one commercial building. In *Case 7/2012* (2012) 25 NZTC 15,269, the TRA found a taxable activity existed even though no supplies had yet taken place. If an activity was only going to lead to one or two supplies the supply or supplies would need to be of a large scale to satisfy the "continuously or regularly" test.

20. The cases distinguish between an activity being carried on "continuously" and an activity being carried on "regularly". In *Allen Yacht Charters v CIR* (1994) 16 NZTC 11,270 at 11,274 Tompkins J distinguished between the two terms:

> This indicates that the activity must either be carried on all the time, ie, continuously, or it must be carried on at reasonably short intervals, ie, regularly. An activity that is intermittent or occasional does not qualify.

21. In *Wakelin v CIR* (1997) 18 NZTC 13,182 at 13,185–13,186, Patterson J expressed a similar distinction between the terms:

> The term "carried on continuously or regularly" as used in s 6(1) is to be given its ordinary meaning. An activity is therefore carried on continuously if it is carried on over a period or in a sequence uninterrupted in time or if it is connected. It is carried on regularly if it is carried on in accordance with a definite course or a uniform principle of action or conduct or if there is a proper correspondence between the elements of the activity (see *The New Shorter Oxford English Dictionary*).

22. Perhaps the fullest discussion of what was meant by continuously or regularly is the decision of Judge Bathgate in *Case N27* (1991) 13 NZTC 3,229 at 3,238–3,239:

> "Continuously" does not obviously mean that the physical activity must be continuing all the time; again the analogy of a business is useful. A business can be continuous, although only carried on in defined periods, such as when a shop is open for business. While the proprietor and his staff are at home asleep, on vacation or not working, the business is still being "carried on" and is in that sense a continuous business. **Continuously, in this context means more that the activity has not ceased in a permanent sense, or has not been interrupted in a significant way, so that one could say with some certainty that it was not continuous.** A single person carrying on a business may be seen as carrying on the business, although away on holiday, with or without making arrangements for the business in their absence. It is again a question of fact and degree, as to whether an activity is carried on continuously or not. The object and purpose of any physical break in the activity, whether it be for rest, recreation, health and such like reasons may be of importance in determining whether or not the activity is being carried on continuously.

4 *Newman* (CA) at 12,102 (per Gault J) and at 12,103 (per McKay J), *Case T40* (1997) 18 NZTC 8,267 8,276.

> Whether an activity is carried on '"regularly"', involves similar considerations in which the. character and nature of the activity would be of importance in determining whether the activity carried on day by day, week by week, or month by month, may be said to be carried on regularly. **Regular, in this context, I think means a steadiness or uniformity of action, or occurrence of action so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character**. Whether it is pursued in a firmly definite course or not will depend largely on the nature of the activity and perhaps the subjective qualities of the person carrying it on. It is unlikely that a person could avoid being charged GST merely because on occasions they were of irregular habits, so long as the activity generally, over a period of time of a year, more or less was fairly continuous or regular, and involved the other requirements of the definition of taxable activity.
>
> [Emphasis added.]

23. The courts have made it clear that the required continuity or regularity cannot be achieved by artificially dividing something into smaller steps so as to create an activity that is continuous or regular.[5]
24. Although often an activity will be carried out continuously **and** regularly, it is sufficient if the activity is either continuous **or** regular. Cases have sometimes decided that something is continuous but not regular and vice versa (although it is more often the case that the activity is both continuous **and** regular, or neither continuous **nor** regular).
25. For example, in *Allen Yacht Charters* Tompkins J found that the taxpayer's yacht chartering was not continuous (at 11,276) but was regular (at 11,276). In contrast, in *Case T40,* the TRA found that the activity was carried on continuously but had misgivings as to whether the activity could also be described as regular (at 8,275). In *Case 7/2012*, the TRA also found the activity was continuous but not regular (at [101]).
26. When it comes to applying the continuous or regular test the focus is not so much on the legal tests discussed above, but on the practical application of the test to the particular facts. Each case is a useful example and can be used to predict how a court might determine a case before it. However, in *Newman*, the Court of Appeal made clear that the test can be applied only to the facts before a court and a definitive view on what would satisfy the test was not necessary or desirable. Richardson J expressed it like this (at 12,101):

> It is neither necessary nor desirable to express any view as to what would have to be involved in a particular sub divisional development to bring the activity within s 6. That must depend on an assessment of the circumstances of the particular case. It is sufficient to conclude, as I do, that the limited activity engaged in by the appellant in this case does not come within the statutory test. For the reasons given I would allow the appeal.

27. All three of the Court of Appeal judges saw the application of the test as a matter of fact and degree (Richardson J at 12,101, Gault J at 12,103, and McKay J at 12,104). Gault J described it thus (at 12,103):

> Plainly it is a matter of fact and degree. It is necessary to ascertain on each set of facts whether there can be identified an holistic activity that can be said to be carried on continuously or regularly and which involves the supply of goods or services. It is the activity that must be carried on continuously, not the sequence of individual competent elements of it.

28. This quote also reaffirms the point made above (in relation to the meaning of activity) that it is unhelpful and incorrect to break an activity down into a series of steps to analyse whether the activity was carried on continuously (and presumably also regularly).
29. The TRA has applied the "fact and degree" test in cases such as *Case S70* (1996) 17 NZTC 4,731, *Case T62* (1998) 18 NZTC 8,468, *Case 7/2012,* and *Case 14/2016.*
30. The Commissioner has provided guidance on whether an activity is continuous or regular in specific contexts such as subdivisions (**QB 24/04**), horse racing (**QB 17/04**), horse breeding (**QB 22/07**) and short-stay accommodation (**QB 19/09**). Subdivisions have probably been the most common fact situation dealt with in the case law concerning whether an activity is continuous or regular.

5 See *Newman* (CA) per Richardson J at 12,101, Gault J at 12,102–12,103, and McKay J at 12,103.

31. Example | Tauira 1 to Example | Tauira 3 illustrate the application of the continuous and regular tests.

Example | Tauira 1 – Activity not carried on continuously or regularly

Ella sets herself up as an animal portrait painter as a side hustle to her full-time occupation as a lift technician. She puts a sign outside her house advising that she is available to accept commissions, and the sign includes her mobile phone number and an example of her work.

In her first year of operation she receives two commissions, one in March and one in August.

Ella's activity in this first year of operation cannot be described as continuous. Her activity is not carried on all the time (*Allen Yacht Charters*) or in a sequence uninterrupted in time (*Wakelin*). Her activity involved putting up a sign and working on two commissions; otherwise, nothing has happened. Her activity cannot be described as regular as it is intermittent (*Allen Yacht Charters)* and is not repeated at fairly fixed times *(Case N27*). She has not satisfied the requirement that her activity be carried on continuously or regularly.

Example | Tauira 2 – Activity carried on continuously

Following on from Example | Tauira 1, Ella's friend Leah (a business adviser) has observed the lack of success of Ella's new undertaking and gives her detailed advice about how to generate more business. As a result of Leah's advice, Ella begins advertising on websites of interest to pet owners, sets up her own website with examples of her work (which she regularly updates), places regular print advertisements in the local newspaper and various pet magazines, has her car vehicle-wrapped with her pet portrait branding, and attends many cat and dog (and other animal) shows in the wider region where she sets up a stall and displays examples of her work, hands out her business card and chats with potential clients.

As a result of these efforts, business begins to grow and in her second year of operation she paints seven portraits, two in March, two in July, one in September and two in December. By the third year of operating her activity, she is receiving regular word-of-mouth referrals together with great online reviews, and she starts receiving multiple commissions every month and has to reduce her work as a lift technician to part-time hours.

In the second year of operation, Ella's activity is continuous. Although actual commissions were still low and irregular, the continuity relates to the activity and not the supplies of the activity. In year two, Ella advertised continuously, set up a website, had her car vehicle-wrapped, and actively sought business by regularly attending animal shows where she engaged with pet owners about portraits of their pets. The activity was carried on all the time (*Allen Yacht Charters)* and uninterrupted in time *(Wakelin*). This is the case even though the activity was a side hustle to her full-time job.

By year three, Ella's activity is even more clearly continuous in nature as the number of supplies has also become continuous.

Example | Tauira 3 – Activity carried on regularly

Mike owns a monster truck and has set up Mike's Monster Trucks to provide paying customers with the experience of being driven around a circuit in a monster truck. Mike has a full-time job Monday to Friday and operates his monster truck rides only in the weekends and only in the summer months when there is demand for this type of activity.

Mike takes the monster truck to car shows, music festivals and other outdoor community events throughout the lower North Island. In the summer months when he is operating the business, and especially around Christmas and New Year, he is at events every weekend and on public holidays.

Mike's Monster Trucks is not carrying on the activity continuously. It is not carried on all the time (*Allen Yacht Charters)* as it does not operate for nine months of the year, so there is an interruption in operation (*Wakelin*). However, Mike's Monster Trucks is carrying on its activity regularly. Although it is operating for only three months of the year, the activity recurs or is repeated at fixed times every summer (*Case N27*) according to a definite course of action (*Wakelin*). Accordingly, Mike's Monster Trucks satisfies the requirement that the activity is carried on continuously or regularly.

