

Binding rulings

This section of the TIB contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates tax liability based on it.

For full details of how binding rulings work, see our information booklet "Binding Rulings" (IR 115G) or the article on page 1 of TIB Volume Six, No.12 (May 1995) or Volume Seven, No.2 (August 1995). You can order these publications free of charge from any Inland Revenue office.

Rent deemed to be payable - deductibility

Public Ruling BR Pub 97/13

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Laws

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

This Ruling applies in respect of sections BD 2 and GD 10.

The Arrangement to which this Ruling applies

The Arrangement is a "lease" of property at less than an "adequate rent" where the property is used by the lessee in the derivation of gross income or exempt income as provided for under section GD 10. This applies when the property is owned by any person, persons, or partnership and is leased:

- to a "relative" of any of those persons or of any member of the partnership; or
- to a "related company"; or
- by a company to a person.

For the purposes of this Ruling the terms "lease", "adequate rent", and "related company" have the meanings attributed to them by section GD 10(4), and "relative" has the meaning attributed to it by section OB 1.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Rent deemed under section GD 10 to be payable by the lessee to the lessor is expenditure incurred by the lessee under section BD 2(1)(b).

The period for which this Ruling applies

This Ruling will apply to leases entered into within the period 1 February 1998 to 31 January 2001.

This Ruling is signed by me on the 12th day of December 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/13

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 97/13 (“the Ruling”).

Background

Section GD 10 notionally increases the amount of rent received for a property by a property owner (lessor) from a relative of the lessor, or from a related company, when the rent is less than the market rate, and to the extent that the property is used by the relative or company for derivation of gross or exempt income. The section permits the Commissioner to determine an “adequate rent”: which amount is deemed by the section to be payable under the lease. The “adequate rent” is deemed to be gross income derived by the lessor.

Section GD 10 is directed against tax avoidance. It controls income shifting normally available in a family setting, but is not limited to that setting. Progressive tax scales give advantages to the family group to spread income, resulting in a reduction in the rate of tax. The section limits this opportunity when related parties lease income-producing property. The effect of deeming income to be derived, based on a rent that should have been paid rather than what was paid, unwinds any advantage sought.

There has been some doubt as to whether rent deemed to be payable under section GD 10 is an allowable deduction for the lessee under section BD 2. The Ruling concludes that rent deemed to be payable is expenditure incurred by the lessee under section BD 2(1)(b). It is therefore an allowable deduction if the exclusions in section BD 2(2) do not apply (excluded is expenditure to the extent that it is of a private or capital nature, incurred in deriving exempt income, and so on).

Legislation

Section BD 2(1) states:

An amount is an allowable deduction of a taxpayer

- (a) ...
- (b) to the extent that it is an expenditure or loss
 - (i) incurred by the taxpayer in deriving the taxpayer’s gross income, or
 - (ii) necessarily incurred by the taxpayer in the course of carrying on a business for the purpose of deriving the taxpayer’s gross income,

Section GD 10 states:

- (1) Where any property owned by any person or by 2 or more persons (whether jointly or in common) or by any partnership is leased to a relative of any of those persons or of any member of the partnership or to a related company or by a

company to any person and the rent is less than an adequate rent for that property or the lease makes no provision for the payment of rent, -

- (a) There shall be deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent shall be deemed to be payable by the lessee to the lessor on the days provided in the lease for payment of the rent, or, if no rent is payable under the lease, on such days as the Commissioner determines, and shall be deemed to be gross income derived by the lessor on the days on which the rent is deemed to be payable under this paragraph; and
- (b) The rent deemed to be payable under paragraph (a) shall be deemed to accrue from day to day during the period in respect of which it is payable, and shall be apportioned accordingly.

(2) This section shall apply with respect to any leased property only if and to the extent that it is used by the lessee in the derivation of gross income or exempt income.

(3) This section shall apply whether the lease was granted before or after the commencement of the income year.

(4) In this section-

“Adequate rent”, in relation to any property, means the amount of rent that the Commissioner determines to be adequate for that property during the period in respect of which the determination is made:

“Lease” means a tenancy of any duration, whether in writing or otherwise; and includes a sublease; and also includes a bailment; and “lessor” and “lessee” have corresponding meanings:

“Related company” means a company that is under the control of the lessor or any relative or relatives of the lessor or any one or more of them, or, where there are several lessors or the lessor is a partnership, under the control of any of the lessors or partners or any relative or relatives of any of the lessors or partners:

“Rent” includes any premium or other consideration for the lease.

Section OB 1 defines “relative” as:

“Relative” –

- (a) ...in relation to any person, means any other person connected with the first-mentioned person by blood relationship, marriage, or adoption; and includes a trustee of a trust under which a relative has benefited or is eligible to benefit; and for the purposes of this paragraph –
 - (i) Persons are connected by blood relationship if within the fourth degree of relationship:
 - (ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other:
 - (iii) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other....

Application of the legislation

How section GD 10 operates

Section GD 10 operates in defined circumstances following a determination by the Commissioner. In order for section GD 10 to apply, there must be:

- The leasing of property;
- By a person (the lessor) to a relative or related company (the lessee);
- When either the stipulated rent is less than adequate or the lease is silent on the payment of rent; and
- The lessee uses the property in the derivation of gross income or exempt income.

The section can apply to transactions between a lessor or lessors and family members, related companies, and among partnerships.

What leased property is covered?

“Property” is not defined for the purposes of section GD 10, but must be intended to include both real property (land and buildings) and personal property (property other than land and buildings). The definition of “lease” supports this interpretation.

“Lease” is defined in section GD 10(4) as a tenancy of any duration, or a bailment. “Tenancy” and “bailment” are not defined. The use of the word “bailment” (essentially the physical transfer of goods) is significant. Only personal property, not real property, is capable of bailment. Therefore, the word “property” must be intended to include personal property. The word “tenancy” can apply to both real and personal property.

The words chosen by Parliament in section GD 10 show that the section is intended to cover personal property in addition to real property.

Who is a relative?

A relative of the lessor is a person connected by “blood relationship”, marriage, or adoption. Blood relationship means a relationship within the fourth degree, which is ascertained by counting the relationship steps between the two people. For example, A and B are first cousins, so they are within the fourth degree of relationship, as follows:

A – A’s parent (1) – Grandparent (2) – B’s parent (3) – B (4)

Any person who marries another person within the fourth degree of relationship automatically assumes the same relationship. For example, anyone marrying B is within the fourth degree of relationship to A.

Children adopted by a person within the third degree of relationship are also relatives.

The deeming effect of section GD 10

If the section applies to a transaction, section GD 10(1)(a) deems:

- An adequate rent to be payable under the lease;

- Rent to be payable by the lessee to the lessor on the days provided in the lease for rent payment, or, if no rent is payable under the lease, on such days as the Commissioner determines; and
- Rent to be gross income of the lessor derived on the days on which it is deemed to be payable.

