Specified superannuation contribution withholding tax (SSCWT)

Introduction

This item states the Commissioner's current policy on specified superannuation contribution withholding tax (SSCWT). It sets out when employers must deduct SSCWT, how they must pay the deductions to Inland Revenue, and the amounts that may be claimed as a tax-deductible expense.

Background

Some employers have a staff superannuation scheme that their employees may join. In many cases, the employer makes a contribution on behalf of employees who contribute to the scheme. The employer's contribution is usually based on a percentage of the employee's salary.

In the past, employers' contributions to employee superannuation schemes have had a number of different tax treatments. However, from 1 April 1989 most employer contributions have been subject to SSCWT. The SSCWT rules are contained in sections 336Z to sections 336ZL of the Income Tax Act 1976. The rate of SSCWT is given in clause 13 of the First Schedule to the Act.

Policy

When an employer makes a monetary contribution to a **superannuation fund** on behalf of an employee, the employer must deduct a final withholding tax of 33 cents per dollar. This withholding tax is called specified superannuation contribution withholding tax. Only the net amount of the employer's contribution (after the deduction of SSCWT) is paid into the superannuation fund on behalf of the employee.

If an employer makes a non-monetary contribution to a superannuation scheme on behalf of an employee, the contribution is generally subject to FBT.

Paying SSCWT deductions to IRD

Employers must deduct SSCWT and pay it to Inland Revenue on the same basis as PAYE. However, SSCWT is added to PAYE when determining whether PAYE and SSCWT deductions have to be paid once or twice a month. If the total PAYE and SSCWT deductions were under $100,000 in the previous year, the employer only has to pay the deductions to Inland Revenue once each month. Otherwise, deductions must be paid to Inland Revenue twice each month.

These are the payment due dates for employers who have to pay PAYE and SSCWT deductions to Inland Revenue twice each month:

- deductions made between the 1st and the 15th of the month - due by the 20th of that month
- deductions made between the 16th and the end of the month - due by the 5th of the following month.

If an employer only has to pay PAYE and SSCWT deductions to Inland Revenue once each month, all PAYE and SSCWT deductions made during the month are due by the 20th of the following month.

Employers who are liable to pay SSCWT should use an IR 66W pay-in slip instead of an IR 66N. The IR 66W covers PAYE deductions, SSCWT deductions, and also Child Support and Student Loan deductions (if applicable). These employers must complete an IR 66W for each payment period and send it to IRD together with payment for the total deductions for the period.

An employer who fails to pay any SSCWT owing by the due date is liable to the same penalties and fines that apply for missed or late PAYE deductions.

An end of year reconciliation of SSCWT payments is not required on the IR 68P form.

Amounts deductible for income tax

SSCWT that is due and payable on specified superannuation contributions made in an income year is deductible in that income year. The timing of the deduction is prescribed by section 140AB.

The net amount of the employer contribution to an employee superannuation fund is also deductible for income tax purposes. The deductibility of employer contributions is governed by section 150.

Defined terms

SSCWT is only payable on employer contributions to superannuation schemes that meet the definition of **superannuation fund**. Similarly, employer contributions to superannuation schemes are only deductible if they are made to a scheme that is a **superannuation fund**.

"Superannuation scheme" means any trust, unit trust (as defined in section 211 of the Income Tax Act 1976), non-resident company, or arrangement constituted under an Act of Parliament (other than the Social Security Act 1964), established principally for the purpose of providing retirement benefits.

"Superannuation fund" includes any superannuation scheme (see previous definition) which meets either of these conditions:

- it is approved by the Government Actuary and classified as a superannuation category 1 scheme or a superannuation category 2 scheme
- it is registered under the Superannuation Schemes Act 1989

However, a **superannuation scheme** which is constituted outside New Zealand and classified by the Govern-

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ment Actuary under regulation 29 or 30 of the Superannuation Schemes Regulations 1983 does not meet the "superannuation fund" definition.

Employer contributions to a superannuation scheme that is not a superannuation fund may be liable to fringe benefit tax.

Example

M Corporation has a staff superannuation scheme for its employees. The scheme is registered under the Superannuation Schemes Act 1989 and is based in New Zealand. Employees who join must contribute 6% of their annual salary to the scheme. M Corporation matches an employee's contributions dollar for dollar. Each fortnight, the employees contribute $10,000 to the staff superannuation scheme.

M Corporation is obliged to make contributions of $10,000 each fortnight to the staff superannuation scheme, on behalf of its employees. However, M Corporation has to deduct $3,300 of SSCWT from its contributions before they are paid into the superannuation scheme. This means the net contribution to the staff superannuation scheme by M Corporation is $6,700.

The $3,300 SSCWT has to be paid to Inland Revenue together with PAYE deductions. Both the $6,700 net contribution to the scheme and the $3,300 of SSCWT paid are deductible for income tax.

Premiums paid for use of business land - deductibility

Introduction

This item states the Commissioner's current policy on the deductibility of premiums paid on the grant or a renewal of a lease. The item looks at the treatment of grants and renewals made before and after 1 April 1993.

Background

Deductions for premiums paid on the grant or a renewal of a lease or licence were previously allowed under section 137 of the Income Tax Act 1976. For grants or renewals occurring on or after 1 April 1993 a depreciation deduction is allowable under section 108 of the Act.

Policy

For a premium to be deductible under section 137 or depreciable under section 108, it must relate to a payment made for the goodwill attached to the land as distinct from goodwill of a business.

Grant or renewal before 1 April 1993

Section 137 allows a deduction for premiums on the grant or renewal of a lease or licence. A "premium" on a lease of land is defined in section 137. It includes these items:

- any payment in the nature of a fine or foregift
- any payment for goodwill attaching to the land
- any payment (except rent) for the grant, transfer, or renewal of the lease.

Section 137(2) allows a deduction for the proportion of the premium that is applicable to that income year. No deduction is allowable for any period of the year in which the land is not used in the production of assessable income.

The treatment of any premium paid on a new sub-lease is the same as for a new lease. Under the proviso to section 137(2), if a lease is assigned the assignee is entitled to claim any premium paid by the lessee which the lessee has not claimed as a deduction. The proviso restricts the deduction to the premium paid by the assignee, as apportioned appropriately. This is illustrated in the case *Roy Ale Ltd v CIR* (1989) 11 NZTC 6,225.

Example 1

Bill Buckner was granted a lease of premises on 1 October 1988 for a period of 3 years. He paid a premium of $3,000 for this lease. He did not use the premises for business purposes until 1 January 1989.

Bill has a balance date of 31 March, so he was able to claim deductions as follows:

Income year	Spread	Deduction
1989	$ 500	$ 250
1990	$1,000	$1,000
1991	$1,000	$1,000
1992	$ 500	$ 500
	$3,000	$2,750

Although the premium paid was $3,000 the deductions total only $2,750 as in the first income year the premises were only used for three months for business purposes.

Example 2

If on 1 April 1990 Bill had assigned the lease to Amy Blue for $2,000 and Amy had used the premises solely for business purposes, the position would be:

Income year	Bill's unexpired portion	Amy's premium	Amy's deduction
1991	$1,000	$1,333	$1,000
1992	$ 500	$ 667	$ 500

Under the proviso to section 137(2) Amy's deduction would be limited to Bill's unexpired portion. Bill is unable to claim a deduction for the 1991 and 1992 years.

Grant or renewal on or after 1 April 1993

The right to use land is included in the Twenty-second Schedule to the Act. As such it is depreciable property for the purposes of calculating a depreciation deduction under section 108. The rate to be used is calculated by using the section 108G formula, which is:

$$\frac{1}{\text{legal life}}$$

Legal life is deemed to include any renewal or extension that is essentially unconditional, or conditional on the payment of pre-determined fees.

Example 3

On 1 October 1993 Trevor Barnes is granted a lease for 3 years at a premium of $3,000 for a term of 3 years. The depreciation rate equals one-third, i.e., 33.33%. Trevor has a 31 March balance date.