"Whether or not for a pecuniary profit"

32. The words "whether or not for a pecuniary profit" make it clear a taxable activity can exist even when there is not a purpose of deriving a pecuniary profit. In this regard, the definition differs from that of "business" in section YA 1 of the Income Tax Act 2007, which includes any profession, trade, or undertaking **carried on for profit**. In contrast, a taxable activity does not need to be carried on for profit, which widens the scope of the definition. As a result of these words a non-profit body can carry on a taxable activity.

33. This component of section 6(1)(a) has not been a significant issue in the cases, but it has been observed in *Case N27*, *Allen Yacht Charters*, *Wakelin* and *Case 7/2012*.

"Involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration"

34. The requirement that the activity "involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration" has been acknowledged in many cases such as *Case N27* at 3,238, *Case P83* at 4,558, *Newman* (HC) at 11,233 and *Case 9/2014* (2014) 26 NZTC 17,072 at [82]. The cases emphasised the point that the requirement of involving supplies for consideration relates to the activity, rather than to the words "continuous or regular". In other words, the activity must involve or be intended to involve the supply of goods and services for a consideration. It is not the case that there must be a continuous or regular supply of goods and services for consideration. As Fraser J said in *Newman* (HC), at 11,233:

> It is to be noted that it is not the supply of goods which is to be carried on continuously or regularly, but the activity which involves or is intended to involve that supply.

35. In *Newman* (HC), Fraser J gave the example (at 11,233) of a person who as a single venture constructs a commercial building with a view to its ultimate sale. Such an activity could be a taxable activity even though there was only one supply of a building. In the Court of Appeal in *Newman*, McKay J agreed that such an activity could be described as a continuous activity (at 12,103) in spite of there being only one supply. (See also *Case N19* (1991) 13 NZTC 3,158 at 3,168.)

36. See also Richardson P in *Bayly* (CA) at 14,078 where his Honour endorsed the view from *Newman* that it is the activity itself, not the supply of goods or services, which is to be carried on continuously or regularly.

37. In terms of testing the intention to supply goods or services, in *Case 14/2016*, Sinclair J said the following[6]:

> [69] Thirdly, a taxable activity must involve, or it must be intended to involve, the supply of goods or services to another person. Where no supplies have been made, but the taxpayer asserts an intention to supply goods or services to another person, that stated intention can be tested against the objective evidence. [footnote omitted]

38. Example | Tauira 4, Example | Tauira 5 and Example | Tauira 6 illustrate the requirement for an activity to either involve or be intended to involve the making of supplies for a consideration.

Example | Tauira 4 – Activity intended to involve the supply of goods and services for a consideration

Mark and Mandy set up an activity to provide "space rockets for everyday folks". After extensive researching, testing and prototyping they are ready to sell rockets to the world. Lawson is interested in interstellar travel and signs up to buy an Ark rocket. The rocket will take about 30 months to build and test before delivery. Due to the experimental nature of their product, Mark and Mandy agree to Lawson making full payment on completion of the project and to fund the construction and testing themselves.

For the first 30 months of their activity, Mark and Mandy make no supplies to any customers. However, their activity **is** intended to involve the supply of goods and services (space rockets) to customers. Furthermore, the 30-month construction period involves continuous activity in the rocket factory, including sourcing materials, construction, ongoing research and testing, and customer interactions. Much like the example of constructing a commercial building discussed in *Newman*, this is sufficient to be a continuous activity, and one that is intended to involve supplying goods and services for a consideration.

6 Relying on *Case N27* at page 3,238.

Example | Tauira 5 – Activity intended to involve the supply of goods and services for a consideration although no supplies ever made

Julian has a dream of developing a computer software programme that will transform the search experience of internet users. He hires a number of software programmers, leases some office space, and incurs the other normal costs of a small software business (pool table, pinball machine, and so on). After 24 months of effort to develop a software solution, and to sell it to commercial users, Julian accepts that the plan has failed and closes the enterprise. No supplies of computer software have ever been made.

Notwithstanding that Julian's enterprise never made any supplies for consideration he did have a taxable activity. For the 24 months it was operating he had an activity that was carried on continuously or regularly and that was intended to involve the supply of goods and services for consideration. The failure of the enterprise does not mean that Julian was not carrying on a taxable activity.

Example | Tauira 6 – Activity not intended to involve the supply of goods and services for a consideration

The Trafford Surplus Fruit Society is a society made up of local gardeners whose fruit trees produce much more fruit than they could ever consume. Every week the society members collect surplus fruit and set up a stall at the local community centre to give the fruit away to people in need. The society carries on an activity continuously or regularly, and the absence of a purpose of making a pecuniary profit is not relevant to whether there is a taxable activity. However, the society does not intend to make supplies of goods and services to other persons for consideration. The supplies of fruit are for no consideration. The society does not have a taxable activity.

"Carried on in the form of a business, trade, manufacture, profession, vocation, association, or club"

39. The words "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club" in the definition emphasise how wide the definition is intended to be. It moves from formal, business-like structures through to less formal arrangements such as associations and clubs (which might often be run on a non-profit basis). Tompkins J discussed this in *Allen Yacht Charters* at 11,275:

> While the definition includes an activity in the form of a business, trade, manufacture, profession, vocation, association or club, clearly this list of activities is not intended to be exclusive. Other activities referred to in argument that could be within the definition are a charity or a school. **What is apparent is that the activity can be something less than a business or undertaking. The only essential requirement is that the activity must involve the supply of goods and services for a consideration**.
>
> [Emphasis added.]

40. This finding is subject to the caveat that an activity carried on essentially as a private recreational pursuit or hobby is excluded by virtue of section 6(3)(a) or section 6(3)(aa). Sections 6(3)(a) and 6(3)(aa) are discussed in more detail later in this statement (from [68].

41. It is worth observing that this part of section 6(1)(a) is inclusive. That is, the activity "includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club".

Includes public and local authorities

42. Section 6(1)(b) provides that the definition of taxable activity includes the activities of any public authority, local authority or public purpose Crown-controlled company. All of these terms are defined in section 2(1).

Beginning and ending of a taxable activity

43. Section 6(2) provides that "anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity".

Beginning of a taxable activity

44. Several TRA cases have made it clear that section 6(2) does not mean that preparatory work is sufficient to amount to a taxable activity in its own right. Instead, section 6(2) means that if a taxable activity has been established, work that is preparatory to that establishment can be included in the scope of the taxable activity.

45. In *Case P73* (1992) 14 NZTC 4,489, the TRA considered section 6(2) in the context of a taxpayer who argued it had a taxable activity of yacht chartering. The TRA found the taxpayer did not have a taxable activity, and said the following in relation to section 6(2) (at 4,494):

> In other words, I find that there was no taxable activity but that, even if there had been, the activity would be excluded under sec 6(3)(aa) from the meaning of "taxable activity" defined in sec 6(1)(a). **I appreciate that sec 6(2) deems the inclusion of commencement (and termination) activity into the course of that activity. However, here there was never the establishment of any taxable activity. Commencement work can only be added to such an activity. By itself, it cannot amount to a taxable activity**.
>
> [Emphasis added.]

46. This was endorsed in cases such as *Case 9/2016* (2016) 27 NZTC 17,490 at [25] and in *Case 14/2016* where Judge Sinclair said:

> [72] While s 6(2) of the GST Act treats anything done in connection with the beginning of a taxable activity as being carried out in the course or furtherance of the taxable activity, the provision does not "create" a taxable activity where one would otherwise not exist. Rather, s 6(2) of the GST Act merely "adds" the commencement activity to the taxable activity.

47. It may be that preparatory activities are sufficiently advanced such that the taxable activity has actually commenced even if no supplies have yet been made (see *Case S56* (1996) 17 NZTC 7,361 at 7,367). Similarly, in *Case 7/2012,* the TRA found the taxpayer's activity in relation to a proposed (but ultimately unsuccessful) subdivision had gone well beyond preparatory work (at 15,282). This was even though the subdivision did not come to fruition and no supplies were made pursuant to the subdivision proposal.

48. Each case is very much fact dependent and requires a realistic assessment of the proposed taxable activity. As the TRA said in *Case 9/2016*:

> [38] Looking at the work done overall I agree with the Commissioner that at best the steps taken by each disputant could be described as preparatory steps towards the commencement of a taxable activity. However as discussed in *Case 7/2012* [footnote omitted] such commencement work is not sufficient and does not create or amount to a taxable activity. There still must be an activity to which those steps attach. In the present case there was no activity which either disputant was carrying on continuously or regularly and which involved or was intended to involve the making of supplies to other persons for a consideration. Instead Mr Smith and XY Limited had a rudimentary proposal for an ambitious development which they did not advance to any extent (and would likely never be able to do so).

49. A non-registered person holding land while trying to secure finance or a resource consent or while waiting for market conditions to improve before beginning development of that land may still be in the preparatory stage of their activity and not have begun a taxable activity.

50. In some circumstances where the activity has not yet satisfied the requirements to be a taxable activity the input tax incurred by the person may be able to be claimed later under section 21B if a taxable activity commences and the person registers for GST.

Ending of a taxable activity

51. Section 6(2) makes it clear that anything done in connection with the ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity. This means it is not open to a registered person ending their taxable activity, including prematurely, to argue that the supplies on cessation are not in the course or furtherance of their taxable activity.

52. As long as there is a taxable activity, any sales of taxable activity assets on the ending of that taxable activity are covered by section 6(2). The person remains a registered person while those sales are taking place (subject to meeting the deregistration requirements in section 52, see from paragraph 57 below).