“Deemed” means adding to the normal meaning of words

If the Commissioner determines an adequate rent, effectively the amount of rent payable is artificially increased by the deeming effect of section GD 10 to reflect the Commissioner’s determination. In a Canadian decision, *R v Vermette* [1978] 2 SCR 838 at page 845, the Court gave a useful description of the legal effect of a deeming provision. It said:

A deeming provision is a statutory fiction; as a rule it implicitly admits that a thing is not what it is deemed to be but decrees that for some particular purpose it shall be taken as if it were that thing although it is not or there is doubt as to whether it is. A deeming provision artificially imports into a word or expression an additional meaning which they would not otherwise convey beside the normal meaning which they retain where they are used; it plays a function of enlargement analogous to the word “includes” in certain definitions; however, “includes” would be logically inappropriate and would sound unreal because of the fictional aspect of the provision.

The section applies to a lessee

Although the section deems the rent determined by the Commissioner to be gross income of the lessor, it does not expressly state that the deemed rent is deductible by the lessee. The absence of a specified mirror treatment for the lessee could arguably support an interpretation of the section based on the proposition that it does not apply to a lessee. The Commissioner does not adopt this interpretation because:

1. An adequate rent is deemed by the section to be payable. Logically this must mean payable by the lessee, and the section says so in the words, “and that rent shall be deemed to be payable by the lessee to the lessor on the days....”
2. The lessee’s use of the leased property for derivation of income is pivotal to the operation of the section.
3. Subsection (2) is directly concerned with the use of leased property by the lessee.
4. Section GD 10 was originally introduced as section 17 of the Land and Income Tax Amendment Act 1951. Introductory Notes supplied to the Minister on introduction of the Bill said:

This clause is designed to cover the position where a taxpayer owning an income producing property, enters into a lease under which a relative becomes entitled to the full rent or income from the property, and is required to pay to the lessor only a nominal or peppercorn rental.

...The provisions of the clause will not be applied to bona fide leases of property, even though the lessee is a relative, and will be operated by the Commissioner only where it is evident that the lease has the effect of transferring income from the taxpayer to a relative.

continued on page 4

from page 3

Thus the purpose of the provision was to prevent reduction of tax paid through transfers of income. This purpose is not inconsistent with the mirror treatment of the lessee mentioned above.

These provisions support the conclusion that section GD 10 is intended to apply to both parties to a transaction.

Deeming not limited to section GD 10

Section GD 10 has no qualification such as, "For the purposes of this section...", and therefore may have a wider application. Section GD 10 is not an independent charging provision, and must be read in conjunction with other relevant parts of the Act. For example, rent is included in gross income by section CE 1(1)(e). The deemed rent is therefore relevant for other purposes of the Act such as for section BD 2(1).

Section BD 2: "incurred" requires a legal obligation to pay

An amount is an allowable deduction under section BD 2 only if it is "incurred" by the taxpayer. Opinion has differed on whether rent deemed payable by the lessee under section GD 10, but not actually paid, is expenditure incurred.

The meaning of incurred was considered by the Privy Council in *CIR v Mitsubishi Motors New Zealand Limited* (1995) 17 NZTC 12,351, where it was said that expenditure must have either been paid or the taxpayer definitively committed to pay it. The taxpayer is definitively committed when a legal obligation to make a payment in the future can be said to have accrued.

Deemed "payable" means there is a deemed legal obligation to pay for the purposes of the Income Tax Act 1994

The question is whether rent deemed by section GD 10 to be "payable" under the lease for the purposes of the Income Tax Act 1994 is to be treated by that Act as if a legal obligation has been created so as to be "incurred" under section BD 2. The Commissioner considers that it does.

For example, in *Re Howell's Application* [1972] Ch. 509, the phrase "Payable by way of rent" was said to mean "rent the tenant is under an enforceable obligation to pay...". New Zealand courts have taken the same view. In *AM Bisley & Co Ltd v C of IR* (1985) 7 NZTC 5,082 at page 5,096, Henry J said:

...that the expenditure is not payable until some future date does not of itself destroy its nature as an existing obligation.

Under section GD 10(1)(a), the adequate rent is deemed to be payable on the days provided in the lease for payment, or on such days as the Commissioner determines. This means that the Act operates as if there was an obligation to pay the rent.

The obligation in *Bisley* was an existing legal obligation to make expenditure that became payable on a future date. Thus, there are two types of expenditure that qualify as "incurred": existing legal obligations payable now, and those that will become payable in the future. For expenditure either to be payable or to become

payable, there must be an existing obligation to pay either now or later. Rent deemed to be payable falls within the first category, and is clearly "incurred".

The nexus between expenditure and income is not affected by deeming

If the leased property is used in the derivation of gross income, any rental paid by the lessee, including a less than adequate rent, is deductible (unless specifically excluded by section BD 2(2)). The required statutory nexus establishing deductibility would be present between the expenditure and the income. A determination by the Commissioner does not alter the quality of that expenditure, but alters merely the amount (quantum).

Conclusion

Rent deemed to be payable under section GD 10 is expenditure incurred by the lessee under section BD 2(1)(b).

Examples

Example 1

A leases a flat to her daughter B for \$10 per week. B then rents it to tenants for \$400 per week. A has other income of \$50,000 and is on a marginal tax rate of 33c in the dollar. B has no other income and pays 21.5c in the dollar. As B's tax bracket is lower than A's, there is a tax saving for the family (about \$2,332) compared to the situation if A rented the flat to the tenants directly.

The Commissioner may determine that an adequate rent is higher than \$10 per week; probably \$400. Section GD 10 will apply to deem the determined rent to be the rent payable by B to A. The adequate rent is deemed to be gross income derived by A. The rent deemed payable is expenditure incurred by B, as there is in effect deemed to be a legal obligation to pay.

Example 2

Company C leases a property to X, a charitable body, at an inadequate rental. X uses the property in the derivation of exempt income.

A "person" includes a company and an unincorporated body of persons (section OB 1). This includes X. Section GD 10(1) applies to a lease of property "by a company to a person" at an inadequate rent. Under subsection (2), the section applies to the extent that the property is used by the lessee in the derivation of gross income or exempt income. An adequate rent determined by the Commissioner is therefore deemed payable. Although a deduction is allowed under section BD 2(1), this is denied by section BD 2(2) as the expenditure is incurred in the derivation of exempt income. In this case, C derives gross income in the amount of the adequate rent, but X is unable to claim a matching deduction.

Interpretation statements

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.