Income year	Deduction
1994	$ 500
1995	$1,000
1996	$1,000
1997	$ 500
Total deduction	$3,000

Example 4

Trevor assigns the lease to Patrick O'Shaughnessy on 1 April 1995 for a premium of $2,000. For the 1994 and 1995 income year Trevor's deductions will be the same as in Example 3. In the 1996 year, as Trevor has disposed of the property, he must make an adjustment under section 117 of the Act. (If the lease being assigned had commenced before 1 April 1993, then section 117 would not apply.) This will result in an amount of $500 being included as assessable income, being the difference between the premium received ($2,000) and the adjusted tax value of the property as at 31 March 1995 ($1,500). Trevor cannot claim a deduction in the 1996 and 1997 years.

Patrick can claim depreciation on $2,000 at the rate of 66.66%, i.e., 1/1.5

Income year	Deduction
1996	$1,333
1997	$ 667
Total deduction	$2,000

Budget night announcements - 30 June 1994

Lease duty on forestry, mineral and similar land use rights

The Government has announced that it intends to repeal section 8(c) of the Stamp and Cheque Duties Act, with effect from 1 July 1994. This change will mean that the granting of rights to use or take profits from land will no longer be liable for lease duty.

This change will primarily benefit the forestry and mining industries. For example, a farmer who grants a company a forestry right to develop and harvest a forest on his or her land will no longer have to pay lease duty on the payment received for the use of the land. Similarly, a right granted to a gravel merchant to extract sand from land will not be subject to lease duty.

Any agreements for use of land which became unconditional before 1 July 1994 will remain liable for lease duty.

This change will not affect leases or easements.

Family Support

The Government has announced that it will raise the income threshold at which Family Support begins to abate from $17,500 to $20,000 gross income per year. It will also increase the under-13-year-old rate for second and subsequent children from $24 per week to $27 per week. These changes will apply from 1 October 1994.

People who are already receiving Family Support will have their entitlements automatically increased from 1 October.

The Finance Bill (No.2), which gives effect to these announcements, was introduced into Parliament on 14 July 1994 and referred to the Government Administration Select Committee for consideration.

Cessation of GST registration

Introduction

This item states the Commissioner's current policy on the procedure and consequences when a person cancels a GST registration.

Background

A person who carries on a taxable activity and makes more than $30,000 of supplies per annum *must* register for GST. A person must also register if he or she expects to make more than $30,000 of supplies in an income year. Before 1 October 1990, the registration threshold was $24,000.

A person who carries on a taxable activity with supplies below the registration threshold *may* register for GST.

A "taxable activity" is an activity which is carried on continuously or regularly, and which involves (or is intended to involve) supplies made to another person for the payment of money or some other consideration.

Policy

Cancelling GST registration

If a person's taxable activities *all* cease, and he or she does not intend to carry on further taxable activities, registration *must* be cancelled. To cancel the registration, the person must provide the Commissioner with a notice in writing within 21 days of ceasing all taxable activities. This notice must specify:

- the date upon which the taxable activities ceased
- whether the person intends to carry on any taxable activity within 12 months of the date of cessation.

The Commissioner will cancel the registration after receiving this notice. However, registration will not be cancelled if there are reasonable grounds for believing that the person will carry on a taxable activity within the subsequent 12 month period (section 52(3)).

A registered person who continues to carry on a taxable activity, but whose value of supplies falls below the $30,000 registration threshold, *may* apply for a cancellation of registration. Such an application must state that the person is no longer liable to be registered.

GST payable upon cancellation

GST is payable on any goods and services used by the registered person in taxable activities for making taxable supplies, if these goods and services are retained when the registration is cancelled. These goods and services include all business assets retained by the registered person. Section 5(3) deems these goods and services to be supplied immediately before the cancellation takes effect. This liability arises regardless of whether the goods and services were acquired before or after the introduction of GST on 1 October 1986.

Under section 10(8), the GST payable on such retained assets is calculated as being one-ninth of the lesser of these values:

- the cost of the goods and services, including any GST charged in the purchase price
- the market value of the supply at the time of cancellation (the "open market value" of goods includes GST)

Final return

When a person's registration has been cancelled, that person must file a final GST return and pay any GST owing. This must be done by the last working day of the month following the month in which the cessation of registration took effect.

Retention of liabilities

After the registration is cancelled, the registered person is still liable for anything done or omitted to be done whilst registered (section 54).

Keeping records

A registered person is required to retain GST records in New Zealand for a period of at least 7 years from the end of the taxable period to which they relate. A person whose registration has been cancelled must still retain GST records for at least 7 years despite the cancellation.

Example

Jacques is a scuba-dive instructor. He has operated his business since 1980. He registered for GST in October 1986 as his projected taxable supplies for the year exceeded the then threshold of $24,000. The volume of Jacques' taxable supplies has fluctuated since then, but he has retained his GST registration.

Jacques decided to go to university, and in October 1993 closed his business and applied to the Commissioner for his registration to be cancelled.

Jacques sold most of his diving equipment, receiving $5,062.50 (including GST of $562.50). However, he decided to keep the business 4-wheel drive vehicle for his own private purposes. He bought the vehicle in 1984 at a cost of $9,500 so he could take clients to isolated locations. The vehicle has a current market value of $8,000.

Jacques must account for these items in his final GST return:

- Any "business as usual" taxable supplies made in the final GST taxable period
- $562.50 output tax on the sale of the dive equipment
- $888.88 output tax on the supply of the vehicle to himself (this is one-ninth of $8,000, the lesser of the cost price and the open market value).

Wages paid to spouse who cooks for permanent employees - deductibility

Introduction

This item states the Commissioner's current policy on claiming deductions for wages paid to a spouse who cooks for permanent employees.

Background

Section 106(1)(d) of the Income Tax Act 1976 prohibits the deduction of wages paid to a taxpayer's spouse, unless the Commissioner consents to that deduction before the taxpayer claims it. The taxpayer must satisfy the Commissioner that the payment is for the performance of non-domestic services by the spouse, or is otherwise a bona fide payment, and that the taxpayer incurs the payment exclusively in the production of income. The Commissioner can disallow as much of the deduction as he considers excessive (section 97).

Policy

To obtain the Commissioner's approval of the deductions, the taxpayer should contact the local Inland Revenue office. The staff there will tell the taxpayer what details are needed, and advise when the approval is granted.

Provided the wages meet the general statutory criteria for deductibility, the Commissioner will approve a taxpayer's request to claim a deduction for wages paid to his or her spouse for cooking for permanent employees.

To claim the deduction the taxpayer must satisfy the normal obligations required of employers. The spouse must complete an IR 12, and the taxpayer must deduct PAYE (including ACC premiums) and pay it to Inland Revenue. The taxpayer must actually pay the spouse wages on a regular basis (in the same manner as payments to other employees) and such wages must not be more than a reasonable amount for the services that the spouse performs. The current level of wages paid for comparable services will be taken as a guide to what is a reasonable amount.

The taxpayer must make a special arrangement with Inland Revenue if he or she wishes to employ his or her spouse to cook for employees over a short period (for example, to cook for seasonal workers such as shearers), or if he or she wishes the spouse to cook for permanent part-time workers or family members who are temporary employees.

The wages paid to the spouse are assessable income.

Disbursements by professional firms on behalf of clients - GST

Summary

The Commissioner has been asked to clarify how the GST Act applies to disbursements which professional firms make on behalf of their clients. This item outlines how the agency provisions of the GST Act apply to these payments. We've used a law firm as an example to illustrate the relevant principles, but the same GST treatment will also apply to payments made in the same circumstances by other registered persons.

If a law firm makes a payment to a third party as agent for a client, the firm does not account for GST output or input tax on the supply. However, the law firm must account for GST output tax on payments that it makes in the capacity of principal and on-charges to the client.

Background

Law firms may charge their clients for a variety of costs incurred in the course of providing legal services, in addition to their fee for legal services. These charges may include:

- Payments made by the firm as *agent* for the client
- Other costs incurred by the firm as *principal* in order to perform the legal services for the client.

The GST treatment of individual charges depends on whether the law firm charges the client for a supply received by the firm as agent for the client, or as a principal in respect of the supply.