53. Things done "in connection with" the ending of a taxable activity may include:
    - The disposal of assets used in the taxable activity[7];
    - Things done over a reasonable period after the making of taxable supplies had ceased to tidy up the affairs of the taxable activity and wind it up[8], including things done during the process of the receivership of a company[9].
    - Defending and attempting to settle legal proceedings for misrepresentation and breach of fiduciary duties following the sale of a business[10].
    - The pursuing of trade debts after the cessation of trading[11].
54. If a person ceases to be registered for GST as a result of the ending of their taxable activity, and they have retained goods and services forming part of the assets of the taxable activity, those goods and services are deemed to be supplied in the course of that taxable activity immediately before the cessation of registration: section 5(3).
55. The circumstances in which section 6(2) operates to ensure GST is charged and the circumstances in which section 5(3) imposes GST can be summarised as follows.
56. When a taxable activity comes to an end, section 6(2) provides that anything done in connection with the end of the taxable activity is treated as being carried out in the course or furtherance of the taxable activity. As a result, sales of assets on the ending of the taxable activity are treated as a part of the taxable activity and would be subject to GST in the usual way, assuming the registered person remains registered.
57. However, if the provisions of section 52 are satisfied the person may deregister voluntarily or be deregistered by the Commissioner, and if that occurs then section 5(3) will operate. Section 52(1) provides that if the registered person's supplies in the next 12 months will not exceed $60,000 then the person ceases to be liable to register for GST. Section 52(2) provides that the registered person in such circumstances may request the Commissioner to cancel the person's GST registration.
58. Section 52(3) provides that if the person ceases to carry on a taxable activity they must notify the Commissioner within 21 days of the cessation, and the Commissioner shall cancel their GST registration. However, things done in connection with the ending of a taxable activity are treated as being carried out in the course or furtherance of the taxable activity, such that the taxable activity has not ceased.
59. Section 5(3) provides that where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by the person shall be deemed to be supplied by that person in the course of that taxable activity at a time immediately before they ceased to be a registered person. Section 10(7A) provides that in the case of such a deemed supply the consideration in money for the supply is treated as being the open market value of the supply.
60. The Supreme Court in *Thompson* considered the issue of whether a person could deregister from GST. They found that sales of assets of the person's taxable activity in connection with the termination of that taxable activity are taxable supplies. Those taxable supplies were to be taken into account when determining if the person had come within section 52(1) – that is, in determining whether their anticipated supplies for the next 12 months were below the registration threshold.
61. The Supreme Court said that to satisfy the Commissioner that supplies made will be below the registration threshold probably requires the taxpayer to show a settled intention that such "transactions" will not take place. If transactions in excess of the registration threshold are being implemented or are planned to occur (or contemplated as likely to occur), in the next 12 months then deregistration cannot occur[12].
62. If a taxpayer has ceased their taxable activity, deregistered for GST, and accounted for any GST under section 5(3) on the deemed supplies of retained assets, then neither the taxpayer nor an agent like a liquidator can re-register for activities related to ending the former taxable activity. This is because that activity has ceased and there will not be any more taxable supplies from the activity, such that the definition of "taxable activity" cannot be satisfied.

7 *Bayly* (CA) at 14,075, *Thompson v CIR* (2012) 25 NZTC 26,126 (SC).
8 *Case U29* (2000) 19 NZTC 9,273.
9 *Case Q43* (1993) 15 NZTC 5,208.
10 *Case T30* (1997) 18 NZTC 8,216.
11 *Case 4/2011* (2011) 25 NZTC 15,035.
12 *Thompson* (SC) at [51].

63. For example, a company that has ceased its taxable activity, deregistered, and returned GST on its retained assets under section 5(3) cannot be re-registered by a liquidator. The liquidator cannot claim GST on expenses paid during the liquidation. Once the company has ceased its taxable activity and accounted for all retained assets, it will make no further taxable supplies. Therefore, it cannot meet the requirements to have a taxable activity.
64. The Commissioner discussed the issue of whether a taxable activity has ceased or ended or is in a temporary hiatus in **IS 21/04**. The discussion and examples in that interpretation statement provide useful guidance as to whether a taxable activity has ceased or not.
65. Example | Tauira 7 to Example | Tauira 12 illustrate how section 6(2) applies to the beginning or ending of a taxable activity.

Example | Tauira 7 – Preparatory work and not a taxable activity

Don the Dreamer is tired of his office job and decides to chuck it in and set up an activity of teaching music appreciation to household pets. He undertakes extensive internet research into animals and their musical preferences, develops an array of musical playlists for the discerning domesticated animal, and undertakes lengthy field research with his guinea pigs.

After 12 months of exhaustive preparation and after the urgent promptings of his bank, Don determines he will be unable to make a go of his proposed activity and returns to an office job.

The activities Don carried out in the 12 months are not sufficient to be a taxable activity. They were only ever preparatory to a proposed taxable activity. Although Don was occupied for a full 12 months all he actually did was search the Internet for articles on pets, create music playlists, and subject his pet guinea pigs to a variety of different music on his Bluetooth speaker. He prepared no business plans or projections, undertook no advertising, did not devise a business name or logo, and did not have a strategy as to how he would deliver musical appreciation to pets in a way that would lead to him making supplies for consideration. In the absence of an actual taxable activity, his preparatory activities are insufficient to be a taxable activity.

Example | Tauira 8 – Preparatory work and not a taxable activity

D'Shon Limited purchases a piece of land from an unregistered vendor and seeks to register for GST and claim a second-hand goods input tax deduction. D'Shon Limited's intentions for the land are somewhat vague and unformed. In such circumstances the Commissioner would be very unlikely to accept that D'Shon Limited has a taxable activity. D'Shon Limited would have a difficult task establishing that any of the key requirements of a taxable activity are satisfied on the facts ("activity", "continuously or regularly", "involves…the supply of goods and services…for a consideration").

Variation

D'Shon Limited is a subsidiary of a property development company, Largie Limited, which has undertaken 20 previous property developments over the past 10 years; usually through a new subsidiary for each development. D'Shon Limited is the latest of these subsidiaries to be set up and to acquire land for a development which Largie Limited has planned. Even though in such circumstances D'Shon Limited may also have a low level of activity, the Commissioner would have more confidence, based on the evidence of how the group's companies have previously operated, and Largie Limited's clear plans for the development, that D'Shon Limited is beginning to carry out a taxable activity.

Example | Tauira 9 – Preparatory work or the beginning of a taxable activity

Horace wants to be a property developer. He already owns a block of land that he inherited. He buys a popular "how to" book on property development and makes a list of the services he will need to engage to be able to develop his land. He makes appointments with his lawyer, accountant, and bank to discuss what he will need to do to begin his property development.

At this point Horace has not begun a taxable activity. Although he owns some land, and has sought some advice, he has not progressed beyond the preparatory stage. The property development is in its very early stages and has not progressed beyond a rudimentary proposal (to adopt the language of *Case 9/2016*).

Further activity

Following on from receiving legal and accounting advice, and talking to his bank, Horace decides that the development is potentially viable and contacts a builder, a project manager, a quantity surveyor, an engineer, and a planning expert to get further advice on the viability of a property development on the site.

Horace has still not begun a taxable activity at this point. Although he is now seeking advice from relevant industry experts he has not taken any concrete steps to progress to an activity that is carried on continuously or regularly that will involve making supplies to people for consideration. The activity to date is still preparatory.

However, if Horace had already decided to proceed with the development and was engaging experts to get a team together to plan the carrying out of the project then that would have been sufficient to be more than just preparatory work.

Yet further activity

Horace receives positive advice from all the experts and proceeds to undertake some preliminary work on the land (required for council approval of the development), seeks finance for the project, lodges a resource consent, and engages an architect, amongst other steps.

At this stage Horace is carrying on a taxable activity. His plan has moved beyond merely preparatory work. Although there have not been any supplies yet, and the core construction activity has not started, the level of activity is sufficient to be more than preparatory, and to be the beginning of a taxable activity (*Case 7/2012*).

Example | Tauira 10 – Has a taxable activity ended or just been temporarily paused?

Rene's Café is a registered person with a taxable activity of hospitality. However, Rene wants to refresh his café to keep ahead of his competitors. He decides to temporarily close the café over winter to allow renovations to the café including new décor, some structural changes to the premises to allow better flow between the kitchen and dining area, and to open the front of the café to allow al fresco dining. Rene's Café reopens in time for spring.

Rene's Café has not ceased carrying on its taxable activity over the three months it was closed. It still had an activity being carried on continuously or regularly involving or intending to involve the making of supplies of goods and services for a consideration.

Variation of the facts

Rene decides to refresh his café to keep ahead of his competitors. He decides to travel the world to seek out the latest trends in café culture. The café is closed for two years while he travels the world exploring what is "on trend".

In such circumstances Rene's Café has ceased carrying on a taxable activity. There is no longer an activity carried on continuously or regularly. This is more a case of a taxable activity ceasing with the possibility of a recommencement at some later time.

Example | Tauira 11 – Supplies on ending of a taxable activity treated as being in the course or furtherance of a taxable activity

Fran starts a business, Fran's Flares, importing specialised flares for use at sporting occasions. The flares are of the type she has seen used overseas at leading sporting events. Fran's business takes off and is enormously popular as New Zealand sporting crowds become obsessed with celebrating their teams' successes by letting off flares. Fran quickly has to upscale her business and acquires a small warehouse, a fleet of specialised vans to deliver the flares to retail outlets, and starts selling associated safety gear such as helmets, visors and flare-resistant gloves.