Property previously used other than for income/business in NZ Application for special depreciation rate, meaning of "estimated useful life"

Summary

Section EG 10 allows the Commissioner to issue special depreciation rates. When determining whether or not to allow a special depreciation rate and the rate (if any) at which such a rate is to be set, section EG 10(2) requires the Commissioner to have regard to the formula set out in section EG 4(3) and the rate of depreciation (if any) adopted by the taxpayer in respect of the property for financial reporting purposes. The formula contained in section EG 4(3) refers to the "estimated useful life" (EUL) of the depreciable property.

When an asset has been used in New Zealand for deriving income or carrying on business ever since it was new, it does not matter that it may have been owned by more than one taxpayer. The EUL of depreciable property is the total period that the property could be useful for deriving income or carrying on a business in New Zealand.

This Interpretation Statement deals with the question of how the definition of "estimated useful life" is applied in setting a special depreciation rate when a taxpayer has depreciable property which was previously used for a purpose other than deriving gross income or carrying on a business in New Zealand. Examples of situations where this will occur are:

- The property was previously used outside New Zealand otherwise than for deriving gross income or carrying on a business in New Zealand (e.g., second-hand imported assets).
- The property was previously used for private purposes in New Zealand and so has not been used in deriving gross income or carrying on a business in New Zealand.

For the purposes of determining the EUL of property, the words "in New Zealand" in the definition of "estimated useful life" mean the property's EUL in New Zealand conditions (i.e. physical conditions and legal and regulatory conditions). The test applied is the total period for which the asset could be used in New Zealand and not the period for which it is actually used in this

country for business or income earning purposes. The EUL of such an asset is not reduced by the period in which it is not used for deriving gross income or carrying on business in New Zealand.

Background

The purpose of section EG 10 is to enable a taxpayer to apply for a rate of depreciation in respect of a particular asset owned by the taxpayer which is different to the general rate which has been established by the Commissioner under section EG 4 for assets of that type, or to apply for a provisional rate if no general rate applies. A taxpayer may choose to apply for a different rate of depreciation to the general rate if special circumstances apply to the particular asset which mean that the asset depreciates at a different rate to the rate at which assets of that type normally depreciate. In these circumstances the general rate may be inappropriate, and so a special rate can be applied.

Legislation

Section EG 1(1) states:

Subject to this Act, a taxpayer is allowed a deduction in an income year for an amount on account of depreciation for any depreciable property owned by that taxpayer at any time during that income year.

Section EG 2 sets out the alternative formulae for calculating the depreciation deduction under section EG 1. One of the components of these formulae is the applicable annual depreciation rate. The applicable annual depreciation rate is determined under sections EG 5 – EG 9, depending on the type of depreciable property in question. In determining the applicable annual depreciation rate under sections EG 5 - EG 9, the property's basic economic depreciation rate is relevant.

Under section EG 4(1), the Commissioner must specify the basic economic depreciation rate for any depreciable property, other than fixed life intangible property or excluded depreciable property, by determination made under section EG 4. Under section EG 4(3), in setting a

continued on page 6

from page 5

diminishing value economic rate under section EG 4, the Commissioner shall have regard to the following formula:

$$1 - \left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}}$$

Section EG 4(3) defines “residual value” as the greater of:

- (a) Estimated residual market value; and
- (b) 13.5% of cost.

Section OB 1 defines “estimated residual market value” as meaning, in respect of any depreciable property:

... its market value at the end of its estimated useful life, estimated reasonably as at the date of acquisition and based upon an assumption of normal and reasonable maintenance of that property over its estimated useful life:

Section OB 1 defines “estimated useful life” as meaning, in respect of any depreciable property:

... the period over which such property might reasonably be expected to be useful in deriving gross income or carrying on a business in New Zealand, having regard to such factors as likely wear and tear, the passage of time, exhaustion, and obsolescence and based upon an assumption of normal and reasonable maintenance:

Section EG 10(1) provides for the setting of special depreciation rates. It states:

The Commissioner may, upon application in writing from a taxpayer in respect of any depreciable property other than fixed life intangible property or excluded depreciable property, allow that taxpayer to apply in respect of that property, for such income year or years as the Commissioner may specify -

- (a) A special base economic depreciation rate higher or lower than that specified in a determination under section EG 4; or
- (b) A provisional basic economic depreciation rate, where no applicable economic rate is specified in a determination under section EG 4.

Section EG 10(2) states:

When determining whether or not to allow a special economic rate or a provisional economic rate under subsection (1), and the rate (if any) at which such a rate is to be set, the Commissioner shall have regard to -

- (a) The formula set out in section EG 4(3); and
- (b) The rate of depreciation (if any) adopted by the taxpayer in respect of the depreciable property for financial reporting purposes.

Application of the legislation

Section EG 10(2) requires the Commissioner to have regard to both the formula set out in section EG 4(3) and the rate of depreciation adopted by the taxpayer in respect of the depreciable property for financial reporting purposes, when determining whether or not to allow a special depreciation rate and what that rate (if any)

should be. In the Commissioner’s view the primary focus of this provision is to reconsider the formula and set a depreciation rate having regard to the use of the particular asset. The rate used for financial reporting purposes is included in the legislation so that the Commissioner may compare the impact of relevant factors upon the asset’s EUL proposed in the application with the effect assigned to these factors for financial reporting purposes.

The formula in section EG 4(3) is the diminishing value formula that is also used for calculating the general depreciation rates. The variables in this formula are: cost, residual value, and EUL.

A key variable is the “estimated useful life”, as defined in section OB 1. Essentially, the definition refers to “the period that property might reasonably be expected to be useful in deriving gross income or carrying on a business in New Zealand”. In the context of setting a general depreciation rate under section EG 4, “that property” in the definition of “estimated useful life” is the class of property for which the general rate is being set. In setting a special depreciation rate the focus is on a particular item of property, and “that property” (when the definition of “estimated useful life” is considered in that context) is the particular asset or group of assets for which the special rate is being set.

The question to be answered is how long the property might reasonably be expected to be useful in deriving gross income or carrying on business in New Zealand. This test focuses on the use of the asset, not the use of the asset by a particular taxpayer. If an asset has been used in New Zealand since new in deriving income or carrying on a business it does not matter that it has been owned by more than one taxpayer. The EUL test is a test of how long the asset could have been expected to be useful in New Zealand.

However, the question arises as to the situation when an asset that has not previously been used for deriving gross income or carrying on business in New Zealand is subsequently used by a taxpayer for those purposes. This Interpretation Statement deals with how the definition of “estimated useful life” is applied in setting a special depreciation rate for property in that context.

There are two possible approaches as to how the definition of “estimated useful life” applies when a taxpayer applies for a special depreciation rate in respect of property which was previously not used for deriving gross income or carrying on a business in New Zealand.