An agent is a person engaged to bring a principal into a contractual relationship with a third party. It is a mixed question of fact and law whether a person is acting as an agent or a principal for a supply. Therefore, the determination of whether a law firm acts as an agent for a client depends on the particular circumstances of each supply.

Payments made as agent

A law firm may act as an agent for a client if it receives a taxable supply of goods and services for which the client is legally liable to pay. The firm may pay statutory fees or arrange and pay for supplies of other goods and services as agent for the client. For example, it may pay fees for supplies received from the Court or a government department, e.g., court fees and land transfer fees.

If it is registered, the supplier of these goods and services must account for GST output tax on the supplies. The law firm acts as agent for its client when it receives and pays for the supplies. Because of the agency relationship between the law firm and the client,

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section 60 of the GST Act governs the GST treatment of the transaction.

Section 60(2) of the GST Act deems a taxable supply of goods and services made to an agent on behalf of a principal to be a supply made to the principal. Under this section, a supply of goods or services that the law firm receives as agent for a client is deemed to be supplied to the client, not to the law firm. If the law firm pays for the supply and the client reimburses the firm for that payment, the reimbursement is not consideration for a supply of services by the law firm. The law firm does not have to account for GST output or input tax on the supply.

A GST-registered client may claim an input tax deduction for the taxable supply if the supply is acquired for the principal purpose of making taxable supplies. To obtain the input tax deduction, the client must hold a tax invoice for the supply as required by sections 20(2) and 24 of the GST Act. (However, under section 24(5) the client would not need a tax invoice if the consideration for a supply is $50 or less.)

There are two ways that a client can satisfy the invoice requirements:

If invoice is in client's name

If the tax invoice for the supply names the client as the recipient of the supply and complies with the requirements of section 24, the client may use this invoice to substantiate the input tax deduction.

If invoice is in law firm's name

The proviso to section 60(2) allows the law firm to ask the supplier to issue a tax invoice for the supply as if the firm had received the supply. If the supplier issues the tax invoice to the law firm, section 60(3) requires the firm to maintain sufficient records to enable the ascertainment of the client's name, address and GST registration number.

The client may use the tax invoice that the supplier issued to the law firm to support an input tax deduction. The client or the law firm (on the client's behalf) must hold the supplier's tax invoice at the time that the client furnishes its GST return. This tax invoice must comply with the requirements of section 24 of the GST Act. If the law firm holds the tax invoice as agent for the client, the client must hold the tax invoice issued by the law firm to the client (setting out legal services rendered and details of disbursements) to further substantiate the input tax deduction.

Law firm acting as principal

The agency provisions do not apply where the law firm pays for taxable supplies which it receives as principal, and on-charges those supplies to the client. For example, a law firm may charge a client for secretarial support time, telephone calls, facsimile transmissions or for photocopying. Generally, the law firm incurs these costs to enable it to provide legal services. It does not incur these costs as agent for any particular client.

If the firm passes the charges on to the client, the Commissioner considers that the charges form part of the total fee for the supply of legal services. The law firm should account for GST output tax on these items in the same manner as the rest of the legal fee (if taxable). A registered client may claim an input tax deduction for the GST paid if the legal services are acquired for the principal purpose of making taxable supplies.

Pre-incorporation supplies

If the law firm is acting for a promoter who is setting up a company (which is not yet incorporated), section 22 of the GST Act outlines the GST treatment of payments made by the firm as agent for that client. Section 22 allows the company, once incorporated and registered for GST, to claim input tax credits for goods and services acquired by the promoter before the company's incorporation.

To qualify for the input tax deduction, the company must have appointed the promoter as a member, officer or employee of the company and reimbursed that promoter for the cost of the goods and services. The promoter must have also acquired the goods and services for the purpose of carrying on a taxable activity by the company, and must not have used them for any other purpose.

Section 22 does not apply in any of these situations:

- if the supply of the goods and services by the promoter to the company is a taxable supply or a supply of secondhand goods (not being a taxable supply)
- If the goods and services were acquired more than six months before incorporation
- if the company does not hold sufficient records to establish the particulars of the supply.

Example

Bedrock Ltd engages its law firm to provide legal services in connection with a commercial property purchase. Bedrock Ltd is purchasing the property for use in its taxable activity. Both the law firm and Bedrock Ltd are registered for GST.

The firm sends Bedrock Ltd a bill setting out the following costs:

- legal services supplied in the course of the property conveyance
- the cost of a national toll call made by the law firm to investigate the terms of a lease of the property
- transfer and mortgage fees paid to the Land Transfer Office as agent for Bedrock Ltd (The Land Transfer Office issued a tax invoice for these fees to the law firm.)

The firm has records of Bedrock Ltd's address and registration number.

GST treatment

- The law firm does not account for GST output tax on the charges made for the transfer and mortgage fees. Bedrock Ltd can claim an input tax deduction for the supply by the Land Transfer Office. Bedrock Ltd may use the tax invoice issued in the name of the law firm by the Land Transfer Office and the law firm's bill to substantiate the input tax deduction.

  The tax invoice issued by the Land Transfer Office to the law firm must satisfy the requirements of section 24 and must be held by either Bedrock Ltd or the law firm (as agent) at the time Bedrock Ltd furnishes its GST return.

- The law firm must account for GST output tax on the fee for legal services rendered, and on the on-charged cost of the toll call. Bedrock Ltd can claim an input tax deduction for the GST so charged. Bedrock Ltd can use the bill issued by the law firm to support the input tax deduction (provided that this bill satisfies the requirements of section 24 as a tax invoice).

"Apples for Schools" promotion - GST

Introduction

This item sets out the GST treatment of the "Apples for Schools" promotion. The promotion involves several supermarkets who provide computer equipment either to a group affiliated to local schools ("organising body"), or directly to the schools. The organising body then gifts the computer equipment to the school. Concerns have been raised that the organising body or school may be subject to GST when they receive the computer equipment.

Summary

- If an organising body is not registered for GST, it will not be liable for GST when it receives computer equipment from the supermarket.
- No GST liability arises to any party when the organising body gifts the computer equipment to the school.
- A GST liability only arises if a GST-registered organising body or a GST-registered school promotes or advertises the participating supermarket in response to the supply of the computer equipment.

Background

An organising body (PTA, students, parents, community group or the school board itself) collects till receipts or coupons from one of the participating supermarkets. Once the total value of the till receipts or coupons exceeds a target amount the supermarket provides the organising body with computer equipment. The organising body then donates the equipment to their affiliated school. In most cases the organising body will not be not registered for GST, however there may be occasions where the school itself collects the till receipts or coupons and is GST registered.

Unconditional gift

Section 2 of the GST Act 1985 defines the term "unconditional gift". The Commissioner's interpretation of "unconditional gift" is explained in Appendix B of TIB Volume Two, No. 4 (November 1990). In summary, a payment will be an unconditional gift if it meets these criteria:

- The payment must be voluntary.
- The payment must be made to a non-profit body for the carrying out of the purposes of that non-profit body.
- No identifiable direct valuable benefit can arise to the person making the payment, or to an associated person.
- The payment must not be made by the Crown or a public authority.

If the organising body or school advertises or promotes the participating supermarket during the course of collecting the till receipts or coupons, a benefit arises to the supermarket and the payment (the computer equipment) does not constitute an unconditional gift. This does not automatically mean that a GST liability arises to the organising body or school. A liability only arises if that body or school is registered for GST. However, in many cases the organising body or school simply collects the till receipts or coupons and does not promote the supermarket. In this situation no benefit is provided to the supermarket. The supply of the computer equipment constitutes an unconditional gift in such cases.

The organising body voluntarily donates the computer equipment to a non-profit body (the school). No benefit arises to the organising body as a result. Therefore, the donation of the equipment by the organising body to the school also constitutes an unconditional gift.

Taxable supply

If the supply of the computer from the supermarket to the organising body is not an unconditional gift there may be a taxable supply. A supply attracts GST when it is a "taxable supply". A taxable supply is a supply made by a GST registered person in the course of a taxable activity. If the organising body is not registered for GST

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any benefits provided to the supermarket will not represent a taxable supply and therefore will not attract GST.