Unfortunately, the enormous success of the flares means sporting events are regularly disrupted as clouds of colourful smoke cover the sporting grounds bringing games to a halt and obscuring the view of spectators. Parliament urgently passes a law immediately banning the sale, possession and use of such flares and Fran's business grinds to an abrupt halt. She is able to export the unused stocks of flares to an Australian supplier shortly afterwards. The vans are sold at a car auctioneers 3 months after the activity is closed down. Over the next 6 months, she sells all the protective gear through army surplus stores. The warehouse is sold 18 months after flares were outlawed. Fran's Flares remains GST registered throughout this process of selling off the assets of the taxable activity.

The sales that occurred after the business was closed down are all treated as being carried out in the course or furtherance of a taxable activity by virtue of section 6(2). This is even though the supplies were made as a result of an unplanned and premature ending of the taxable activity and even though the assets were sold over an 18-month period after the ending of that taxable activity. (If Fran had instead ceased to be a registered person because of the cessation of her flare business, section 5(3) would have operated to impose GST on her taxable activity assets if she had intended to retain the assets.)

Variation of the facts

Alternatively, assume when Parliament banned such flares Fran held on to all her assets (except the sporting flares which she sold to an Australian supplier) as she investigated the possibility of pivoting into the supply of flares for civil defence, maritime, search and rescue, and military purposes.

During this period where Fran is investigating pivoting her activity, there is a question as to whether Fran's taxable activity has ceased. If it has ceased, Fran is obliged to notify the Commissioner under section 52(3) and the Commissioner can cancel her registration. However, the Commissioner cannot cancel Fran's registration under that section if the Commissioner is of the view that Fran will carry on a taxable activity within the next 12 months. This will be a question of fact in each case, but the longer the period of inactivity, the more likely it is that the Commissioner will consider that the taxable activity has ceased.

Example | Tauira 12 – Things done in connection with the ending of a taxable activity treated as being in the course or furtherance of a taxable activity

Gazinium Limited operates a gazinium refining business at an industrial site. Due to the hazardous nature of the product Gazinium Limited is required to conduct continuous testing and monitoring of the entire site for contamination. The terms of the applicable resource consent require that the company continue to monitor and test the site for a period of four years after the cessation of refining.

Gazinium Limited ceases to operate the refinery business and hence ends its taxable activity. However, it continues to monitor and test for contamination for another four years – as required by the resource consent.

The ongoing monitoring and testing are done in connection with the ending of a taxable activity, and as such are treated as being carried out in the course or furtherance of the taxable activity.

Registration

66. It is worth briefly considering the link between having a taxable activity and requiring a person to be registered for GST under section 51. Section 51(1)'s starting point is that a person is liable to be registered when they carry on a taxable activity and have made or will make supplies exceeding $60,000 in a 12-month period (looking backwards under section 51(1)(a) or looking forwards under section 51(1)(b)).

67. The proviso to section 51(1)(a) means that if the threshold has been exceeded in the previous 12 months but the Commissioner is satisfied that the value of supplies in the next 12-month period will not exceed $60,000, the person does not become liable to register. This operates to cover one-off supplies which took the person's level of taxable supplies over the $60,000 threshold that are not likely to be repeated[13].

68. Section 51(1)(c) is another proviso to the requirement to be registered under section 51(1). It provides that a person shall not be liable to register where the Commissioner is satisfied the registration threshold will be exceeded solely as a consequence of

    - any ending of, including a premature ending of; or
    - any substantial and permanent reduction in the size or scale of;

    any taxable activity carried on by that person.

69. So where a person is not liable to be registered in respect of their taxable activity, and the assets of the taxable activity are sold on its cessation, registration will not be required just because those asset sales take the taxable activity over the registration threshold. (But this will not apply in the case of a subdivision where the sales proceeds are the expected outcome of the activity rather than as a result of the ending or reduction in size of the activity; *Case P10* (1992) 14 NZTC 4,066.)

70. Section 51(1)(d) provides that a person shall not be liable to register where the Commissioner is satisfied the registration threshold will be exceeded solely as a consequence of the replacement of any plant or other capital asset used in any taxable activity carried on by the person[14].

Exclusions from the definition of "taxable activity"

71. Section 6(3) provides exclusions from the definition of "taxable activity" in the six paragraphs from section 6(3)(a) to section 6(3)(e).

Scope of this discussion

72. This interpretation statement primarily considers the exclusions in paragraphs (a) and (aa). The other four exclusions have been dealt with by the Commissioner in public items (paragraphs (b), (c)[15] and (e)[16]) or is such a significant topic that it would take up a disproportionate part of this statement to cover it (paragraph (d[17]) fully. However, Example | Tauira 13 illustrates how the exclusion of exempt supplies from the definition of "taxable activity" works in practice. It is worth observing that the exclusion operates "to the extent to which the activity involves the making of exempt supplies".

13 See IS 23/05 (GST – section 5(6D): Payments in the nature of a grant or subsidy *Tax Information Bulletin* Vol 35 No 7 (August 2023): 37) at paragraphs 60 to 61, and IS 23/08 (Goods and Services Tax – Unit title bodies corporate *Tax Information Bulletin* Vol 35 No 11 (December 2023): 2) at paragraphs 37 to 38 and Example 1.

14 See IS 23/05 at paragraphs 62 to 66.

15 Sections 6(3)(b) and (c), 6(4), and 6(5) are covered in BR Pub 23/01, BR Pub 23/02, BR Pub 23/03, and QB 23/07.

16 Section 6(3)(e) was added to the Act by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023. The effect of the provision is discussed in GST apportionment and adjustment rules *Tax Information Bulletin* Vol 35, No 6 (July 2023): 62 at 66–71.

17 Section 6(3)(d) excludes exempt supplies from the taxable activity definition. Exempt supplies cover the supply of financial services (section 14(1)(a), the supply by a non-profit body of any donated goods or services (section 14(1)(b)), certain supplies of accommodation and related supplies (section 14(1)(c) to (d)) and the supply of any fine metal (section 14(1)(e)).

Example | Tauira 13 – Exclusion from "taxable activity" for exempt supplies

Jackie, a landlord who already owns four rental properties, purchases two blocks of units (Block A and Block B) situated on two adjacent pieces of land. Jackie is not GST-registered as all of the existing properties she owns are rented out long-term (and are exempt supplies of residential accommodation).

Jackie's new properties are in a central suburb close to a stadium. Jackie's friend tells her there is a lot of demand for short-term accommodation for tourists visiting this area. Jackie is somewhat sceptical; however, she decides to put this theory to the test by advertising Block A as short-stay accommodation. For Block B, she decides to stick to what she knows and finds long-term residential tenants.

This arrangement works well for Jackie. There is indeed strong demand for short-term accommodation, and her long-term residential tenants give her peace of mind and income security. She continues with this arrangement.

There are two separate activities being undertaken, one taxable and one exempt. The Block A property is a taxable activity of short-stay accommodation. The Block B property is used independently to undertake a separate activity, specifically making exempt supplies. Block B's activity does not form part of Jackie's taxable activity.

Jackie must register for GST if her short-term accommodation income exceeds the GST registration threshold. (Income below this threshold may be subject to the platform economy rules.)

Variation: Sale of the rental properties

Several years later, the stadium closes, and the Block B tenants indicate that they wish to move overseas in the near future. Rather than find new tenants, Jackie decides to sell both properties. Jackie is now GST registered as the income from the short-term accommodation in the past twelve months exceeded $60,000. When the properties are sold, their GST treatment will differ as Jackie's business involved both taxable and exempt activities. The GST treatment of Block A will depend on the purchaser's characteristics and intention but may be subject to GST at either 15% or 0%. As Block B was used to make exempt supplies, any future sale will not form part of Jackie's taxable activity, will not be subject to GST, and there will be no deemed taxable supply on sale. This is the case for Block B, even if the property was rented out for long-term residential accommodation for less than 5 years, because it is a separate activity from the activity carried on with Block A (being separate blocks of land and separate activities).

If Block B had been part of a taxable activity, the supplies might still be exempt supplies under section 14(1)(d) if the land had been used exclusively for at least five years in making supplies of residential accommodation.

"Private recreational pursuit or hobby"

73. Paragraphs (a) and (aa) provide as follows:

> (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—
>
> (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
>
> (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; …

74. Paragraph (aa) extends the exclusion for private recreational pursuits and hobbies to corporates and other non-natural persons who would otherwise not be covered as they cannot have a private recreational pursuit or hobby. The concept of a **private** recreational pursuit or hobby is relevant only to a natural person. A company, for example, cannot undertake private pursuits. Paragraph (aa) ensures there is a wider exclusion for activities carried on essentially as private recreational pursuits or hobbies.

75. It is worth briefly considering the dictionary definitions of the words in the phrase "private recreational pursuit or hobby" ahead of considering the case law.

76. The constituent words of the phrase private recreational pursuit are defined in *The Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011):

> **private** adj **1**. For or belonging to one particular person or group only … **2**. (of a person) having no official or public position • not connected with one's work or official position.
>
> **recreational** adj relating to recreation …
>
> **recreation** n. enjoyable leisure activity
>
> **pursuit** n **2.** A recreational or sporting activity

77. Hobby is defined in the same dictionary:

> **hobby** n **1.** An activity done regularly for pleasure

78. The dictionary definitions indicate that "private recreational pursuit or hobby" refers to an activity that is undertaken primarily for personal enjoyment rather than in relation to one's work or business. The case law discussed below is largely consistent with these dictionary definitions.