A. The Total Life approach

The first is that the definition of “estimated useful life” focuses on the potential usefulness of the asset to any business in New Zealand and only takes into account the effect of factors that cause the asset to depreciate as set out in the definition of that term (i.e. wear and tear, the passage of time, exhaustion, and obsolescence). When determining the EUL of a particular asset using this approach it is irrelevant that the asset has previously

been used for purposes other than deriving gross income or carrying on a business in New Zealand. This means that the EUL of a particular asset is *not reduced* by the time the asset was not used in producing gross income or carrying on a business in New Zealand. The EUL of the asset applied in setting a special depreciation rate for the asset is *the total life* of that asset, *not the remaining life* to that taxpayer.

B. The Remaining Life approach

The second approach determines the EUL by assessing the period a particular asset will actually be used to produce income or carry on a business in New Zealand. When determining the EUL, this approach takes into account the factors that may cause the asset to depreciate as set out in the definition of that term, and also takes into account the period that the asset is used for purposes other than deriving gross income or carrying on a business for the purposes of deriving gross income in New Zealand. This means that the EUL of the particular asset *is reduced* by the time that the asset is not used in producing gross income or carrying on a business in New Zealand.

The wording of the definition of “estimated useful life” is capable of supporting both the first and second approaches. The first approach interprets the words “the period over which such property *might* reasonably *be expected to be useful* in deriving gross income or carrying on a business *in New Zealand*” broadly, as meaning the period over which there is a possibility that the asset theoretically *could* be useful for producing income or for a business in New Zealand. Under this interpretation the EUL of an asset will generally begin at the start of the asset’s actual life, and it does not matter whether the asset actually is used for deriving income or carrying on a business in New Zealand for all of the asset’s actual life. This is because the asset could potentially be useful for these purposes in New Zealand for all of its actual life.

The second approach interprets the words “might reasonably be expected to be useful” narrowly, as meaning the period an asset *is used or is physically available for use* for deriving income or carrying on a business in New Zealand. Under this interpretation the EUL is taken from the time that the asset is first used for these purposes in New Zealand, and does not include any time that it is used for other purposes (e.g. private use in New Zealand, or for producing income or carrying on a business overseas).

While it is acknowledged that the legislative wording could be more certain, the Commissioner’s view is that the first approach – the Total Life approach - is correct. When a taxpayer applies for a special depreciation rate, the EUL for the particular asset will only be reduced by “such factors as likely wear and tear, the passage of time, exhaustion, and obsolescence and based on the assumption of normal and reasonable maintenance”. The fact that the asset was previously used for a purpose other than deriving income or carrying on a business in New Zealand will not reduce its EUL.

Reasons for adopting this interpretation

There are a number of reasons for adopting this interpretation of “estimated useful life”.

- As previously noted, in relation to secondhand assets generally, the definition of “estimated useful life” is specific to assets or classes of assets, rather than being taxpayer specific. It focuses on the EUL of an asset, or asset class, and does not relate to a particular taxpayer. It is the total potential life of the particular asset to the New Zealand economy that is important, and not the life to a particular taxpayer. The Total Life approach is consistent with the EUL being specific to the life of an asset or class of assets. The Remaining Life approach is not, and focuses on the life of an asset to a particular taxpayer.
- The definition of “estimated useful life” does not require the EUL to be measured at the time the asset is acquired by the owner. This can be compared to the definition of “estimated residual market value”, which requires the estimated residual market value of property to be measured as at the date of acquisition. The absence of such wording in the definition of “estimated useful life” confirms that that definition refers to the total life of the particular asset, and not to the asset’s remaining useful life.
- The Remaining Life approach adopts what is, in effect, a “remaining estimated useful life” test. However, the definition of “estimated useful life” makes no reference to “remaining” life. This can be compared to the definition of “fixed life intangible property” in the depreciation regime which contains the phrase “the property’s remaining estimated useful life”. This strongly suggest that the definition of “estimated useful life” refers to property’s *total* estimated useful life. If this were not the case, the word “remaining” would not have been necessary before the reference to EUL in the definition of “fixed life intangible property”.
- The purpose behind allowing taxpayers to apply for and be issued with special depreciation rates was to enable taxpayers to apply more accurate rates in respect of certain property. The special rates were to be allowed when specific or unusual conditions affected the property in question. There is no indication in the legislation that the term “estimated useful life” should have one meaning for setting general rates (i.e., total life) and another for setting special rates (i.e., remaining life). If Parliament intended this, it would have expressly provided for it.
- Under the Remaining Life approach to the application of the term “estimated useful life”, the term only applies to the period that an asset will actually be used in deriving gross income or carrying on a business in New Zealand. If the overseas or private use part of a particular asset’s life can be disregarded in determining the asset’s EUL, there will be different estimated useful lives within a class of assets for those assets which have been overseas or in private use and those

continued on page 8

from page 7

which have not. Further, assets which have been overseas or in private use for different lengths of time will also have different estimated lives.

This can be demonstrated by the following example. An asset with a total expected useful life of 20 years is held overseas for 10 years by a non-New Zealand resident taxpayer, and is then sold to a New Zealand resident taxpayer. Under the second approach, the EUL of the asset is reduced by the time that the asset spends in non-New Zealand income producing or business use. The New Zealand taxpayer could apply to the Commissioner for a special depreciation rate based on the asset's remaining useful life of 10 years. Varying the example, if the asset is instead held by the overseas taxpayer for 15 years, the Commissioner could grant the New Zealand taxpayer a special depreciation rate based on the asset's remaining 5 years of EUL to the New Zealand taxpayer. This would result in assets of the same class ending up with widely varying depreciation rates, depending on the remaining number of useful years to the owner (in the example, the EUL of the asset would be either 20 years, 10 years, or 5 years, depending on when it was purchased by a New Zealand taxpayer). The Commissioner does not consider that the depreciation regime was intended to operate in this way.

- The basic economic depreciation rate for any class of depreciable assets is based on a formula in which one of the components is the EUL of assets in that class. If assets which belong to a particular class have different estimated useful lives depending on whether and how long they have spent overseas or in private use, it will be impossible to set a general basic economic depreciation rate for that class of assets. This is plainly not what was intended. Instead, assets of a particular type should generally all have the same EUL (regardless of time spent outside New Zealand or in private use) and have the same applicable economic depreciation rate, unless special circumstances apply to a particular asset.
- Another implication of the Remaining Life approach is that it would result in more favourable depreciation rates applying to imported secondhand assets than would apply to New Zealand secondhand assets (other than those which had been in private use). This would occur because an imported asset's total useful life would be reduced by the time that it was not used in deriving income or carrying on a business in New Zealand, while a New Zealand asset's EUL would be the total useful life of that asset. This would appear to provide an unintended incentive for taxpayers to import secondhand assets, rather than purchase the equivalent secondhand New Zealand asset. Such an incentive is contrary to the proposition that the tax system should have a neutral effect on business investment decisions unless the legislation is clearly intended to be concessionary or provide an incentive.
- The Total Life approach is also consistent with the final recommendation of the Consultative Committee

on the Taxation of Income from Capital ("the Valabh Committee"). The final recommendations of the Valabh Committee on depreciation were contained in their letter to Government of 14 November 1991. This letter refers to the definition of "estimated useful life" and states:

The definition reflects our view that the useful life on an asset for depreciation purposes is not the life for which an asset could technically be used, but the life for which it is or will be useful in the income earning process. It is necessary to identify relevant objective criteria for determining useful life such as physical deterioration, technical obsolescence, obsolescence due to market factors and the average length of time for which an asset is held for income-earning or business purposes.