If an organising body is a registered person, or if a registered school collects the receipts or coupons on its own behalf, and provides an advertising benefit to the supermarket, a taxable supply does occur. The organising body or school must account for GST equal to 1/9th of the value of the computer equipment.

If an organising body or school is unsure whether it has a GST liability, it should contact the local Inland Revenue office.

Questions we've been asked

This section of the Tax Information Bulletin sets out the answers to some day-to-day questions that people have asked. We have published these as they may be of general interest to readers.

These items are based on letters we've received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

Income Tax Act 1976

Taxable Accident Compensation payments

Section 65 - Items included in assessable income: A taxpayer asked which types of Accident Compensation payments are subject to income tax.

Section 76 of the Accident Rehabilitation and Compensation Insurance Act 1992 specifies that these are the only types of compensation paid under the Act that are taxable:

- compensation for loss of earnings
- compensation for loss of potential earning capacity
- vocational rehabilitation allowance
- weekly compensation paid to a surviving spouse, children, or other dependants of a person who dies as a result of personal injury covered by the Act.

These payments are specifically not taxable:

- independence allowance
- survivors' grants
- funeral grants
- any payment to an injured person to pay for rehabilitation (except vocational rehabilitation allowance above).

Depreciation recovered on sale of a building - spreading the income

Former section 117 - Revised assessments where assets sold after deduction of depreciation allowances: A landlord sold his rental property in the 1992-93 income year. He asked if there were any income spreading provisions for depreciation recovered on the sale of the building.

Buildings sold in period 28 July 1988 - 31 March 1993

Any depreciation which is recovered when an asset (including a building) is sold after 28 July 1988 is assessable income. This income can be spread over the year of sale and any or all of the three previous years if both of these conditions are met:

- the sale occurred before the start of the 1993-94 income year
- the amount of depreciation recovered is more than $1,000.

To spread this income, either the taxpayer or his or her agent must apply to Inland Revenue in writing.

Buildings sold on or after 1 April 1993

The spreading provision does not apply to buildings or other assets sold on or after 1 April 1993. Depreciation recovered on buildings sold after this date is covered by the new section 117.

Losses from disposition of depreciable property - effect of *Para Handkerchief* case

Section 117(3) - loss from disposition of depreciable property: A taxpayer asked if the *Para Handkerchief* case (*Para Handkerchief and Textiles (1964) Ltd v CIR* (1992) 14 NZTC 9,125) overrides the deduction of losses from the disposition of depreciable property available under section 117(3).

The short answer is no. Before the introduction of the new depreciation rules, (which apply from the 1993-1994 income year), section 108 provided the legislative basis for depreciation. Generally, section 108 allowed a deduction for "ordinary depreciation" to recompense fair wear and tear, obsolescence, or uselessness of assets used in the production of income. Depreciation allowances were available at the Commissioner's discretion.

The *Para Handkerchief* case involved a company that purchased new plant and used it to earn assessable income for approximately ten months. The plant was sold for a substantial loss when the business venture failed. The company sought to claim a deduction of $239,907 for the loss on a sale of assets. The Commissioner disallowed the claim under the then section 108 on the grounds that the equipment was neither useless nor obsolete.

The Court held that whether an item has become obsolete or useless is a question of fact to which an objective test is applied. Here the assets had suffered a reduction in value not because they had become useless, but because the company could not operate profitably. The price of the assets sold was affected by the factors of supply and demand, not the state of the assets. The Court considered that the loss suffered was a capital loss and therefore no deduction was allowed.

As part of the new depreciation rules a new section 117 was enacted. Section 117(3) provides that if a taxpayer disposes of depreciable property for an amount that is less than its adjusted tax value at that time, a deductible loss arises.

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Section 117(3) allows the taxpayer an automatic write-off for the difference between the adjusted tax value of the asset and the sale price.

Section 117(3) applies to all assets except intangible property and buildings, disposed of from the 1993-1994 income year. Losses on disposal now have a statutory basis where previously they were deductible at the Commissioner's discretion. There is no requirement for the asset to have become useless or obsolete. For these reasons section 117(3) supersedes the decision in *Para Handkerchief*.

Losses on the sale of buildings are specifically not deductible under section 117(3). However, if buildings are sold at a loss, a deduction is allowable in the year of sale. The deduction is the lesser of the loss on sale or the depreciation allowance for the period of ownership in that year.

Section 117(7) provides for the situation where depreciable property has been disposed of for an amount that the Commissioner believes is not its market value. In this situation the Commissioner deems the property to have been disposed of for a consideration equal to the property's market value, or if the market value cannot be ascertained, for an amount specified by the Commissioner.

"Other income" received after starting to receive New Zealand superannuation

Section 336D(3) - Commissioner may determine date income received: A taxpayer was due to retire, and receive her last pay on 15 April 1994. She became entitled to receive New Zealand superannuation from 16 April 1994. However, because of some administrative difficulties, she did not receive her final pay until 2 May. She asked whether that final pay will be treated as "other income" for the purposes of New Zealand superannuitant surcharge.

Usually, New Zealand superannuitant surcharge is payable when a superannuitant receives "other income" which exceeds the person's individual surcharge exemption, at the same time as he or she is entitled to receive New Zealand superannuation. Where New Zealand superannuation is received for part of the year only, as in this example, the exemption is apportioned.

However, in this instance the taxpayer's final pay will not be treated as other income, even though it was received at the same time that New Zealand superannuation was being received.

Under section 336D(3) of the Income Tax Act 1976, if other income is received within a reasonable time after a superannuitant starts receiving New Zealand superannuation, the Commissioner may determine that income to be received on a date other than the actual date of receipt, as long as these three conditions are met:

- the income would have been received on the day on which the Commissioner determines
- the superannuitant has not deliberately arranged his or her affairs so as to obtain a favourable result
- it is in the superannuitant's interests that the section should apply.

The determination of what constitutes a reasonable period will depend on the facts of each case.

Business losses - reduction of PAYE deductions

Section 351 - Special tax code certificates: A taxpayer with a business which was running at a loss asked if this loss could be used to reduce his PAYE deductions from a salary that he also receives.

If the taxpayer expects the amount of PAYE deductions made from his salary or wages during the year to exceed his actual end of year tax liability, he may apply for a special tax code certificate (IR 23). Under section 351, the Commissioner may issue an IR 23 annually specifying a special rate at which tax is to be deducted by the employer.

This special rate can take into account an entitlement to deduct past business losses carried forward (under section 188), or an estimated current year business loss (if the taxpayer provides an acceptable budget).

To obtain a special tax code certificate, the taxpayer should complete an application form (IR 23B) and send it to the district office which holds his tax records.

Every taxpayer who has used a special tax code certificate must file a tax return.

Exemption from filing employee start and finish schedules

Section 432 - Employers to make returns as to employees: A local newspaper employer has asked if it could become exempt from filing an employee start and finish schedule (IR 66ES). Its grounds were that filling out a schedule of employees for each month was time consuming as the employer had a high staff turnover, especially for newspaper delivery personnel.

Section 432(6) allows the Commissioner to exempt an employer from filing a start and finish schedule for:

- any class or description of employment
- the employment of any class or description of employee
- the employment of employees by any class or description of employer.

In this case, the Commissioner did not exempt the employer from filing an IR 66ES schedule. The reason for collecting the information contained in the schedule is to help the Department of Social Welfare and the Accident Rehabilitation & Compensation Insurance Corporation to combat benefit and earnings fraud and abuse. To date, the Commissioner has not given any exemptions.

Computer software development - deductibility of costs

A computer software developer intended to develop some new software, but had not yet arranged any sales. She asked if pre-development expenditure, such as a feasibility study, was deductible.

These taxpayers can deduct pre-development expenditure, as long as the expenditure occurs in an established business (as opposed to a business in the set-up process):

- taxpayers who develop software for sale or licence
- in-house software developers (i.e. taxpayers who develop software for use in their own business),

For further details, see the Appendix to TIB Volume Four, No.10 (May 1993).