79. The wider wording in section 6(3)(a) and (aa) is "any activity carried on essentially as a private recreational pursuit or hobby". The most comprehensive analysis of these words was by Judge Bathgate in *Case N27* at 3,240. His Honour considered the meaning of "essentially" and the significance of the word "private". He did not give a comprehensive definition of "private recreational pursuit or hobby" but indicated factors to consider. Although it is long, the following quote (from 3,240) is worth setting out because it is the best example of a New Zealand court or tribunal attempting to define the exclusion:

> **The word "essentially" in the phrase mentioned, I think emphasises the necessity for the activity being clearly a private recreational pursuit or hobby**. "Essentially" derives its meaning from the word "essential". The *Shorter Oxford English Dictionary* defines "essential" as:
>
> > "Of or pertaining to the essence of anything.
> >
> > Of or pertaining to a specific thing, or intrinsic nature.
> >
> > Constituting, or forming part of, the essence of anything; necessarily implied in its definition.
> >
> > Indispensably requisite."
>
> "Essence" is defined in the same dictionary as:
>
> > "Being viewed as a fact or as a property of something.
> >
> > Something that is; an entity.
> >
> > Specific being, `what a thing is'; nature, character."
>
> For an activity to be carried on essentially, as a private recreational pursuit or hobby, that activity must be in essence of such a nature, in the context of sec 6, so that although an activity may have some of the appearances or some of the attributes of such an activity, **it will not be exempt from the definition of "taxable activity" unless it is in essence a private recreational pursuit or hobby**. An activity that might also seem to be a business would not, to my mind, be one that was "carried on *essentially* as a private recreational pursuit or hobby".
>
> "Private recreational pursuit or hobby", is a phrase that contains five words, each of which must be given emphasis and meaning in the context in which they appear. "**Private" in the context I think means, for a natural person, an activity that is peculiar to oneself, a singular or individual recreational pursuit or hobby**, although it may be enjoyed by a person in the company, of, or in participation with others of a like interest. In the context of sec 6(3)(aa) it is obviously an activity that can be carried on by more than one person. **However, the word "private" would exclude an activity being carried on by, for instance, the holder of an office or a person in some official position**. In *C of IR v Haenga* (1985) 7 NZTC 5,198 at p 5,207; [1986] 1 NZLR 119 at p 128, *Richardson* J, in considering the meaning of sec 106(1)(j) of the *Income Tax Act* 1976, in relation to expenditure or loss of a private or domestic nature, said:
>
> > "An outgoing is of a private nature if it is exclusively referable to living as an individual member of society …"

> I do not attempt to give an all-embracing or exclusive definition of the phrase "... essentially as a private recreational pursuit or hobby", **but observe that would seem to require, in essence, a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person (or persons) concerned**. In the context of the Act it is not an activity of a business, organised in some coherent fashion to achieve a pecuniary profit. Whether an activity is essentially that of a private recreational pursuit or hobby, or not, is a question of fact in each case. It depends on the totality of the evidence ...
>
> [Emphasis added.]

80. Judge Bathgate observes the importance of the word "essentially" in the exclusions and concludes that these mean the activity must **clearly** be a private recreational pursuit or hobby. As his Honour said, it is not enough that an activity may have some of the appearance or attributes of a private recreational pursuit or hobby or is enjoyed by the person. It will not be excluded unless it is **in essence** a private recreational pursuit or hobby.
81. Judge Bathgate also analysed the meaning of "private" in the phrase "private recreational pursuit or hobby" and suggested that, for a natural person, it means an activity peculiar to oneself, although it may be enjoyed by a person in the company of others.
82. Overall, his Honour thought the term referred to a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person concerned. It is not an activity organised in a coherent fashion to achieve a pecuniary profit. Importantly, it is a question of fact in each case.
83. In *Case N27*, the TRA found there was a taxable activity of the racing and sale of a racehorse. The TRA found the exclusion in section 6(3)(aa) did not apply observing (at 3,241):

> I find that was a taxable activity under sec 6(1)(a) of the Act and was not excluded from that by virtue of the activity, if carried on by a natural person, would be carried on by that person essentially as a private recreational pursuit or hobby. **Some of the individual members of the partnership may have derived, and probably did derive, private and personal enjoyment from the undertaking. However, that did not detract in any significant way from the coherent organisation and purpose of the objector to achieve the profit expected and intended when the expenditure was incurred and the supplies made to it**. The purpose of those supplies to it was for the objector to make a supply in the course of its taxable activity by the sale of A.
>
> [Emphasis added.]

84. The expression private recreational pursuit or hobby has not been considered in detail in other New Zealand case law. The meaning of "recreation" has been considered in Australia and the United Kingdom.
85. In *A-G v Cooma Municipal Council* [1962] NSWR 663 Jacobs J in the New South Wales Supreme Court considered the meaning of "recreation". He found that recreation can include physical and sporting pursuits, but also includes cultural, artistic and intellectual pursuits.
86. In *R (on the application of Muir) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) Lang J also had to consider the meaning of recreation. Her Honour adopted the definition from *Cooma*, and concluded that recreation included recreation of the mind, such as libraries and art galleries, and was not limited to physical or sporting activities. Her Honour concluded (at [99]):

> All these illustrations of recreational activities are consistent with the dictionary definition of recreation which is a means of refreshing or enlivening the mind or spirits by some pleasant occupation, pastime or amusement. The word originates from the Latin verb *recreare* meaning to refresh, restore, make anew, revive, invigorate.

87. Her Honour concluded (at [104]) that the provision of education and childcare at a private nursery was not recreation notwithstanding that children would play in the course of their day at the nursery. The decision was upheld in the Court of Appeal (*Wandsworth Borough Council v R (on the application of Muir)* [2018] EWCA Civ 105).
88. The *Wandsworth Borough Council* case, as well as endorsing the *Cooma* decision, also made it clear that in interpreting the meaning of recreation it is important to focus on the substance of the activity rather than incidental elements of it.
89. It is also worth considering some of the TRA decisions that considered the exclusion from the definition of taxable activity for a private recreational pursuit or hobby.
90. In *Case M131* (1990) 12 NZTC 2,850 a company carried on business as a builder in a town with an extensive horse racing activity. The company claimed an input tax deduction for promotional expenses connected with racing a horse. Judge Bathgate found the expenditure was not incurred on an essentially private recreational pursuit or hobby; instead, the expenditure was promotional expenditure incurred in carrying on the company's taxable activity.

91. In *Case P73,* the taxpayer company owned a yacht and argued it had a taxable activity of boat chartering. The owner of the company was advised to race the yacht to obtain publicity and a reputation on which to base the chartering promotion.

92. The TRA found that no chartering activity was ever achieved on a sufficiently continuous or regular basis to be a taxable activity. Even if there were a taxable activity, the TRA concluded it would be excluded on the basis of section 6(3)(aa). The TRA said (at 4,495):

> **It may well be that a reason for the racing activity was promotion of the proposed chartering activity, but the dominant reason was as a private recreational pursuit or hobby**. The chartering activity was never much more than a proposal and, certainly, was never continuous or regular as required by sec 6(l)(a). I can understand that an incidental reason for racing the vessel was to promote it as a vessel to be chartered, rather than to promote the name of the objector as the proprietor of the proposed chartering business.
>
> [Emphasis added.]

93. This conclusion is consistent with Judge Bathgate's comments in *Case N27* about the meaning of the word "essentially" in section 6(3)(a) and 6(3)(aa).

94. *Case U10* (1999) 19 NZTC 9090 is one of the TRA cases with the most extensive discussion of an activity being a private recreational pursuit or hobby. The taxpayer was a company with an activity of providing cleaning and catering services to an airport facility. Among other things it claimed input tax deductions for expenses related to horse-breeding activities. (It also undertook certain horse-racing activities, but it treated those as a hobby and did not claim input tax deductions in respect of them.)

95. The TRA found against the taxpayer in regard to the input tax deductions for horse-breeding activities – in part because it was actually a shareholder–employee of the company that carried out that activity rather than the taxpayer. But despite that, the TRA went on to consider whether the horse-breeding activity amounted to a taxable activity or was excluded by virtue of being a private recreational pursuit or hobby.

96. The TRA came to its conclusion on the status of the horse-breeding activity:

> 46. It seems to me that, in terms of the definition of "taxable activity" in s 6(1)(a) of the Act, the horse breeding activities might have been carried on continuously or regularly, although that is arguable, and were intended to involve supplies of goods in the sense of horses for sale. I doubt whether the level of activity would achieve the level necessary for there to be a "business" but it may well have achieved the level of a "taxable activity". **However, my overall assessment of the evidence is that there was no real distinction between [the taxpayer's] GT's horse breeding and horse racing activities. These were very intertwined and were part of his passion for horses and their attributes. His interest in his horses was very much a recreational and personal relaxation pursuit and, looked at objectively, is a hobby**. Indeed GT's own evidence supports that conclusion. I find that there were not separate activities of breeding and racing and that GT's total pursuit of horse breeding and horse racing is excluded from the term "taxable activity" by s 6(3)(a) "being a natural person, any activity carried on essentially as a private recreational pursuit or hobby" or rather, in this case, any horse breeding (or racing) activities of the objector company would, in terms of s 6(3)(aa), be a hobby if carried on by a natural person. **The fact that this activity was pursued out of business times does not mean that it is a recreational pursuit. It is, of course, quite possible for a person to spend time free from a main business pursuit in pursuing some other business activity. However, the issue is a relevant one in taking an overall perspective of the situation**.
>
> [Emphasis added.]