However it is necessary to note that it is the useful life of the asset which is the important criteria for determining depreciation rates, not necessarily the length of time for which it will be used by any particular taxpayer. This means that where an asset will be disposed of to another taxpayer for use by that taxpayer, the useful life of the asset needs to be calculated having regard to the entire period for which the asset will be used, not just the period for which the asset is first used by the taxpayer.

The Valabh Committee stated that the "estimated useful life" of an asset for depreciation purposes is the life for which it *is or will be useful*. The definition of "estimated useful life" reflects this by saying "might be expected to be useful". The Valabh Committee did not contemplate that the definition would only apply to the period during which the asset was actually being used in New Zealand.

Conclusion

The EUL of property is the total period that the property theoretically could be used for deriving gross income or carrying on a business in New Zealand. Generally, this period begins when the asset is new (there may be exceptional cases when the estimated useful life of an asset does not begin when the asset is new, e.g. when it would not make commercial sense for any New Zealand business to purchase a particular type of asset new, but the purchase of the same asset secondhand at a later stage when the cost is lower is a sensible investment decision). What is relevant in determining the end of the EUL is whether any New Zealand business would choose to retain the asset for use in deriving gross income or carrying on that business.

Examples

Example 1

Company A imports a secondhand machine into New Zealand. The machine is 15 years old, and is expected to be useful in New Zealand for a further 4 years. It will then cease to comply with New Zealand safety standards, and so will be scrapped or sold offshore. No unusual factors will cause it to deteriorate faster than normal.

Taking the Total Life approach, the EUL of the machine is 19 years – being the total number of years that the machine could potentially be expected to be useful for deriving income or carrying on a business in New Zealand. The machine could potentially have been used for deriving income or carrying on a business in New Zealand during its entire life, even though it was actually outside New Zealand for its first 15 years.

Taking the Remaining Life approach, the EUL of the machine is 4 years – being the number of years the machine will actually be used for deriving income or carrying on a business in New Zealand.

The first approach is correct. The machine has an EUL of 19 years.

Example 2

Company B purchases a secondhand asset in New Zealand. The asset was previously used privately for 5 years, and will be used by Company B for another 3 years before it is scrapped. The asset would normally last for another 5 years, but the way that the company uses it will cause it to deteriorate within 3 years of acquisition.

The EUL of the asset is 8 years. This includes the 5 years that the asset was used privately as it might reasonably have been expected to be useful in a business in New Zealand during this period. The 8-year EUL also takes into account the abnormal use by Company B of the asset which causes it to lose value faster than normal (normally that type of asset would have an EUL of 10 years).

Example 3

Taxpayer A acquires a new depreciable asset for \$500,000. The asset has a 20-year EUL, and is expected to have a nil estimated residual market value. The asset’s basic economic depreciation rate, using the diminishing value method, is 9.5%, calculated as follows:

$$1 - \left(\left(\frac{13.5\% \text{ of cost}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right)$$

$$= 1 - \left(\left(\frac{67,500}{500,000} \right)^{\frac{1}{20}} \right)$$

$$= 9.5\%$$

If Taxpayer A retains the asset for 10 years, the asset’s adjusted tax value at that time will be \$203,163. The depreciation deduction available in that year will be \$19,300. The depreciation deductions for the 11th, 12th, and 13th years of ownership are as follows:

	Adjusted tax value	Depreciation deduction
Year 11	\$183,863	\$17,467
Year 12	\$166,396	\$15,808
Year 13	\$150,588	\$14,305

Taxpayer B acquires an asset which belongs to the same class as the asset owned by Taxpayer A. The asset is 10 years old and has not been used for the purposes of deriving income or carrying on a business in New Zealand during that time. Taxpayer B purchases the asset for \$200,000.

There is no difference between the asset purchased by Taxpayer B and other assets of the same class in terms of the industry or the physical environment in which the asset has operated or will operate, or in terms of the way or amount the asset has been or will be used.

The formula for calculating the depreciation deduction in respect of Taxpayer B’s asset is set out in section EG 2 of the Act and is:

$$a \times b \times \frac{c}{12}$$

In this formula:

- a is the annual depreciation rate applicable to the property and the depreciation method
- b is the adjusted tax value of the property at the end of the income year before the depreciation deduction is taken
- c is the number of whole or part calendar months in the income year that the property is owned by the taxpayer.

The formula will give rise to different results depending on which of the two approaches discussed in this statement is applied. Under the Total Life approach, the annual depreciation rate is the basic economic depreciation rate for that type of asset (in this case 9.5%). Under the Remaining Life approach, Taxpayer B can be issued with a special depreciation rate based on the remaining EUL of the property. A special depreciation rate based on the remaining EUL (10 years) of the property would be:

$$1 - \left(\left(\frac{13.5\% \text{ of cost}}{\text{cost}} \right)^{\frac{1}{\text{remaining estimated useful life}}} \right)$$

$$= 1 - \left(\left(\frac{27,000}{200,000} \right)^{\frac{1}{10}} \right)$$

$$= 18\%$$

Using the special depreciation rate of 18% (and assuming the asset is owned for the entire income

continued on page 10

from page 9

year), the depreciation deduction for the 10-year old asset in its first year of ownership by Taxpayer B will be:

$$\text{special dep'n rate} \times \text{adjusted tax value of asset (in this case the cost price)}$$

$$= 18\% \times 200,000 = \$36,000.$$

Using this special depreciation rate, the depreciation deductions in the asset's 11th, 12th, and 13th years (Taxpayer B's 2nd, 3rd, and 4th years of ownership) will be:

	Adjusted tax value	Depreciation deduction
Year 10	\$200,000	\$36,000
Year 11	\$164,000	\$29,520
Year 12	\$134,480	\$24,206
Year 13	\$110,274	\$19,849

Comparing the depreciation of Taxpayer A and Taxpayer B's identical assets, it can be seen that if the depreciation rate is based on the *remaining* EUL of the asset (i.e. where approach 2 is used), the asset depreciates at a much faster rate than it normally would.