Goods and Services Tax Act 1985

Consignment notes appearing as tax invoices

Section 24 - Tax invoice: The representative of a small firm was concerned that he was receiving more than one copy of a tax invoice for incoming goods from his major supplier. The problem was that a batch of under copies had not been endorsed with the words “Consignment Note”, and without that endorsement the two copies were identical. The recipient wondered if the Goods and Services Tax Act 1985 was being infringed.

Section 24(1) states that it is not lawful to issue more than one tax invoice for each taxable supply. If an under copy is a duplicate of the top copy and both are issued, a breach of the Act occurs.

In this situation, it seems likely that a genuine mistake has been made. However, Inland Revenue will formally advise the issuer of the alleged offence and caution against a repetition. We will take no further action provided that:

- the recipient has not made any double input credit claims for the same supply
- the issuer rectifies the mistake as soon as possible
- No fraud has been contemplated.

Upcoming TIB articles

In the next few months we’ll be releasing policy statements on these topics in the Tax Information Bulletin:

- When Inland Revenue can grant relief from payment of tax in cases of financial hardship
- GST and temporary imports
- Tax treatment of salaries and emoluments received by NZ residents employed by the International Monetary Fund, World Bank and similar entities
- Dividend withholding payment accounts as they relate to consolidated groups of companies
- Losses of individual NZ resident insurance underwriters
- Treatment of dividend imputation credits and dividend withholding payment credits in the hands of trustees and beneficiaries
- GST and secondhand goods
- GST treatment of goods donated to a non-profit body, when the goods undergo change
- Filing a special GST return when goods are sold in satisfaction of a debt
- Payment of lease duty on the variation / renewal of a lease
- Misappropriation of partnership property by a partner
- Meaning of terms “own” and “acquired” for depreciation purposes
- Personal sickness and accident and loss of earnings insurance policies
- Tax status of bodies corporate
- Responsibility for deducting withholding tax from door charges at hotels and taverns

We’ll publish these statements as soon as we’ve finished consulting with commentators outside Inland Revenue.

Legal decisions - case notes

This section of the Tax Information Bulletin sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council.

We have given each case a rating as a reader guide to its potential importance.

- • • • • • Important decision
- • • • • Interesting issues considered
- • • • Application of existing law
- • • Routine
- • Limited interest

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. Where possible, we have indicated if an appeal will be forthcoming.

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.

Contents

Whether Church beneficiary fund's income is exempt from tax

Rating: • • •

Case: Presbyterian Church of New Zealand Beneficiary Fund v. CIR

Act: Income Tax Act 1976, sections 61(21), (25) & (27)

Keywords: *Charitable trust, not carried on for the private pecuniary profit of any individual, advancement of religion*

Summary: The High Court held that income derived by the Presbyterian Church of New Zealand Beneficiary Fund ("the Fund") was exempt from income tax under section 61(25) of the Income Tax Act 1976 ("the Act"). The Fund provided for the financial security of retired Ministers and their dependants and was held to be a charity.

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Facts: The fund is a category 1 superannuation scheme under the definition in section 2 of the Act. It is administered by a standing committee of the General Assembly of the Presbyterian Church ("the Church"). The General Assembly governs the Church in New Zealand.

The Fund operates to benefit retired ministers of the Church. The primary benefit it provides is the payment of an annuity to ministers upon retirement at the age of 60. Some incidental benefits exist, including the facility for lump sum capitalisation of the annuity, sickness benefits and widows' benefits (which include child and orphan allowances).

The Fund's income was exempt up until 30 April 1988 under section 61(21) of the Act. However, from that date the provision no longer exempts such superannuation income. The Court therefore had to consider whether the income derived after that date was exempt under any other provision, namely section 61(25) of the Act, which exempts income derived by charities from tax.

The Fund contended that the income was exempt. The Commissioner argued to the contrary, submitting that:

1. The Fund was not a charity but rather was a superannuation fund.
2. The purpose of the Fund was not to advance religion but rather to provide benefits to its members.
3. That there was insufficient public benefit for the Fund to be charitable.
4. The Fund was carried on for the private pecuniary gain of the members of the fund.

Decision: The High Court rejected the Commissioner's contentions, concluding that the Fund was a charity and that its income was exempt from tax under section 61(25).

The Court said that the Trust Deed demonstrated the Fund's charitable purpose. The Court considered that the nature of the controlling body and its members (the Church) demonstrated that the purpose of the fund was that of advancing religion.

His Honour considered that an integral part of the advancement of religion involved the activities of its Ministers, whose financial protection and welfare on retirement are the primary concern of the Fund. He therefore concluded that a fund of this kind is undoubtedly charitable as going to the advancement of religion, if it is in the hands of trustees appointed by a mainstream church.

Justice Heron acknowledged that the advancement of religion was not the sole purpose of the Fund (accepting that the provision of benefits to members was also a purpose), but he concluded that the predominant purpose of the Fund was charitable. The provision of private benefits to members was merely subsidiary.

The Fund also did not fail for lack of public benefit - His Honour considered that the protection of the clergy was of sufficient public benefit.

The decision in *Baptist Union of Ireland (Northern) Corporation Ltd v. CIR* 26 TC 335 was central to the Fund's case and the judgment of the Court. Justice Heron considered that decision to be indistinguishable from the facts in this case.

Comment: Inland Revenue has not yet decided whether to appeal this decision.

Whether companies incorporated outside New Zealand can be included in a group for tax purposes

Rating: • • • •

Case: CIR v Alcan New Zealand Limited CA 150/93

Act: Income Tax Act 1976, sections 85(4), 191, 242, 317(c), 318, 336N

Keywords: *Group of companies, value of trading stock, interpretation of taxing statutes*

Summary: This was an appeal to the Court of Appeal from the decision of Justice Tompkins in *Alcan New Zealand Ltd v CIR (1993) 15 NZTC 10,125.* Justice Tompkins adopted a literal approach to the interpretation of the term "companies" for section 191(3), and held that section 191(3) applied to companies whether incorporated in New Zealand or elsewhere. The Court of Appeal dismissed the appeal.

Facts: Alcan New Zealand Ltd ("Alcan") was incorporated in New Zealand and is a wholly owned subsidiary of Alcan Australia Ltd ("AAL"), an Australian resident company. AAL is 73.26% owned by Alcan Aluminium Ltd, a Canadian company. Alcan purchases aluminium ingots and billets from AAL, and processes them into semi-fabricated aluminium products.

When Alcan calculated the closing value of its trading stock under section 85(4) for the 1988 and 1989 income years, it sought to use the "cost price" of that aluminium to AAL as a member of their "group of companies" rather than the "cost price" to Alcan.

The Commissioner issued an assessment for the 1988 and 1989 income years which adjusted Alcan's valuation of trading stock. Alcan objected to the assessment and a case was stated to the High Court. Alcan submitted that Alcan and AAL were a "group of companies" as defined in section 191(3), and Alcan was entitled under the former proviso to section 85(4) to value its trading stock "at cost". This would mean that the profit AAL made in selling the trading stock to Alcan was to be disregarded.

The Commissioner submitted that the term "group of companies" in section 191(3) is to be construed as applying only to "New Zealand taxpayers" in the sense that it refers to companies whose activities produce either income which is assessable for New Zealand income tax or losses recognised under the Income Tax Act.

The High Court decided in favour of Alcan and held that the phrase "group of companies" in section 191(3) should be interpreted by applying the definition of "companies" in section 2. Therefore the term "group of companies" referred to a group of companies whether incorporated in New Zealand or elsewhere. The Commissioner appealed the High Court's decision to the Court of Appeal, contending that the definition of "group of companies" in section 191(3) implies that it applies only to companies which are New Zealand taxpayers within Part IV of the Income Tax Act 1976. It therefore follows that Alcan is not entitled to rely on the former proviso to section 85(4) so as to value its trading stock at the cost to AAL.

Decision: The Court of Appeal held that section 191(3) should not be read in a restrictive manner and that a non-resident company can be a member of a "group of companies". It also held that Alcan was not prevented from relying on the former proviso in section 85(4). In arriving at this decision, the single judgment of Justice McKay looked at the principles of interpreting taxing statutes. In applying the rules of interpretation of a taxing statute as set out in the judgment of the Privy Council in *Mangin v Commissioner of Inland Revenue* [1971] NZLR 591

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at 594, Justice McKay noted that it would be a mistake to put the interpretation of revenue statutes in a different category from other legislation. All statutes are to be interpreted on the basis set down in section 5(j) of the Acts Interpretation Act 1924 and are deemed remedial, and accordingly should receive “such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision and enactment according to the true intent, meaning and spirit.”