97. The TRA considered (at [48]) factors that led to the conclusion that horse breeding was a private recreational pursuit or hobby. These factors included:

- the activity had no sale of thoroughbred horses, instead there were only sales of "hacks";
- there were no separate accounts between horse breeding and horse racing (and the taxpayer accepted horse racing was a hobby);
- there was no business plan or budget for the horse-breeding activity (although the TRA accepted this was not determinative);
- the activity had all the hallmarks of a hobby; and
- there was no delineation between horse racing and horse breeding (for example, expenses for grazing expenses were not apportioned between breeding and racing).

98. In a good number of TRA cases there was no real need to analyse the "private recreational pursuit or hobby" test as the decision was clear that the activity was a:
    - private recreational pursuit or hobby (see, for example, *Case V16* (2002) 20 NZTC 10,182); or
    - taxable activity and was not excluded as a private recreational pursuit or hobby (see, for example, *Case R38* (1994) 16 NZTC 6,212, *Case S34* (1995) 17 NZTC 7,228 and *Case S36* (1995) 17 NZTC 7,237).

99. Therefore, the cases indicate that in deciding whether something is essentially a private recreational pursuit or hobby it is necessary to consider:
    - whether the activity is clearly a private recreational pursuit or hobby (*Case N27* and *Case P73*);
    - whether the activity is a private pastime carried on for personal refreshment, pleasure or recreation (*Case N27* and *Case U10*);
    - the degree of coherent organisation and purpose to achieve a profit (*Case N27*);
    - that "private recreational pursuit or hobby" covers physical, sporting, intellectual, cultural, and artistic pursuits (*Cooma* and *Wandsworth Borough Council*);
    - whether the activity is closely linked to supporting an existing taxable activity (*Case M131*) or does not have such a link (*Case V16*);
    - the careful preparation of accounts and apportionment of expenses between different activities which may or may not be taxable activities (*Case U10*); and
    - the amount of time spent on the activity and whether it was pursued during normal working hours or not (*Case U10*).

100. Example | Tauira 14 to Example | Tauira 19 illustrate the exclusion from taxable activity for being a private recreational pursuit or hobby.

Example | Tauira 14 – Activity a private recreational pursuit or hobby

Philip and Winnie own an eight-hectare lifestyle block. Both Philip and Winnie are in full-time paid employment. The lifestyle block has a small number of sheep (for maintaining the grass in some of the paddocks), horses, some chickens, a number of fruit trees, and an area of regenerating native bush. Occasionally Philip and Winnie sell some excess eggs or fruit within the local community. Philip's passion is raising show horses on a large paddock on the lifestyle block, and he enters some of these horses into competitions. Occasionally he breeds from his horses and may sell a foal depending on his own requirements. On average he sells a foal every two or three years. Winnie is not interested in horses but enjoys the country lifestyle and is passionate about helping to restore the native bush on the property by eliminating pests, planting trees, and restoring a small wetland area.

Philip does not have a detailed business plan for his horse activity, and nor does he have precise financial information about the costs of the activity. He spends between 20 to 30 hours a week on the horse activity including grooming, feeding and watering, training the horses, and attending horse shows.

While the activities carried out on the lifestyle block, including Philip's horse activity, are carried on continuously or regularly they are excluded from the definition of taxable activity as they are private recreational pursuits or hobbies. The activities:

- Are carried on for the personal pleasure or recreation of Philip and Winnie;
- Are not carried on with a degree of coherent organisation to achieve a profit (*Case N27*);
- Do not support an existing taxable activity;
- Have no evidence of the careful preparation of accounts; and
- Occur outside of their normal working hours as both Philip and Winnie are in full-time employment (although the time spent on the horse activity by Philip and the time spent by both of them on maintaining the lifestyle block is significant).

Variation on the facts

Under this variation, assume Philip and Winnie had a sheep and beef farm run by a farm manager not far from the lifestyle block. The issue is whether that would make any difference to this answer. The Commissioner's view is that the answer would not change. While the farm would be a taxable activity, the lifestyle block, including the show horse activity, remains a hobby. This means it remains a non-taxable activity and would not be amalgamated into the farming activity. However, variations on the facts of this example could lead to different answers.

Further variation on the facts

Under this variation, Philip and Winnie's lifestyle block is held in a family trust. The interposing of a family trust does not change the outcome. Section 6(3)(aa) provides that the exclusion from taxable activity for an activity carried on essentially as a private recreational pursuit or hobby extends to the situation where a non-natural person is carrying on the activity. Case law has established that non-natural persons like partnerships, trusts, and companies can be carrying on activities that, if carried on by a natural person, would be a private recreational pursuit or hobby.

Example | Tauira 15 – Activity a private recreational pursuit or hobby

Martin is a tax lawyer and a connoisseur of marmalade. He becomes increasingly dissatisfied with the variety of marmalades on sale in his local area. He has a large residential section with a good number of citrus trees that are fruiting abundantly. Accordingly, he decides to see whether he can make a better quality marmalade for his own use. Every weekend he experiments with making marmalade. After much trial and error, and even a few tears, he hits on a recipe that he considers exceptional. He shares his marmalade with family and friends who all agree "it's the best".

Martin's children's school is having a fair, and the organising committee have heard how good Martin's marmalade is. The committee asks him if he could make a batch to sell at the fair as part of its fundraising. Martin makes a big batch of marmalade ready to sell at the fair. Sales are brisk, and the marmalade sells out.

Martin's activity of making marmalade is a private recreational pursuit or hobby even though he has now sold some of his products to paying customers. It is essentially undertaken for Martin's own personal pleasure, is conducted in an ad hoc and casual way, and does not involve careful organisation or the keeping of precise accounts. The sales of marmalade were the result of an ad hoc request to help raise funds at the school fair.

Example | Tauira 16 – Activity not a private recreational pursuit or hobby

Following on from Example | Tauira 15, Martin realises demand exists for his marmalade and wonders whether this could be the pathway out of tax law he is looking for. He starts to be more consistent in his marmalade making, making a batch every week to take to the local Sunday market where he sets up a small stall with 25 jars of marmalade. Demand is tremendous, and every week he sells out within an hour.

After six months of testing the market at the Sunday market, Martin resigns from his full-time job, rents a small commercial kitchen, and starts making marmalade full time using fruit he buys in from commercial orchards. He starts supplying speciality food stores and continues with his stall at the Sunday market where he now has considerably more stock available on a weekly basis.

Martin's original activity of running a small stall at the Sunday market would be sufficient to amount to a taxable activity for the purposes of section 6(1) as it was an activity carried on continuously or regularly involving supplies for consideration.

However, what is less clear is whether the exclusion in section 6(3)(a) still applies. It would be necessary to consider further facts such as whether he kept careful business records regarding his income and expenses, whether he organised his stall on a coherent and regular basis, and whether he was trying to achieve a profit or was more interested in socialising and sharing his beautiful marmalade with the world. The small scale of the venture is not determinative, although a small amount of time spent outside of usual working hours does indicate a hobby.

In any case, by the time he has taken on marmalade making as his occupation, he has definitely converted his private recreational pursuit or hobby into a taxable activity (in other words the section 6(3)(a) exclusion no longer applies). Resigning from his full-time job, renting a commercial kitchen, and ordering in supplies of fruit in commercial quantities all indicate his hobby has become a taxable activity.

Example | Tauira 17 – Activity changing from a private recreational pursuit or hobby to a taxable activity

Rachel, a non-GST registered individual, purchases a holiday home to use as a weekend getaway from her accounting job. She works in the city and commutes to her holiday home for the weekend. The holiday home is empty during the week. Rachel does not have a taxable activity.

Variation: Holiday home owned by an individual where a friend stays

Continuing with the facts from above, two years later, Rachel's friend Eva negotiates a work from home arrangement with her employer. Eva loves the city nightlife during the weekend, however sometimes Eva feels like a change of scenery during the week. Every now and then (on no regular basis) Eva stays at Rachel's holiday home for a few weekdays. Eva is a good friend of Rachel's, and Rachel does not ask her for any financial contribution for her stay, nor does Rachel charge Eva any rent or have any sort of formal agreement with her. However, Eva insists on contributing to the property's running costs when she stays and pays a small amount of money to Rachel when she stays.

At this stage, there is still no taxable activity. Rachel's use is private and recreational, and even though Eva pays her some money when she uses the property occasionally, this is in goodwill and is not in the form of a business or trade. The payments Eva makes to Rachel are not a set amount, are made ad-hoc based on when Eva decides to stay, and reflect Eva's good-natured intention to contribute towards the costs of running the holiday home.

Rachel's intention in providing the holiday home to Eva was not to supply short-stay accommodation for consideration, as she never asked Eva for any money – she solely made it available to Eva as a friend, knowing she wasn't using it during these periods anyway. There is no degree of coherent organisation, no business plan, and no precise financial information about the payments made by Eva to Rachel for use of the property. Both Eva and Rachel are using the holiday home to escape from the city. Both Eva and Rachel's use of the property constitutes private recreational use. There continues to be no taxable activity.

