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TAX INFORMATION
Bulletin

CONTENTS

Inland Revenue
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YOUR OPPORTUNITY TO COMMENT

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

A list of the items we are currently inviting submissions on can be found at **www.ird.govt.nz**. On the homepage, click on "Public consultation" in the right-hand navigation. Here you will find drafts we are currently consulting on as well as a list of expired items. You can email your submissions to us at **public.consultation@ird.govt.nz** or post them to:

Public Consultation
Office of the Chief Tax Counsel
Inland Revenue
PO Box 2198
Wellington

You can also subscribe to receive regular email updates when we publish new draft items for comment.

Livestock valuation determinations to move to LTS Technical Standards

From 1 July 2009 the responsibility for issuing livestock determinations passed from the Office of the Chief Tax Counsel (OCTC) to Legal & Technical Services. From that date LTS Technical Standards assumed responsibility for issuing the National Standard Costs for Specified Livestock and the National Average Market Values for Specified Livestock.

These changes mean that from 1 July 2009 onwards any enquiries relating to livestock valuations should be sent to:

LTS Manager
LTS Technical Standards
National Office
Inland Revenue
PO Box 2198
Wellington 6140

IN SUMMARY

IN SUMMARY (continued)

Questions we've been asked

QB 09/03: Decisions on application of section CA 1(2) – common law interest and income under ordinary concepts

This QWBA addresses the application of section CA 1(2) of the Income Tax Act 2007 to common law interest, and more specifically the judgment in *CIR v Buis and Burston* (2005) 22 NZTC 19,278. In *Buis and Burston*, France J held that section CD 5 of the Income Tax Act 1994 (now section CA 1(2) of the Income Tax Act 2007) could not apply to tax common law interest payments. While the Commissioner decided not to appeal the decisions in the *Buis* and *Burston* cases, and accepts the outcome in respect of the facts of those cases, he does not accept the correctness of this aspect of the decisions (the scope of section CA 1(2)), and intends to have the matter considered further by the courts when an opportunity arises in the future.

Items of interest

Inland Revenue's Public Rulings Unit

This article explains the types of public advice provided by the Unit, who makes up the Unit, how topics are selected and consulted on, the future of the Unit and its role within Inland Revenue.

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 their tax liability based on it.

For full details of how binding rulings work, see our information booklet *Adjudication & Rulings: A guide to binding rulings (IR 715)* or the article on page 1 of *Tax Information Bulletin*, Vol 6, No 12 (May 1995) or Vol 7, No 2 (August 1995).

You can download these publications free from our website at **www.ird.govt.nz**

STATEMENT ON FRINGE BENEFIT TAX AND MOTOR VEHICLE MULTI-LEASES

Public Ruling BR Pub 04/03 applied for the period 29 March 2004 to 28 March 2009.

Since the ruling was issued, the Income Tax Act 1994 has been repealed and replaced with the Income Tax Act 2004, which has also been repealed and replaced with the Income Tax Act 2007. There has also been a legislative change for calculating fringe benefit tax (FBT) on leased motor vehicles.

Now expired BR Pub 04/03 ruled on an arrangement involving the leasing of a motor vehicle under a multi-lease product to a lessee, who in turn provided the motor vehicle to an employee of the lessee for the employee's private use or made the motor vehicle available for such private use or enjoyment.

FBT on leased vehicles used to be assessed on the vehicle's market value at the beginning of the lease, by virtue of section CI 1(a) or section CI 1(b) and Part A of Schedule 2 of the Income Tax 1994. Many leases were structured so that the lessee entered into a lease for a flexible or specified time (eg, 12 months), with the option or possibility of entering into further leases. This resulted in a new market value for each period and a commensurate reduction in FBT as the vehicle aged. The expired public ruling provided guidelines as to the characteristics such a multi-lease product needed to exhibit in order to be considered a new lease and how to calculate FBT in these circumstances.

The legislative change to the calculation of FBT on leased motor vehicles since the ruling was issued means the previous method is no longer available. Amendments to Schedule 2 of the Income Tax Act 2004 (now Schedule 5 of the Income Tax Act 2007) have aligned the treatment of leased vehicles with that of owned vehicles for the period beginning 1 April 2006. This means the fringe benefit in relation to a leased vehicle is now to be based on its cost price or tax value (that is, a motor vehicle's depreciated value) rather than its market value, as before.

As a result of the legislative changes, BR Pub 04/03 will not be reissued.