Applying the rules of interpretation set down in *Mangin* the Court held that none of the arguments advanced by the Commissioner provided a sufficient basis for departing from the plain meaning of the words. It was not necessary to read into those words some implied limitation and to do so would require speculation as to legislative intent. The present case was not one in which a literal interpretation would result in any injustice to the taxpayer, nor was it in conflict with the purpose of the legislation.

Comment: Inland Revenue is appealing this decision.

Whether a full-time student qualifies for the transitional tax allowance

Rating: • • •

Case: TRA No 92/88 Case R19 (1994) 16 NZTC 6,096

Act: Income Tax Act 1976, section 50C

Keywords: *Qualifying person, full-time earner, remunerative work*

Summary: A full-time student was not considered to be a full-time earner, and therefore could not qualify for the transitional tax allowance rebate.

Facts: The taxpayer was a full-time university student receiving a student allowance. In his 1990 tax return he claimed the transitional tax allowance rebate on the basis that he was a full-time earner.

Decision: To qualify for the transitional tax allowance rebate, a taxpayer must be a *qualifying person* as defined in section 50C(1). This means that the taxpayer must be a *full-time earner* engaged in *remunerative work*. Both these terms are also defined in section 50C(1).

The taxpayer considered that his study was work done to receive a student allowance. He therefore considered that he qualified for the transitional tax allowance rebate.

The Judge found that study at university is not work that provides a taxpayer with income. To be *remunerative work*, remuneration must be received for personal services performed. The connection between receiving the student allowance and working at university studies was not direct enough. The taxpayer was therefore not conducting remunerative work under section 50C(1). He did not qualify for the transitional tax allowance rebate.

Comment: The taxpayer is not appealing this decision.

Whether forward wool contracts and forward foreign exchange contracts are financial arrangements

Rating: • • • • •

Case: CIR v Dewavrin Segard (NZ) Limited (1994) 16 NZTC 11,048

Act: Income Tax Act 1976, sections 64B to 64M

Keywords: *Accrual regime, foreign exchange contracts, wool contracts*

Summary: The taxpayer's forward contracts for the sale of wool and forward foreign exchange contracts were held to be financial arrangements subject to the accrual regime. Although the foreign exchange contracts were entered into to hedge the wool contracts the taxpayer had to account for them separately. The calculation of foreign exchange gains or losses on the wool contracts began when the wool contracts were entered into rather than on the delivery date. The calculations of income or expenditure on balance dates (under section 64C) might be modified under the "wash up" calculation upon maturity (under section 64F). Income or expenditure for the contracts under section 64C was to be calculated using market valuation methods.

Facts: The Commissioner appealed this case from the Taxation Review Authority decision of *Case Q2* (1993) 15 NZTC 5,005.

Wool contracts

The taxpayer was a commodity exporter. It was not a cash basis holder under the accrual regime. It sold wool on a deferred or forward basis. Purchase prices were denominated in foreign currencies, generally United States dollars. Typical wool contracts were those in which the balance date intervened between the dates on which the wool contracts were made and the dates of shipment and delivery. Payments were made no earlier than the dates of shipment. Between the dates the wool contracts were entered into and the company's balance date (31 December 1987) movements in the United States dollar exchange rates resulted in unrealised losses of $590,409 at balance date. The Commissioner did not allow a deduction for this loss.

Foreign exchange contracts

The taxpayer arranged foreign exchange contracts to hedge against the risk of currency fluctuations. These forward foreign exchange contracts did not precisely match the forward wool contracts but the Taxation Review Authority did not regard this mismatching as material. Under the foreign exchange contracts, the taxpayer undertook to sell United States dollars in amounts to be yielded by the wool contracts on the dates of expected receipt. In return it received fixed amounts in New Zealand dollars. At the balance date these foreign exchange contracts were showing unrealised gains of $539,724, which the Commissioner treated as assessable income.

Taxation Review Authority

The taxpayer objected and the Taxation Review Authority held that:

- The wool contracts were not "financial arrangements" subject to the accrual regime. The unrealised losses of $590,409 were not deductible.
- The foreign exchange contracts were subject to the regime but the gains on the contracts did not have to be returned until maturity.

Accordingly, the taxpayer's tax positions on the wool and foreign exchange contracts were matched at balance date.

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Decision: Justice Gault delivered the Court of Appeal's judgment. The Court allowed the Commissioner's appeal for the foreign exchange contracts. The taxpayer had to return the $539,724 gain in the 1988 income tax year. However, the taxpayer was entitled to seek further assessments for the forward wool contracts as at 31 December 1987.

The Court of Appeal held that:

- The forward foreign exchange contracts were "financial arrangements" under the section 64B(1) definition.
- The forward contracts for the sale of wool were similarly financial arrangements subject to the accrual regime. The only exceptions were contracts where settlement was required within 63 days of entry. Such short-term agreements for the sale and purchase of property are excepted financial arrangements.
- Each wool contract and its corresponding foreign exchange contract could not be regarded as parts of the same financial arrangement. Accordingly, the taxpayer could not offset its currency gains and losses on this basis. Even if the two contracts matched, they could not be considered parts of the same arrangement because the taxpayer's counterparties under the two types of contracts were different. There was no interaction or interdependence between the counterparties.
- In applying section 64C(1) to each wool contract at balance date that provision could not be read with section 64F. When calculating accrual income (or expenditure) at balance date, section 64C(1) requires that "regard shall be had to the amount of all consideration provided to the person and by the person." Justice Gault commented that while consistency is obviously desirable, that cannot be achieved unless the words are reasonably capable of construction to that end. Accordingly, he held that fluctuations in value between the dates contracts were entered and the balance date will be income or expenditure to be accounted for on an accrual basis. This is notwithstanding that the result might be modified on a base price adjustment under section 64F. The base price adjustment is a "wash up" calculation of overall income or expenditure from a financial arrangement required under the accrual regime.
- The appropriate accrual method under section 64C for the foreign exchange contracts was the valuation method. This is the method employed under SSAP-21 for foreign exchange contracts not taken out for hedging purposes. The method compares values at balance dates with those when the contract was entered into using spot rates (determined presumably by reference to Determination G6) for the foreign currency amounts. The method was held to conform with the requirements of section 64C(4).
- Section 64C(3)(b) applied to the wool contracts at balance date. Justice Gault held that the taxpayer could apply a market valuation method at balance date under this provision.
- It would not be open for a taxpayer to avoid the application of the accrual rules by claiming to have adopted a different method of accrual accounting in its financial reporting, and claiming that therefore no alternative method provided for in section 64C can be adopted.

Comment: Inland Revenue is appealing this decision to the Privy Council. We also propose to issue a policy statement on the *Dewavrin* decision in a future TIB.

Whether expenditure qualifies for the prevention of pollution incentive

Rating: • • • •

Case: Waste Management Ltd v Commissioner of Inland Revenue HC55/93;NZTC (1994) 16

Act: Income Tax Act 1976, section 124

Keywords: *Sanitary landfill; preventing or combating pollution; in the construction on land; treating industrial waste; primarily.*

Summary: A taxpayer's business operations involved the collection, treatment and disposal of waste material. It purchased and developed a sanitary landfill site and applied to the Commissioner to deduct 20% per year of the capital expenditure under section 124. The Court held that legal costs, expenditure on public relations exercises and valuers' fees that were incurred solely for planning hearings were costs of acquiring the land and therefore *were not* costs incurred in "construction on land"; and that expenditure on exploratory wells and construction plans and specifications *were* expenditure incurred in "construction on land" and were therefore deductible under the section.

Facts: The taxpayer's operations involved the collection and disposal of commercial and domestic waste and the treatment of the material recovered. The taxpayer expanded its business by buying a sanitary landfill site at Dairy Flat 20 km north of Auckland.