Further variation: Holiday home owned by an individual used privately with some commercial rental – now a taxable activity

After several more years of this arrangement, Eva decides to buy her own holiday home. Rachel wonders if she can supplement her accounting income by listing the holiday home on a short-stay accommodation website during the week now that Eva won't be using it at that time. She blocks out the weekend days when she stays there and builds up a steady flow of income from regular bookings during the week.

At this point, Rachel is carrying on a taxable activity. She is running the holiday home rental as a business, advertises for it, and has customers regularly staying during the week. Whether Rachel needs to register for GST will depend on if the income she receives in a twelve month period exceeds the $60,000 GST registration threshold. (Note the platform economy rules are likely to apply to any income earned under this threshold, provided the accommodation is provided through a third-party booking intermediary.)

Example | Tauira 18 – Activity changing from a private recreational pursuit or hobby to a taxable activity

A non-GST registered trust, Family Trust, purchases a holiday home from an unregistered person for its beneficiaries (family members Ben and Frank, along with their families) to use. Family Trust does not undertake any taxable activities. The beneficiaries use the holiday home on an ad hoc basis, and they do not pay anything to stay. The family usually gather at the holiday home over the major holiday periods. There is no agreement for use of the holiday home and Family Trust spends minimal time and cost in providing the short-stay accommodation to family members, as the beneficiaries clean after their visits, and bring their own linen.

These factors support the conclusion that the beneficiaries' use of the home is not a taxable activity but rather a private recreational pursuit or hobby.

Variation: Holiday home owned by a trust with one-off commercial letting

Family Trust's holiday home is in close proximity to the venue for an annual music festival. The Family Trust trustees have heard that renting out the holiday home at this time can be lucrative, with people prepared to spend up to $500 a night for this type of accommodation. The trustees listed the holiday home on a website set up to provide accommodation for the festival and it was booked for 10 nights. The trustees are considering doing the same again in the future.

One-off or occasional rentals (even though they can be lucrative) will not be a taxable activity as the use of the holiday home is still an activity carried on essentially as a private recreational pursuit or hobby. (In addition one-off or occasional rentals would not satisfy the requirement of being continuous or regular.)

Further Variation: Holiday home owned by a trust with regular commercial letting

Following on from the facts above, after two years of ownership, to cover some of the costs of the holiday home, the Family Trust trustees decide to list the property on an online platform for holiday letting. The only advertising to third parties is the listing on the online platform.

At this point, Family Trust is carrying on a taxable activity. It is running the holiday home rental as a business, advertises for it, and has customers regularly staying during the week. Whether Family Trust needs to register for GST will depend on if the income it receives in a twelve month period exceeds the $60,000 GST registration threshold.

The supplies of accommodation made by the Family Trust to the beneficiaries are "associated supplies" and valued at open market value if the supply is made for no consideration or a consideration less than open market value (section 10(3)).

Example | Tauira 19 – Activity changing from a taxable activity to a private recreational pursuit or hobby

Vino is a winemaker who runs a small vineyard and also makes his own wine. He has a cellar door/tasting room set up in a room of his home (which is on the same vineyard block). He sells wine through his cellar door/tasting room to tourists as he is located in one of New Zealand's tourist hot spots on the route of a Great Ride cycle trail. Vino has a taxable activity. He carries on an activity continuously or regularly which involves supplying goods and services for a consideration.

Eventually Vino becomes fed up with running a vineyard/winery. He is tired of the long hours, variable and uncertain returns, and inebriated tourists leaving their rented bicycles on his front lawn. He decides to close the cellar door/tasting room, convert 75% of his vineyard to a labyrinth for his spiritual reflections, and retain 25% of his vineyard to make wine for his personal consumption (and that of his friends and family) and for the occasional sale of a bottle to old customers who may stop by.

Vino no longer has a taxable activity. While the remaining part of the vineyard involves an activity that is being carried on continuously or regularly and still involves supplying goods and services for a consideration, it is an activity carried on essentially as a private recreational pursuit or hobby.

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LEGAL DECISION – CASE SUMMARY

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.

CSUM 25/12 High Court refuses to grant stay of liquidation pending outcome of judicial review proceeding

Decision date: 15 September 2025

Case

CIR v KD Transport Limited [2025] NZHC 2671

Legislative References

Companies Act 1993

High Court Rules 2016 r 1.19, 31.11

Judicial Review Procedure Act 2016 s 15

Tax Administration Act 1994 (TAA) s 3, s 6, s 6A, s 176, s 177, s 177A, Pt 11

Case law references

Pauaco Ltd v Seasir Ltd [2025] NZHC 2058

Commissioner of Inland Revenue v RLITS Contracting Ltd [2024] NZHC 1258

Nemisis Holdings Ltd v North Harbour Industrial Holdings Ltd (1989) 1 PRNZ 379

Carlton & United Breweries Ltd v Minister of Customs [1986] 1 NZLR 423 (CA)

Shane Warner Builders Ltd v Commissioner of Inland Revenue [2018] NZHC 1654

Eastbus Ltd v Commissioner of Inland Revenue HC Dunedin CIV-2006-412-153, 3 March 2006

P v Commissioner of Inland Revenue [2015] NZHC 2293

Anthony v Commissioner of Inland Revenue [2025] NZHC 1382

Summary

The Commissioner commenced liquidation proceedings against KD Transport Limited (KD). KD requested relief under s 177 of the TAA which the Commissioner declined. KD sought judicial review of the Commissioner's decision declining its proposal for relief and also applied to stay the liquidation proceeding, pending determination of its judicial review application. The stay application needed an extension of time as it was made outside the five working day period prescribed in the High Court Rules. The application for an extension of time was dismissed, and the Associate Judge made an order liquidating KD.

Impact

The Court confirmed earlier case law that it is in the public interest that the Commissioner carry out his statutory duties, including completing enforcement action in a timely manner. The Court also confirmed that requiring the Commissioner to be a party to judicial review proceedings which are without merit would undermine the integrity of the tax system and frustrate the Commissioner's enforcement function in relation to undisputed debts. When PAYE and GST are not paid, other taxpayers are entitled to expect the Commissioner will take a firm line.

Facts

In March 2025, the Commissioner applied to liquidate KD for substantial GST and PAYE arrears. The application was advertised, but in May 2025 the liquidation proceedings was adjourned to allow time for KD to file a proposal.

A request for relief was made under s 177 of the TAA on the basis that KD was a relief company and that under s 177A recovery of the company's outstanding tax would place the director and his dependents in serious hardship. KD offered a lump sum payment and regular monthly payments, and requested remission of penalties and interest. The Commissioner requested further information from the company, but it was not all provided. The request for relief was declined by the Commissioner.

The company applied to judicially review the Commissioner's refusal to grant relief, and applied to stay the liquidation proceeding pending the outcome of the judicial review application. As the stay application was made more than five working days after KD was served with the liquidation proceeding, KD needed an extension of time to be able to file the stay application.

Subsequently, KD made a fresh request for relief on the express basis that it superseded the earlier request, however, this request offered nothing by way of payments. The second request for relief was also declined by the Commissioner.

Issue

Whether the Court should grant KD an extension of time to apply to stay the Commissioner's liquidation proceeding.

Decision

Associate Judge Paulsen found that there was no basis for the Court to grant an extension of time to make an application under r 31.11 and even if such an extension was granted, the application for a stay must be refused. His Honour took the following factors into account:

- The company had been behind in its tax obligations for several years.
- It was put on notice in early December 2024 that the Commissioner may take legal action against it.
- The director indicated at that time that a proposal would be made to the Commissioner but that did not occur. A proposal was only submitted to the Commissioner three weeks after the first call.
- There was no explanation by the company why it could not have made a request for relief to the Commissioner earlier and applied for stay of the proceeding within the time required by r 31.11.

His Honour acknowledged there is obvious prejudice to the Commissioner when taking action to recover outstanding tax if liquidation or bankruptcy proceedings can be delayed by last minute applications for financial relief and then for stay, pending challenge by judicial review.

More substantively, the Judge noted that granting an extension of time would serve no purpose. The sole basis advanced for the granting of a stay was so that KD's application for judicial review of the Commissioner's initial decision refusing relief could be determined. KD made a subsequent request for relief on the express basis that it superseded its first request for relief. Whether or not there was any merit in the application for judicial review (which the Commissioner denied), there was no longer any live issue as between KD and the Commissioner in relation to the first application for relief. There was no prospect that the Court would grant relief requiring the Commissioner to reconsider that decision.

Associate Judge Paulsen reiterated that in considering whether to accept or refuse a request for relief, the Commissioner exercises a broad discretion and considers a range of factors within the statutory framework.

The Judge cited with approval comments in *Shane Warner Builders Ltd v Commissioner of Inland Revenue* that it was in the public interest for the Commissioner to be able to collect taxes when they became due, and that the integrity of the tax system would be undermined if the Commissioner's attempt to enforce payment of undisputed debts was frustrated by unmeritorious judicial review proceedings.

An order was made liquidating the company.

TECHNICAL DECISION SUMMARY

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

TDS 25/23: Disposal of cryptoassets

Decision date | Rā o te Whakatau: 9 June 2025 Issue date | Rā Tuku: 6 October 2025

Subjects | Kaupapa

This item summarises an adjudication about the acquisition and disposal of cryptoassets (including staking rewards) and whether the amounts derived are income.