NEW LEGISLATION

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

TAXATION (BUSINESS TAX MEASURES) ACT 2009

The Taxation (Business Tax Measures) Bill was introduced into Parliament under urgency on 10 February 2009, passing through its final stages in Parliament on 26 March. The resulting Act received Royal assent on 30 March 2009.

The legislation introduces new tax rules aimed at improving the business environment for small and medium enterprises by easing the impact of taxes on their cash flows and reducing business tax compliance costs.

The new Act amends the Income Tax Act 2007, Tax Administration Act 1994 and Goods and Services Tax Act 1985.

CHANGES TO HELP SMALL AND MEDIUM ENTERPRISES

Sections DB 62, EB 23(1)(b), EW 13(2), EW 17(1)(a), EW 25(2) and (3), EW 54, EW 56, EW 57(1),(2),(3) and (9), EW 58(1),(3),(4) and (5), EW 59, EW 60(2) and (3), RD 22(3) and (4), RD 45 (2)(a), (2)(b), (3)(a), (3)(b), (4)(a), (4)(b), RD 46(2) to (6), RD 50(5), RD 52(3)(b), RD 53(4)(a), RD 60(1), (2)(b), RD 61(1)(a), RZ 3, RZ 5 and YA 1 of the Income Tax Act 2007

Sections 120KE(1)(b) and 3(1)(e)(ii) of the Tax Administration Act 1994

Sections 15(2)(a), 19A(1)(b)(i) and 51(1)(a) of the Goods and Services Tax Act 1985

The main purpose of the new rules is to help smaller businesses deal with the economic pressures currently being faced as a result of the economic downturn. The measures introduced were part of a wider package of relief measures aimed at helping businesses' cash flows and reducing the amount of time that small and medium enterprises (SMEs) must spend on their tax obligations.

As SMEs account for over 95% of New Zealand's businesses it is important that the people who operate them can concentrate on the things that will help their businesses. Improving cash flows and reducing the number of tax returns, payments and calculations SMEs have to deal with will help to ease the tax burden they currently face, and free up time and money to focus on strengthening their businesses.

Key features

The new rules introduce the following changes:

- a new threshold of $10,000, below which all business-related legal expenditure is fully deductible
- a rise in the low-value trading stock threshold, from $5,000 to $10,000
- extending the methods for businesses to account for financial arrangements
- a rise in the pay as you earn (PAYE) once-a-month filing and payment threshold, from $100,000 to $500,000
- a rise in fringe benefit tax (FBT) thresholds, under which accounting for FBT is not required for minor benefits provided to employees. The new thresholds rise from $15,000 a year per employer and from $200 each quarter per employee, to $22,500 and $300 respectively
- extending FBT annual filing to include closely held businesses whose FBT liabilities are restricted to one or two vehicles used by owner-employees (regardless of their annual PAYE deductions)
- a rise in the FBT annual filing threshold, from $100,000 to $500,000
- a reduction in the provisional tax uplift rate from 105%/110% to 100%/105%, to apply from 1 April 2009 to provisional tax payments for the 2008–09 and 2009–10 income years made after these dates. Where certain companies are currently allowed to use uplift ratios of 95%/100% (as a result of the reduction in the company tax rate to 30%), lower uplift ratios of 90%/95% will instead apply
- a rise in the provisional tax use-of-money interest (UOMI) safe harbour threshold, from $35,000 to $50,000
- a rise in the Goods and Services Tax (GST) six-monthly return filing threshold, from $250,000 to $500,000
- a rise in the GST payments basis threshold, from $1.3 million to $2 million
- a rise in the GST registration threshold, from $40,000 to $60,000
- minor remedial matters relating to changes made by the Taxation (Urgent Measures and Annual Rates) Act 2008.

Application dates

The new rules generally either apply to the 2009–10 or later income years, or from 1 April 2009.

Detailed analysis

Introduction of a new threshold of $10,000 below which all business-related legal expenditure is fully deductible (application from the 2009–10 income year)

New section DB 62 simplifies the rules for deducting legal expenditure.

This change allows businesses an immediate tax deduction for business-related legal expenditure, up to $10,000 a year, without having to distinguish between revenue and capital. This is intended to reduce tax compliance costs and tax liabilities.

For example, if a business's total bill for all legal fees in a given income year is $10,000, the entire amount will be deductible without requiring analysis of which amounts relate to non-deductible capital expenditure and deductible revenue expenditure. However, when a business's total bill for all legal fees in a given income year is $20,000, normal tax rules will apply and capital and revenue amounts must be separately identified for the full $20,000.