If, instead, the EUL of the secondhand asset is the *total* EUL of that asset, so the depreciation rate of the asset is not adjusted, the depreciation deduction

for the 10-year old asset in its first year of ownership by Taxpayer B will be:

$$\text{annual dep'n rate} \times \text{adjusted tax value of asset (in this case the cost price)}$$

$$= 9.5\% \times 200,000 = \$19,000.$$

Using the standard 9.5% depreciation rate, the depreciation deductions in the asset's 11th, 12th, and 13th years (Taxpayer B's 2nd, 3rd, and 4th years of ownership) will be:

	Adjusted tax value	Depreciation deduction
Year 10	\$200,000	\$19,000
Year 11	\$181,000	\$17,195
Year 12	\$163,805	\$15,561
Year 13	\$148,244	\$14,083

It is clear that the depreciation deductions which result from using the basic economic depreciation rate are very similar to those which would apply had Taxpayer B owned the asset for its entire life. Given that there are no special circumstances affecting the asset to make it depreciate at a faster rate than other assets of the same class, there does not appear to be any reason for Taxpayer B to apply a higher depreciation rate, calculated using the *remaining* EUL of the asset, than the basic economic depreciation rate pertaining to the asset.

Legislation and determinations

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

Student loan scheme – interest rates and repayment threshold for 1998-99

On 4 December 1997 the Ministers of Revenue and Education announced the interest rates and the repayment threshold for the student loan scheme for the year commencing 1 April 1998.

The total interest rate will be 8.0 percent. This is made up of the base interest rate of 6.2 percent and the interest adjustment rate of 1.8 percent.

The repayment threshold for the 1998/99 income year will be \$14,716.

Depreciation determinations issued since last update of IR 260 Depreciation booklet

This list shows the contents of all depreciation determinations we've issued since the last update of our Depreciation booklet (IR 260). We've published it so you can quickly check whether you need to review any determinations when calculating depreciation for tax purposes.

Some determinations cover a large number of assets which will concern relatively few taxpayers. For these determinations we've simply listed a cross-reference to the original TIB article rather than reproduce several pages of figures here.

This list is essentially a summary; if you're claiming depreciation on any of these assets we recommend that you refer to the original TIB article to make sure you get the full context of the determination, including the relevant industry categories.

Asset	Estimated useful life (years)	DV banded depreciation rate (%)	SL equivalent banded dep'n rate (%)	Determination number	Appears in TIB
Aquariums	4	40	30	DEP22	9.2:1
Automotive tools (<i>various – see TIB article</i>)				DEP30	9.11:2
Bakery utensils (incl. pots and pans)	3	50	40	DEP30	9.11:2
Bedding (Hotels, Motels, etc, and medical/lab)	3	50	40	DEP30	9.11:3,4
Bin (wool storage, live bottom)	15.5	12	8	DEP11	7.3:20
Bulkheads (insulated, removable)	4	40	30	DEP13	7.10:26
CCH Electronic NZ Essential Tax Package, designed for a specific tax year	1	100	100	PROV4	7.3:19
CCH Electronic NZ Master Tax Guide, designed for a specific tax year	1	100	100	PROV4	7.3:19
Combing machines (wool)	15.5	12	8	DEP11	7.3:20
Containers (insulated, below 8m ³)	5	33	24	DEP13	7.10:26
Containers (shipping)	20	9.5	6.5	DEP13	7.10:26
Crown Health Enterprise assets (<i>half a page of various assets - see TIB article</i>)					6.5:3
Dance floor	20	9.5	6.5	DEP30	9.11:3
Drilling machines (horizontal directional)	6.66	26	18	DEP24	9.3:3
Drilling machine components, underground (horizontal directional)	2	63.5	63.5	DEP24	9.3:3
Electronic article surveillance systems	5	33	24	DEP26	9.6:3
Engineering tools (<i>various – see TIB article</i>)				DEP30	9.11:2
Fastening guns (explosive)	3	50	40	DEP20	8.10:1
Firearms (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Gas cylinders – LPG (incl. propane and butane)	8	22	15.5	DEP16	8.1:10
Gas cylinders – other	12.5	15	10	DEP16	8.1:10
Gill machines (wool)	20	9.5	6.5	DEP11	7.3:20
Golf ball placing machine and sensor	3	50	40	DEP10	7.3 :18
Golf driving ranges, netting (for golf driving nets)	5	33	24	DEP10	7.3 :18
Golf driving ranges, poles (for golf driving nets)	20	9.5	6.5	DEP10	7.3 :18
Golf mats (stance and base, at golf driving/practice ranges)	2	63.5	63.5	DEP10	7.3 :18
Hand soap dispensers	2	63.5	63.5	DEP7	6.7:16
Ink mixing systems, computerised	3	50	40	DEP27	9.8:2
“Kiwiplus” – kiwifruit packhouse software	1	100	100	PROV6	9.6:8
Lawnmowers (domestic type in use by lawnmowing contractors)	2	63.5	63.5	DEP15	7.13:22
Lawnmowers (non-domestic type in use by lawnmowing contractors)	5	33	24	DEP15	7.13:22
Machine centre, CNC (timber/joinery industry)	8	22	15	DEP28	9.9:1
Marquees (<i>half a page of various assets – see TIB article</i>)				DEP18	8.6:8
Medical and medical laboratory equipment (<i>3 pages of various assets – see TIB article</i>)				DEP8	6.7:17
Mulchers (commercial)	4	40	30	DEP25	9.6:6

Paintball firearms	2	63.5	63.5	DEP20	8.10:1
Pallet covers (insulated)	2	63.5	63.5	DEP13	7.10:26
Paper towel dispensers	2	63.5	63.5	DEP7	6.7:16
Pistols, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Plant trolleys	5	33	24	DEP23	9.3:2
Psychological testing sets	10	18	12.5	PROV2	6.10:6
Rams (hydraulic or pneumatic)	3	33	24	DEP30	9.11:3
Residential rental property chattels (<i>various – see TIB article</i>)				DEP30	9.11:3
Rifles, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Rifles (less than 10,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Rifles (more than 10,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Scaffolding (aluminium)	8	22	15.5	DEP19	8.8:3
Scaffolding (other than aluminium)	15.5	12	8	DEP19	8.8:3
Scientific and laboratory equipment (not medical laboratory equipment) (<i>2 pages of various assets – see TIB article</i>)				DEP8	6.7:17
Shop utensils (incl pots and pans)	3	50	40	DEP30	9.11:3
Shotguns (less than 50,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Shotguns (more than 50,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Skidoo	5	33	24	DEP30	9.11:3
Speed humps (metal)	5	33	24	PROV3	6.13:13
Stage	20	9.5	6.5	DEP30	9.11:3
Static delimiters (timber industry)	5	33	24	DEP9	6.11:16
Tags (security)	3	50	40	DEP21	9.1:1
Toilet roll dispensers	2	63.5	63.5	DEP7	6.7:16
Tomato graders	8	22	15.5	DEP14	7.13:23
Tooling machine, CNC (timber/joinery industry)	8	22	15	DEP28	9.9:1
Trailers (class TD – over 10 tonnes) – when rented for periods of one month or less	10	18	12.5	DEP29	9.11:1
Undersea maintenance equipment (<i>1 page of various assets – see TIB article</i>)				DEP17	8.2:9
Wintering pads (rubber)	6.66	26	18	PROV5	8.2:7
Yachts (international ocean-going)	6	15	10	DEP12	7.10:25
Yachts (other than international ocean-going)	15.5	12	8	DEP12	7.10:25

Booklets available from Inland Revenue

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. To order any of these booklets, call the forms and stationery number listed under "Inland Revenue" in the blue pages at the front of your phone book. This is an automated service, and you'll need to have your IRD number handy when you call.