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007 unless otherwise specified.

Summary of facts | Whakarāpopoto o Meka

1. The taxpayers held interests in cryptoassets jointly.
2. The taxpayers decided to invest in Crypto Y. At the time they bought Crypto Y it was still in the early stages of development, but the taxpayers were aware Crypto Y planned to offer staking rewards in the future.
3. The taxpayers stated that their dominant purpose in acquiring Crypto Y was as a long- term investment to obtain a regular investment return of about 5–10% in the form of Crypto Y staking rewards.
4. Shortly after the taxpayers bought Crypto Y, the price increased significantly, and the taxpayers sold almost half their holding. They invested about 30% of the sale proceeds into shares and bonds and reinvested the rest back into Crypto Y.
5. About 9 months after the taxpayers' initial purchase of Crypto Y the price dropped below the original purchase price and the taxpayers used some of the cash they got from the sale of Crypto Y to purchase more Crypto Y.
6. Two years after the initial purchase the taxpayers were able to start staking Crypto Y and earn staking rewards, which they did.
7. About 3½ years after the initial acquisition, the taxpayers sold just under 30% of their Crypto Y in multiple transactions over an 8-month period for a significant profit. The taxpayers invested the proceeds in blue-chip dividend-paying shares that provided a regular return similar to the return from staking Crypto Y.
8. In their income tax returns, the taxpayers returned amounts from the disposal of Crypto Y. They also returned amounts related to the acquisition of staking rewards and claimed a deduction for crypto-related expenses.
9. The taxpayers filed a Notice of Proposed Adjustment proposing to reverse those amounts out of their income tax returns.
10. Inland Revenue's Customer and Compliance Services issued a Notice of Response rejecting the adjustments the taxpayers proposed. Customer and Compliance Services considered the income tax returns the taxpayers filed were correct.
11. The dispute continued unresolved. The parties exchanged statements of position, and the dispute was referred to the Tax Counsel Office for adjudication.

Issues | Take

12. The main issues considered in this dispute were whether:
    - amounts derived from the disposal of Crypto Y (including the disposal of staking rewards) were income under s CB 4 (acquired for purpose of disposal);
    - a profit-making undertaking or scheme existed under s CB 3 (profit-making undertaking or scheme); and
    - the acquisition of Crypto Y staking rewards was income under s CA 1(2) (income under ordinary concepts).

Decisions | Whakatau

13. The Tax Counsel Office decided that:
    - the Taxpayers had not shown, in terms of s CB 4, they did not acquire Crypto Y (including the staking rewards) for the purpose of disposing of it;
    - the Taxpayers had not shown that there was not a profit-making undertaking or scheme under s CB 3; and
    - the Taxpayers had not shown that the Crypto Y staking rewards acquired by the Taxpayers were not income under ordinary concepts under s CA 1(2).

Reasons for decisions | Pūnga o ngā whakatau

Preliminary issue | Take tōmua: Onus and standard of proof

14. Except for proceedings relating to evasion or similar act or obstruction, the onus is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]
15. The standard of proof required is the balance of probabilities.[3]

Issue 1 | Take tuatahi: Acquired for the purpose of disposal

16. Under s CB 4, an amount that a person derives from disposing of personal property is income of the person if they acquired the property for the purpose of disposing of it.
17. The only question under s CB 4 was whether the taxpayers acquired Crypto Y for the purpose of disposal.
18. The courts have developed principles when determining whether property was acquired for the purpose of disposal including the following:[4]
    - The distinction between capital and revenue is not relevant to s CB 4.
    - The test of purpose is subjective and requires consideration of the state of mind of the purchaser at the time the property was acquired.
    - Where there is more than one purpose, it is the dominant purpose that is relevant. The focus is on what was truly important to the person at the time of acquisition.
    - In some factual situations it may be necessary to draw a careful distinction between motives and intentions and purposes.
    - Describing a purchase as a hedge against inflation or as providing an accretion in capital value or as a good investment is not a substitute for making the proper enquiry required under the provision.

1 Section 149A(2) of the Tax Administration Act 1994. See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC) and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

2 Section 138P(1B) of the Tax Administration Act 1994.

3 *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028 and *Case X16* (2005) 22 NZTC 12,216.

4 *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346; (1989) 3 NZLR 661 (CA).

- The person's subjective purpose must be assessed and tested against the totality of circumstances, which includes the:
  - nature of the asset;
  - vocation of the taxpayer;
  - circumstances of the purchase;
  - number of similar transactions;
  - length of time the property was held; and
  - circumstances of the use and disposal of the asset.
- Actions may speak louder than words, and the totality of circumstances may negate the asserted purpose of the purchase.

Application

19. The Tax Counsel Office considered the taxpayers' statements and actions and assessed them against the totality of the circumstances. It considered that while earning staking rewards was **a** purpose, the taxpayers' dominant purpose when they acquired the relevant cryptoassets was to dispose of them sooner or later.
20. The following factors led to this conclusion:
    - The taxpayers had the onus of proof on the balance of probabilities. It was up to the taxpayers to prove the cryptoassets were not acquired with the dominant purpose of disposing of them. The onus was not on the Commissioner to prove the taxpayers acquired the cryptoassets with the dominant purpose of disposing of them.
    - However, the taxpayers' statements and actions together with their previous research and involvement in the crypto industry for several years suggested they were looking for exponential growth in cryptoassets rather than seeking a regular investment return in the form of staking rewards.
    - The facts and circumstances showed that a regular return from holding Crypto Y (in the form of staking rewards) was unlikely to be the dominant purpose of acquiring Crypto Y. In particular, staking was not available at the time the Crypto Y was acquired, and the projected return from staking could have been achieved by investing in blue-chip dividend-paying shares without the risk involved with holding Crypto Y.
    - The facts and circumstances also showed that the disposal of Crypto Y was likely to be the dominant purpose of acquiring Crypto Y. In particular, purchases of Crypto Y were made when the market was low (or falling) and sales were made at peaks in the market. The gains from the disposal of Crypto Y were substantial both in absolute terms and relative to the returns achieved from staking, and proceeds from the sales were invested in blue-chip dividend-paying shares for a similar return to the return from staking Crypto Y.

Issue 2 | Take tuarua: Profit-making undertaking or scheme

21. Under s CB 3, an amount derived by a person from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person.
22. From case law the following principles can be derived for the application of s CB 3:
    - An undertaking or scheme requires the existence of some plan or purpose that is coherent and has unity of conception, involving a series of steps directed to an end result.
    - The courts have generally adopted the view that the undertaking or scheme must exhibit features of a business deal.
    - The mere realisation of a capital asset in the most advantageous manner is not subject to s CB 3.
    - The taxpayer must have a dominant purpose of making a profit. The assessment of a profit-making purpose is made at the time the relevant undertaking or scheme is entered into or devised.
    - There must be a nexus between the undertaking or scheme and the amount derived so it can be said that the amount was derived from carrying on or carrying out the scheme.

Application

23. The available evidence demonstrated that the taxpayers were likely carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit. That scheme was to buy Crypto Y, use it in various ways to accumulate more Crypto Y and sell it for a profit over time. The reasons for this conclusion were as follows:
    - The taxpayers' statements and the extent of their activities and actions demonstrated they had a coherent plan involving a series of steps that were directed to an end result of making a profit.
    - The purpose of entering into the scheme was to make a profit as demonstrated by statements the taxpayers made.
    - The amounts derived were derived from carrying on or carrying out the identified scheme.
24. The plan was more than just a single transaction of acquisition and resale. The Tax Counsel Office considered the plan exhibited features that gave it the character of a business deal. The Tax Counsel Office did not consider the receipt of staking rewards a passive acquisition. Not everyone who holds Crypto Y receives staking rewards. An investor in Crypto Y must actively turn their mind to receiving staking rewards and make the decision to stake all (or a portion) of their holdings. In the taxpayers' situation (because they self-custodied Crypto Y) they also had to choose a validator to delegate their holdings to for each wallet they had.

Issue 3 | Take tuatoru: Income under ordinary concepts

25. Section CA 1(2) provides that "an amount is also income of a person if it is their income under ordinary concepts". "Income under ordinary concepts" is not defined in the Act. The courts have usually adopted a process of "characterisation" in which they weigh up several factors to decide whether an amount constitutes income. These factors include:
    - the principle that income is something that comes in;
    - periodicity, regularity or recurrence of the amount;
    - the quality of the amount in the hands of the recipient;
    - whether or not the amount is a capital receipt; and
    - whether or not the amount derived was a passive acquisition.
26. The Tax Counsel Office concluded that the Crypto Y staking rewards the taxpayers acquired were income under ordinary concepts in terms of s CA 1(2). The reasons for this conclusion were as follows:
    - The taxpayers received regular and recurrent staking rewards in the form of Crypto Y and Crypto Y is convertible into money.
    - The regular receipt of staking rewards was a flow of money or money's worth arising from the ownership of property, being the Crypto Y staked. Therefore, the staking rewards were a return on the taxpayers' investment and had the character of income.
    - It was also arguable that the staking rewards were rewards for a service the taxpayers provided. Holders of Crypto Y are not required to stake their Crypto Y but, if they do so, they are contributing to the operation and security of the blockchain network and are rewarded for doing so.

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.

Policy

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.