Two major hazards arise from poor control of a landfill: leaching of contaminated water and production of gases, particularly methane. During the 1988, 1989 and 1990 years there was very little physical work carried out on the site. The only excavation on site was done in 1988 when 13 exploratory wells were bored to indicate the texture of the substrata. However, during the three year period engineers and others carried out extensive surveys of the land, and produced feasibility studies and preliminary working plans in case this was a viable and permitted commercial enterprise. There was heavy expenditure on planning applications. Apart from the exploratory wells no physical work was done until late 1992.

The taxpayer claimed for application of the benefit under section 124 of the Income Tax Act 1976. Section 124 allows a yearly deduction of 20% of capital expenditure. The section allows a deduction if a taxpayer is engaged in a business in New Zealand and has incurred in that business expenditure in the construction on land in New Zealand of earthworks, ponds, settling tanks, or other similar improvements primarily for the purpose of treating industrial waste in order to prevent or combat pollution of the environment.

Decision: Justice Speight held that:

- All of the expenses incurred in the operation related directly or indirectly to the eventual carrying out of the waste treatment process, but not all such expenses, either current or capital, could claim the benefit of section 124.
- The word "treating" is not to be construed as solely involving some chemical process. In the context of section 124, "treating" is more akin to "dealing with". Purely physical activities such as compaction, containment and settling, are not treatments in the chemical sense, but are consonant with the type of works section 124 contemplates.
- Construction work on a large scale involves exploration, preparation of plans, supervision of layout, and finally the major operation. Having regard to the object of section 124, there is no logical distinction to be drawn between

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expenditure incurred on physical development and expenditure on non-physical work such as design costs. Expenditure incurred by way of research, investigation, drawing of plans, and the consequent physical activity comprise "construction primarily for the purpose of treating". Expenditure incurred in altering the zoning restraints does not relate to construction. Expenditure for the purpose of gaining permission to carry out work which would not otherwise have been permitted is a cost of land acquisition and is not expenditure in the construction on the land. Examples of such expenditure are legal costs, public relations exercises and valuers' fees that the taxpayer incurs solely for planning hearings. This expenditure is not incurred in the construction on land of improvements for treating industrial waste.

- Some of the engineering fees might relate solely to preparation of opinions to be given to the hearings as evidence, and may not be relevant to construction plans. However, if such material served a dual purpose, and was to be utilised for construction purposes if and when the company obtained consent, then the expenditure is deductible. Physical work such as the exploratory wells and construction plans and specifications are eligible for the deduction.

Comment: Inland Revenue and the taxpayer are appealing this decision

Whether wool is a secondhand good for GST purposes

Rating: • • • •

Case: L.R. McLean and Company Ltd and Others v Commissioner of Inland Revenue CA 88/93

Act: Goods and Services Tax Act 1985, section 2

Keywords: *Secondhand goods, use*

Summary: The taxpayers appealed against the High Court decision that wool is not a secondhand good for the purposes of the GST Act. The Court of Appeal concluded that wool is not a secondhand good, and dismissed the appeal. (See TIB Volume Four, No. 8 (April 1993) for the High Court decision on this case.)

Facts: The taxpayers are wool merchants, who buy wool from farmers. A number of the farmers are not GST-registered. The issue was whether the wool the taxpayers buy is a secondhand good for the purposes of the GST Act. If so, then they can claim an input tax credit for the wool they buy from non-registered persons.

The taxpayers argued that the definition of "secondhand goods" was a term of art, intended to apply to any article that unregistered persons sell to registered persons, to enable registered persons to claim an input tax credit. They argued that the scheme of the Act indicated that the input tax credit mechanism was designed to apply to all goods that private persons sold to registered persons.

Decision: The taxpayers could not claim an input tax credit for the wool they bought from unregistered farmers. The Court rejected the appellants' argument that the Act intended that the input tax credit mechanism should apply to all goods sold to registered persons. The Court held that wool was not a secondhand good.

The ordinary meaning of "secondhand" includes both previous use and previous ownership, with the emphasis on previous use. This means that once something has been used for its intrinsic purpose, it is secondhand. Primary produce is not normally regarded as secondhand, because its intrinsic use is that of consumption.

There was nothing in the purpose or scheme of the Act that would justify ignoring the ordinary meaning of the term "secondhand".

Comment: The taxpayers are not appealing to the Privy Council.

Whether goods and services acquired for the principal purpose of making taxable or exempt supplies

Rating: • • • •

Case: CIR v BNZ Investment Advisory Services Limited (1994) 16 NZTC 11,111.

Act: Goods and Services Tax Act 1985 - sections 2(1), 8(1) and 10(19).

Keywords: *Principal purpose, input tax*

Summary: This was a successful appeal against the TRA decision in *Case P62 (1992) 14 NZTC 4, 427*. The High Court found that goods and services acquired by a financial planner were not acquired for the principal purpose of making taxable supplies if the financial planner was dependent on commissions from investments. Instead the planner acquired goods and services with the principal purpose of making exempt supplies of services.

Facts: The taxpayer was a financial planner. It offered investment plans to its customers for which it charged a small fee and a commission on all investments placed under the plan. Most of the efforts of the taxpayer's staff involved giving investment advice. This advice was a taxable supply of services, being an exclusion from the definition of "financial services" in section 3(1)(l). Much less time was spent on actually implementing the plan. Implementing the advice, and receiving a commission, was an exempt supply of services under section 3(1)(l). The taxpayer claimed full input tax deductions for goods and services acquired for use in its business.

The Commissioner disallowed the deductions and the taxpayer's objection. The taxpayer stated a case to the TRA. The TRA found for the taxpayer, deciding that the single goal of the taxpayer was offering investment advice to the public. The TRA held that the taxpayer acquired goods and services for the principal purpose of making taxable supplies, satisfying the definition of "input tax". The taxpayer could make a section 20(3) deduction.

Decision: The issue was whether the goods and services were acquired with the principal purpose of making taxable supplies. Both parties agreed that "purpose" meant the object the taxpayer had in mind, not the taxpayer's intention or motive. The parties differed slightly on the meaning of "principal". The Commissioner argued that "principal" meant primary or fundamental purpose. The taxpayer believed it meant "more than half". Justice Doogue accepted the Commissioner's view.

Justice Doogue found it unnecessary to consider whether "principal purpose" was an objective, subjective or intermediate test. He believed it would not make a difference in this case. However, he did note that in other cases the appropriate test may be important.

Justice Doogue decided that the taxpayer's principal purpose of acquiring goods and services was to derive income capable of meeting the cost of the goods and services. The principal purpose was not to provide investment advice. Giving investment advice was merely a means to an end. It provided negligible income of itself. The main method of earning income was by earning commissions on investments placed with financial institutions, that is, by providing exempt supplies of financial services. The goods and services were acquired principally to achieve income through making exempt supplies. Justice Doogue said that the TRA confused the means (investment advice) by which the taxpayer achieved its purpose (earning income) with its purpose.

Justice Doogue suggested his analysis may have been different if the taxpayer had achieved income by charging realistic fees. He also may have decided the case differently if the business purpose was something other than achieving a profit through earning income.

Comments: The taxpayer is not appealing this decision.

List of Inland Revenue booklets

This list shows all of Inland Revenue's information booklets as at the date of this Tax Information Bulletin. There is also a brief explanation of what each booklet is about.

Some booklets could fall into more than one category, so you may wish to skim through the entire list and pick out the booklets that you need. You can get these booklets from any Inland Revenue office.

For production reasons, the TIB is always printed in a multiple of eight pages. We will include an update of this list at the back of the TIB whenever we have enough free pages.

For people in business

A guide to Inland Revenue audits (IR 297) March 1994

For business people and investors. It explains what is involved if you are audited by Inland Revenue; who is likely to be audited; your rights during and after the audit, and what happens once an audit is completed.

ACC premiums (published by ARCI Corporation) 1994/95

Explains the ACC employer premium, and gives the premium rates payable by employers and self-employed people. ACC publish this book.

Approved issuer levy (IR 291A) May 1994

For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.