The TIB is always printed in a multiple of four pages. We will include an update of this list at the back of the TIB whenever we have enough free pages.

General information

Binding rulings (IR 115G) - May 1995: Explains binding rulings, which commit Inland Revenue to a particular interpretation of the tax law once given.

Cash assistance for your growing family (FS 4) - Mar 1997: Information about Family Assistance and how to apply.

Disputing a notice of proposed adjustment (IR 210K) - Oct 1996: If we send you a notice to tell you we're going to adjust your tax liability, you can dispute the notice. This booklet explains the process you need to follow.

Disputing an assessment (IR 210J) - Oct 1996: Explains the process to follow if you want to dispute our assessment of your tax liability, or some other determination.

How to tell if you need a special tax code (IR 23G): Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.

If you disagree with us (IR 210Z) - Sep 1996: This leaflet summarises the steps involved in disputing an assessment.

Income from a Maori Authority (IR 286A) - Feb 1996: For people who receive income from a Maori authority. Explains which tax return the individual owners or beneficiaries fill in and how to show the income.

Independent Family Tax Credit (FS 3) - Sep 1996: *Introducing extra help for families, applying from 1 July 1996.*

Inland Revenue audits (IR 297) - May 1995: *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.*

Koha (IR 278) - Aug 1991: *A guide to payments in the Maori community - income tax and GST consequences.*

Maori Community Officer Service (IR 286) - Apr 1996: *An introduction to Inland Revenue's Maori Community Officers and the services they provide.*

New Zealand tax residence (IR 292) - Jun 1997: *An explanation of who is a New Zealand resident for tax purposes.*

Overseas private pensions (IR 258A) - Oct 1996: *Explains the tax obligations for people who have interests in a private superannuation scheme or life insurance annuity policy that is outside New Zealand.*

Overseas social security pensions (IR 258) - Jun 1997: *Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.*

Problem Resolution Service (IR 287) - Nov 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.*

Provisional tax (IR 289) - Jun 1997: *People whose end-of-year tax bill is \$2,500 or more 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) - Jun 1997: *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.*

Rental income (IR 264) - Apr 1995: *An explanation of taxable income and deductible expenses for people who own rental property. This booklet is for people who own one or two rental properties, rather than larger property investors.*

Reordered Tax Acts (IR 299) - Apr 1995: *In 1994 the Income Tax Act 1976 and the Inland Revenue Department Act 1974 were restructured, and became the Income Tax Act 1994, the Tax Administration Act 1994 and the Taxation Review Authorities Act 1994. This leaflet explains the structure of the three new Acts.*

Self-employed or an employee? (IR 186) - Jun 1997: *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.*

Stamp duty and gift duty (IR 665) - Feb 1995: *Explains what duty is payable on transfers of real estate and some other transactions, and on gifts. Written for individual people rather than solicitors and legal firms.*

Student Loans - how to get one and how to pay one back (SL 5) - 1998: *We've published this booklet jointly with the Ministry of Education, to tell students everything they need to know about getting a loan and paying it back.*

Superannuitants and surcharge (IR 259) - Jun 1997: *A guide to the surcharge for national superannuitants who also have other income.*

Tax facts for income-tested beneficiaries (IR 40C) - Aug 1997: *Vital information for anyone who receives an income-tested benefit and also has some other income.*

Taxes and duties (IR 295) - May 1995: *A brief introduction to the various taxes and duties payable in New Zealand.*

Taxpayer obligations, interest and penalties (IR 240) - Jan 1997: *A guide to the new laws dealing with interest, offences and penalties applying from 1 April 1997.*

Trusts and estates - (IR 288) - May 1995: *An explanation of how estates and different types of trusts are taxed in New Zealand.*

Visitor's tax guide - (IR 294) - Nov 1995: *A summary of New Zealand's tax laws and an explanation of how they apply to various types of visitors to this country.*

Business and employers

ACC premium rates - Mar 1997: *There are two separate booklets, one for employer premium rates and one for self-employed premium rates. Each booklet covers the year ended 31 March 1997.*

Depreciation (IR 260) - Apr 1994: *Explains how to calculate tax deductions for depreciation on assets used to earn assessable income.*

Direct selling (IR 261) - Aug 1996: *Tax information for people who distribute for direct selling organisations.*

Electronic payments to Inland Revenue (IR 87A) - May 1995: *Explains how employers and other people who make frequent payments to Inland Revenue can have these payments automatically deducted from their bank accounts.*

Employer's guide (IR 184) - 1996: *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) - May 1995: *When businesses spend money on entertaining clients, they can generally only claim part of this expenditure as a tax deduction. This booklet fully explains the entertainment deduction rules.*

First-time employer's guide (IR 185) - April 1996: *Explains the tax obligations of being an employer. Written for people who are thinking of taking on staff for the first time.*

Fringe benefit tax guide (IR 409) - Nov 1994: *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 1997: *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.*

IR 56 taxpayer handbook (IR 56B) - Mar 1997: *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.*

Making payments (IR 87C) - Nov 1996: *How to fill in the various payment forms to make sure payments are processed quickly and accurately.*

PAYE deduction tables - 1998

- Weekly and fortnightly (IR 184X)

- Four-weekly and monthly (IR 184Y)

Tables that tell employers the correct amount of PAYE to deduct from their employees' wages from 1 July 1996.

Retiring allowances and redundancy payments (IR 277) -

Aug 1997: An explanation of the tax treatment of these types of payments.

Smart Business (IR 120) - Jul 1996: An introductory guide to tax obligations and record keeping, for businesses and non-profit organisations.

Surcharge deduction tables (IR 184NS) - 1998: PAYE deduction tables for employers whose employees are having NZ Super surcharge deducted from their wages.

Taxes and the taxi industry (IR 272) - Feb 1996: An explanation of how income tax and GST apply to taxi owners, drivers, and owner-operators.