The new rules also introduce a definition of "legal expenses" in section YA 1 of the Income Tax Act for this purpose. "Legal expenses" for this purpose means fees for legal services (as defined in the Lawyers and Conveyancers Act 2006) provided by members of the New Zealand Law Society or an Australian equivalent.

Higher low-value trading stock threshold (application from the 2009–10 income year)

Section EB 23 of the Income Tax Act has been amended to raise the threshold for low-value trading stock from $5,000 to $10,000 (based on the value of the trading stock).

This change will reduce record-keeping and the amount of time some businesses must spend each year counting and valuing stock.

Accounting for financial arrangements (application from the 2009–10 income year)

Sections EW 13, 17 and 25 of the Income Tax Act have been amended to:

- allow non-individuals, subject to existing thresholds, to return income tax in relation to financial arrangements on a cash accounting basis; and
- allow more taxpayers to use the straight-line basis for accounting for financial arrangements, by increasing the existing threshold for this from $1.5 million to $1.85 million (based on the total level of financial arrangements).

The definition of "cash-basis" person has been amended in section EW 54 and sections 56 to 60 of the Income Tax Act.

Higher PAYE once-a-month filing and payment threshold (application from 1 April 2009)

Section RD 22 of the Income Tax Act has been amended to raise the PAYE once-a-month filing and payment threshold from $100,000 to $500,000.

When prior year total PAYE deducted for all employees is $500,000 or more, an employer must pay PAYE to Inland Revenue twice a month. When total PAYE deducted is less than $500,000, the employer can account for PAYE once a month.

This change significantly increases the number of businesses that can benefit from the increased cash flows that arise from paying PAYE only once a month. Employers that are above the current threshold but below the new threshold can still pay twice-monthly if that better suits their business needs.

Higher thresholds under which FBT is not required to be accounted for in respect of minor unclassified benefits provided to employees (application from 1 April 2009)

Sections RD 45 and 46 of the Income Tax Act have been amended to raise the thresholds for exempting minor benefits from FBT from $15,000 a year per employer and $200 each quarter per employee to $22,500 and $300 respectively.

This change means fewer employers will be required to return FBT on minor unclassified benefits (such as flowers or other small gifts) provided to employees.

Extension for FBT annual filing (application from 1 April 2009)

Section RD 60 of the Income Tax Act has been amended to further broaden annual filing for FBT to include closely held businesses whose FBT liabilities are restricted to one or two vehicles used by owner-employees, regardless of their annual PAYE deductions.

The change is intended to ease cash flow and reduce compliance costs for qualifying businesses.

Higher FBT annual filing threshold (application from 1 April 2009)

Section 61 of the Income Tax Act has been amended to raise the FBT annual filing threshold from $100,000 to $500,000.

When prior year total PAYE deducted for all employees is $500,000 or more, an employer providing fringe benefits to employees must account and pay for FBT to Inland Revenue quarterly. When total PAYE deducted is less than $500,000, the employer can pay and file annually instead.

This increase will mean fewer FBT returns and payments will need to be filed by small businesses, thereby easing cash flows and reducing compliance costs for eligible employers.

Reduction in the provisional tax uplift rate (application from 1 April 2009 to provisional tax payments for the 2008–09 and 2009–10 income years payable after this date)

Sections RZ 3 and RZ 5 of the Income Tax Act have been amended to reduce the standard method uplift for the calculation of provisional tax liability for the 2008–09 and 2009–10 income years.

Provisional tax is based on payments of tax being made during the income year. One of the standard methods of calculating provisional tax is by basing it on taxpayers' residual income tax (RIT) from prior years, specifically by assuming that it is either:

- 105% of the previous year's RIT; or
- 110% of the next preceding year's RIT (for taxpayers that have not yet furnished their previous year's income tax return).

The new rules reduce the "uplift" rate to reflect the likelihood of reduced profits in the 2008–09 and 2009–10 income years as a result of the economic downturn. Accordingly, for remaining provisional tax payments due for the 2008–09 and 2009–10 income years, the 105% and 110% uplift rates have been temporarily reduced to 100% and 105% respectively.

It should be noted that changes made to provisional tax for individuals in respect of the 2008–09 and 2009–10 income years (as a result of the reduction in the top income tax rate for individuals) must also be taken into account. See Table 1.

In addition, 30% tax-rate taxpayers (eg, companies) were previously allowed to use uplift ratios of 95% or 100% (as a result of relief provided following the lowering of the company tax rate from 33% to 30%). The rules now allow such entities to use new uplift ratios of 90% or 95% (instead of 95% or 100%) for remaining provisional tax payments due for the 2008–09 and 2009–10 income years when the higher 33% rate is used as the base year. See Table 2.