Consolidation (IR 4E) March 1993

An explanation of the consolidation regime, which allows a group of companies to be treated as a single entity for tax purposes.

Employers' guide (IR 184) 1994

Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.

Entertainment expenses (IR 268) April 1993

Covers the tax treatment of business entertainment expenses, under the rules applying from 1 April 1993.

Fringe benefit tax guide (IR 409) June 1992

Explains fringe benefit tax obligations of anyone who is employing staff, or companies which have shareholder-employees. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.

GST - do you need to register? (GST 605) May 1994

A basic introduction to goods and services tax, which will also tell you if you have to register for GST.

GST guide (GST 600) 1994 Edition

An in-depth guide which covers almost every aspect of GST. Everyone who registers for GST gets a copy of this booklet. It is quite expensive for us to print, so we ask that if you are only considering GST registration, you get the booklet "GST - do you need to register?" instead.

Imputation (IR 274) February 1990

A guide to dividend imputation for New Zealand companies.

Inland Revenue employers' tax calendar
(IR 24E) 1994

A list of all the more common tax due dates that employers have to remember. If you have a balance date other than 31 March, you may find the full tax calendar (IR 24) more useful.

Inland Revenue tax calendar (IR 24) 1994

A complete list of all the tax due dates. It covers everything from filing tax returns to the due dates for non-resident Student Loan repayments.

PAYE deduction tables
- Four-weekly and monthly (IR 184Y) 1994
- Weekly and fortnightly (IR 184X) 1994

Tables that tell employers the correct amount of PAYE to deduct from their employees' wages.

Qualifying companies (IR 4PB) October 1992

An explanation of the qualifying company regime, under which a small company with few shareholders can have special tax treatment of dividends, losses and capital gains.

Resident withholding tax on interest (IR 283) March 1993

A guide to RWT for people and institutions which pay interest.

Running a small business? (IR 257) Jan 1994

An introduction to the tax obligations involved in running your own business.

Surcharge deduction tables (IR 184NS) 1994

PAYE deduction tables for employers whose employees are having national super surcharge deducted from their wages.

Tax help for sprouting young businesses (IR 257C)

A promotional pamphlet for Inland Revenue's Small Business Tax Information Service.

Taxpayer Audit (IR 298)

An outline of Inland Revenue's Taxpayer Audit programme. It explains the units that make up this programme, and what type of work each of these units does.

For non-profit groups

Charitable organisations (IR 255) May 1993

Explains what tax exemptions are available to approved charities and donee organisations, and the criteria which an organisation must meet to get an exemption.

Clubs and societies (IR 254) June 1993

Explains the tax obligations which a club, society or other non-profit group must meet.

Education centres (IR 253) June 1994

Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.

Gaming machine duty (IR 680A) February 1992

An explanation of the duty which must be paid by groups which operate gaming machines.

GST for non-profit bodies (GST 605A) September 1992

Tells non-profit groups whether they'll need to register for GST, and on what activities they must account for GST.

For individual taxpayers

Dealing with Inland Revenue (IR 256) April 1993

Introduction to Inland Revenue, written mainly for individual taxpayers. It sets out who to ask for in some common situations, and lists taxpayers' basic rights and obligations when dealing with Inland Revenue.

Estate and gift duties (IR 634) November 1991

An explanation of estate and gift duties, written for individual people rather than solicitors or legal firms. Estate duty has been repealed since this book was written.

Interest earnings and your IRD number (IR 283L) September 1991

Explains the requirement for giving to your IRD number to your bank or anyone else who pays you interest.

International tax guide (IR 275) June 1989

Deals with controlled foreign companies, foreign investment funds, and people who have interests in them.

IR 56 taxpayer handbook (IR 56B) April 1994

A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and Deep Freeze base workers who make their own PAYE payments.

Koha (IR 278) August 1991

A guide to payments in the Maori community - income tax and GST consequences.

New Zealand tax residence (IR 292) April 1994

An explanation of who is a New Zealand resident for tax purposes.

Objection procedures (IR 266) March 1994

Explains how to make a formal objection to a tax assessment, and what further options are available if you disagree with Inland Revenue.

Provisional tax (IR 289) March 1994

People whose end-of-year tax bill is over $2,500 must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.

Putting your tax affairs right (IR 282) May 1994

Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.

Resident withholding tax on investments (IR 279) April 1993

An explanation of RWT for people who receive interest or dividends.

Retiring allowances and redundancy payments (IR 277) June 1994

An explanation of the tax treatment of these types of payments.

Self-employed or an employee? (IR 186) April 1993

Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether s/he must pay ACC premiums.

Special tax codes (IR 23G) January 1994

Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.

Stamp duties (IR 665) June 1992

Explains what duty is payable on transfers of real estate and some other transactions. Written for individual people rather than solicitors and legal firms.

Student Loans and Inland Revenue (SL 1)

A guide to your tax obligations if you've taken out a Student Loan.

Student Loan repayments - everything you need to know (SL 2) January 1994

A more in-depth guide to making student loan repayments.

Superannuitants and surcharge (IR 259) January 1994

A guide to the surcharge for national superannuitants who also have other income.

Tax facts for income-tested beneficiaries (IR 40C) September 1992

Vital information for anyone who receives an income-tested benefit and also has some other income.

Problem Resolution Service (IR 287) November 1993

An introduction to Inland Revenue's Problem Resolution Service. You can use this service if you've already used Inland Revenue's usual services to sort out a problem, without success.

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Child Support booklets

Child Support - a guide for bankers (CS 66) August 1992
An explanation of the obligations that banks may have to deal with for Child Support.

Child Support - a guide for tax practitioners (CS 4) March 1992
A summary (mainly for accountants) of how Child Support works, and the rates for calculating payments.

Child Support - a parent's guide (CS 1) March 1992
An in-depth explanation of Child Support, both for custodial parents and parents who don't have custody of their children.

Child Support - an introduction (CS 3) March 1992
A brief introduction to Child Support.

Child Support - does it affect you? (CS 50)
A brief introduction to Child Support in Maori, Cook Island Maori, Samoan, Tongan and Chinese.

Child Support - how to approach the Family Court (CS 51) June 1992
Explains what steps people need to take if they want to go to the Family Court about their Child Support.

Child Support - the basics - a guide for students
A basic explanation of how Child Support works, written for mainly for students.

Due dates reminder

August

5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1994 due.

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with April balance dates.
Second 1995 instalment due for taxpayers with December balance dates.
Third 1994 instalment due for taxpayers with August balance dates.
(We will accept payments received on Monday 8 August as on time.)

Non-IR 5 taxpayers: annual income tax returns due for taxpayers with April balance dates (SL 9 to be attached for Student Loan borrowers).

20 Large employers: PAYE deductions and deduction schedules for period ended 15 August 1994 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 July 1994 due.

Gaming machine duty return and payment for month ended 31 July 1994 due.

RWT on interest deducted during July 1994 due for monthly payers.

RWT on dividends deducted during July 1994 due.

Non-resident withholding tax (or approved issuer levy) deducted during July 1994 due.

(We will accept payments received on Monday 22 August as on time for 20 August.)

31 GST return and payment for period ended 31 July 1994 due.

September

5 Large employers: PAYE deductions and deduction schedules for period ended 31 August 1994 due.

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with May balance dates.
Second 1995 instalment due for taxpayers with January balance dates.
Third 1994 instalment due for taxpayers with September balance dates.

1994 end-of-year payments of income tax, Student Loans and ACC premiums due for taxpayers with October balance dates.

Non-IR 5 taxpayers: annual income tax returns due for taxpayers with May balance dates (SL 9 to be attached for Student Loan borrowers).

QCET payment due for companies with October balance dates with elections effective from the 1995 income year.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 September 1994 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 August 1994 due.

Gaming machine duty return and payment for month ended 31 August 1994 due.

RWT on interest deducted during August 1994 due for monthly payers.

RWT on dividends deducted during August 1994 due.

Non-resident withholding tax (or approved issuer levy) deducted during August 1994 due.

30 GST return and payment for period ended 31 August 1994 due.

Non-resident Student Loan repayments: second instalment of 1995 non-resident assessment due.

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Legal decisions - case notes (pages 13-21)