Resident withholding tax and NRWT

Approved issuer levy (IR 291A) - May 1995: For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.

Non-resident withholding tax payer's guide (IR 291) - Mar 1995: A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.

Resident withholding tax on dividends (IR 284) - Oct 1993: A guide for companies, telling them how to deduct RWT from the dividends that they pay to their shareholders.

Resident withholding tax on interest (IR 283) - Jul 1996: A guide to RWT for people and institutions which pay interest.

Resident withholding tax on investments (IR 279) - Jun 1996: An explanation of RWT for people who receive interest or dividends.

Non-profit bodies

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) - Jun 1993: Explains the tax obligations which a club, society or other non-profit group must meet.

Education centres (IR 253) - Jun 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) - Jun 1997: An explanation of the duty which must be paid by groups which operate gaming machines.

Grants and subsidies (IR 249) - Jun 1994: An guide to the tax obligations of groups which receive a subsidy, either to help pay staff wages, or for some other purpose.

Company and international issues

Company amalgamations (IR 4AP) - Feb 1995: Brief guidelines for companies considering amalgamation. Contains an IR 4AM amalgamation declaration form.

Consolidation (IR 4E) - Mar 1993: An explanation of the consolidation regime, which allows a group of companies to be treated as a single entity for tax purposes.

Controlled foreign companies (IR 275) - Nov 1994: Information for NZ residents with interests in overseas companies. (More for larger investors, rather than those with minimal overseas investments)

Foreign dividend withholding payments (IR 274A) - Mar 1995: Information for NZ companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.

Foreign investment funds (IR 275B) - Oct 1994: Information for taxpayers who have overseas investments, but who don't have a controlling interest in the overseas entity.

Imputation (IR 274) - Dec 1997: A guide to dividend imputation for New Zealand companies.

Qualifying companies (IR 4PB) Oct 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.

Child Support booklets

A guide for parents who pay child support (CS 71A) - May 1997: Information for parents who live apart from their children.

Child support - a guide for custodians (CS 71B) - Nov 1997: Information for parents who take care of children for whom child support is payable.

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

Child support administrative reviews - how to apply (CS 69A) - Apr 1997: How to apply for a review of the amount of child support you receive or pay, if you have special circumstances.

Child support administrative reviews - how to respond (CS 69B) - Apr 1997: Information about the administrative review process, and how to respond if you are named in a review application.

Child support and the Family Court (CS 51) - Apr 1997: Explains what steps people need to take if they want to go to the Family Court about their 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 - estimating your income (CS 107G) - Aug 1997: Explains how to estimate your income so your child support liability reflects your current circumstances.

Child support - how the formula works (CS 68) - Dec 1996: Explains the components of the formula and gives up-to-date rates.

Problems with our child support service? (CS 287) - Jul 1997: Explains how our Problem Resolution Service can help if our normal services haven't resolved your child support problems.

Due dates reminder

February 1998

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 January 1998 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with October balance dates.
- Second 1998 instalment due for taxpayers with June balance dates.
- Third 1998 instalment due for taxpayers with February balance dates.
- 1997 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with balance dates in period March-September.
- QCET payment due for companies with balance dates in period March-September, if election is to be effective from the 1998 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 February 1998 due.
- Small employers: PAYE deductions and deduction schedules for period ended 31 January 1998 due.
- Gaming machine duty return and payment for month ended 31 January 1998 due.
- RWT on interest deducted during January 1998 due for monthly payers.
- RWT on dividends deducted during January 1998 due.
- Non-resident withholding tax (or approved issuer levy) deducted during January 1998 due.
- 27 GST return and payment for period ended 31 January 1998 due.

March 1998

- 5 Large employers: PAYE deductions and deduction schedules for period ended 28 February 1998 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with November balance dates.
- Second 1998 instalment due for taxpayers with July balance dates.
- Third 1998 instalment due for taxpayers with March balance dates.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 March 1998 due.
- Small employers: PAYE deductions and deduction schedules for period ended 28 February 1998 due.
- Gaming machine duty return and payment for month ended 28 February 1998 due.
- RWT on interest deducted during February 1998 due for monthly payers.
- RWT on dividends deducted during February 1998 due.
- Non-resident withholding tax (or approved issuer levy) deducted during February 1998 due.
- 31 GST return and payment for period ended 28 February 1998 due.
- Non-resident Student Loan repayments - fourth instalment of 1998 non-resident assessment due.

Public binding rulings and interpretation statements: your chance to comment before we finalise them

This page shows the draft public binding rulings and interpretation statements that we now have available for your review. You can get a copy and give us your comments in three ways:

By post: Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our local offices.

From our main offices: Pick up a copy from the counter at our office in Takapuna, Manukau, Hamilton, Wellington, Christchurch or Dunedin. You'll need to post your comments back to the address below; we don't have facilities to deal with them by phone or at our local offices.

On the Internet: Visit our web site at <http://www.ird.govt.nz/rulings/> Under the "Adjudication & Rulings" heading, click on "Draft Rulings", then under the "Consultation Process" heading, click on the drafts that interest you. You can return your comments via the Internet.

Name _____
 Address _____

Interpretation guidelines

Comment Deadline

0007: Non-resident software suppliers' payments derived from New Zealand – income tax treatment

28 February 1998

We must receive your comments by the deadline shown if we are to take them into account in the finalised item



No envelope needed - simply fold, tape shut, stamp and post.

Affix
Stamp
Here

Team Leader (Systems)
 Adjudication & Rulings
 National Office
 Inland Revenue Department
 P O Box 2198
 WELLINGTON



I would like to be included on the TIB mailing list.

Mr.Mrs.Miss.Ms

Initials

Last Name

Position

Company

Address

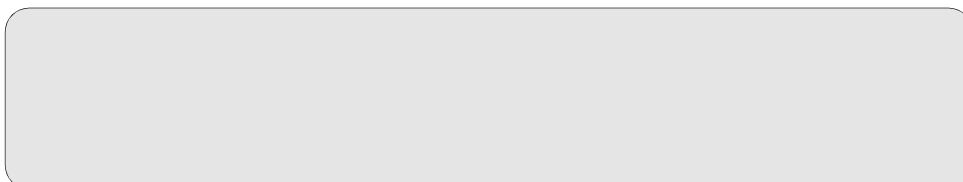
Number of copies required

Member of the Institute of Chartered Accountants of New Zealand? Yes No

I am currently on the TIB mailing list. Change of name/address required.

I no longer wish to receive the TIB Please remove my name from the mailing list.

**Attach mailing label from
TIB here (preferable), or
fill in previous details
below.**



Mr.Mrs.Miss.Ms

Initials

Last Name

Position

Company

Address

**Return to: TIB Mailing List
 P O Box 31 581
 LOWER HUTT**