These changes will reduce the size of taxpayers' provisional tax payments, giving them greater cash flows over the next two years (as a result of lower provisional tax payments). The standard uplift rates of 105% and 110% will apply again in the 2010–11 and future income years.

Table 1: Changes for individuals

Year for provisional tax being calculated	Year of RIT amount used	Adjustment
2009 (instalments payable on or after 1 April 2009)	2007	RIT – $730 + 5%
	2008	RIT – $730
2010	2008	RIT – $1,460 + 5%
	2009	RIT – $730
2011	2009 (back to original calculation)	RIT + 10%
	2010 (back to original calculation)	RIT + 5%

Table 2: Changes for companies and those taxed as companies

Year for provisional tax being calculated	Year of RIT amount used	Adjustment
2009 (instalments payable on or after 1 April 2009)	2007	95% of RIT
	2008	90% of RIT
2010	2008	95% of RIT
	2009	RIT (no adjustment)
2011	2009 (back to original calculation)	RIT + 10%
	2010 (back to original calculation)	RIT + 5%

Further information on provisional tax, including practical examples that include the above changes, can be found in the Inland Revenue guide IR 289 *Provisional tax: A guide to understanding your provisional tax*. This guide was updated in May 2009 to incorporate the changes included in the new legislation.

Higher provisional tax use-of-money interest safe harbour threshold (application from the 2009–10 income year)

Section 120KE of the Tax Administration Act 1994 has been amended to increase the provisional tax use-of-money interest (UOMI) safe harbour threshold from $35,000 to $50,000.

This makes it easier for more individual taxpayers to use the standard uplift method of calculating provisional tax rather than estimating, thus reducing compliance costs for those taxpayers and reducing their exposure to UOMI interest.

Higher goods and services tax six-monthly return filing threshold (application from 1 April 2009)

Section 15 of the Goods and Services Tax Act 1985 has been amended to increase the threshold below which GST returns can be made six-monthly from $250,000 to $500,000 of taxable supplies in a 12-month period. Taxpayers with more than $500,000 of taxable supplies are required to make two-monthly GST returns.

Taxpayers with highly seasonal activities and small businesses may find this change helpful.

Higher GST payments basis threshold (application from 1 April 2009)

Section 19A of the Goods and Services Tax Act has been amended to raise the threshold below which GST may be accounted for on a payments basis from $1.3 million to $2 million of taxable supplies in a 12-month period.

This change will allow more taxpayers to account for GST on a payments basis and may assist cash flows as GST will generally only need to be accounted for on the receipt of funds rather than upon issue of an invoice. Using the GST invoice basis is still optional for all taxpayers.

Higher GST registration threshold (application from 1 April 2009)

Section 51 of the Goods and Services Act has been amended to raise the GST registration threshold from $40,000 to $60,000 of taxable supplies in a 12-month period.

This change means those under the threshold can opt out of the GST system, resulting in lower GST compliance costs and fewer cash-management problems associated with making GST payments. Taxpayers who meet the criterion of a taxable activity will still be able to register for GST on a voluntary basis if they fall under the revised threshold.

Minor remedial matters (various application dates)

A number of minor remedial matters relating to changes made by the Taxation (Urgent Measures and Annual Rates) Act 2008 have also been introduced. They amend sections RD 50, 52 and 53 of the Income Tax Act 2007 and section 3 of the Tax Administration Act 1994.

TAXATION (BUDGET TAX MEASURES) ACT 2009

The Taxation (Budget Tax Measures) Bill 2009 was introduced into Parliament under urgency on 28 May 2009. The bill was tabled during the Budget debate and passed through its final stages on 29 May, receiving Royal assent later that day.

The resulting Act gives effect to Budget announcements to close the KiwiSaver mortgage diversion facility to new applicants from 1 June 2009. It also repeals the planned personal tax cuts planned for the 2010–11 and 2011–12 income years, and the associated increase to the independent earner tax credit.

The new Act amends the KiwiSaver Act 2006 and the Kiwisaver Regulations 2006, the Taxation (Urgent Measures and Annual Rates) Act 2008 and the (Taxation (Business Tax Measures) Act 2009.

CLOSING THE KIWISAVER MORTGAGE DIVERSION FACILITY

Sections 229 and 236 of the KiwiSaver Act 2006; regulations 21 and 24 of the KiwiSaver Regulations 2006

The mortgage diversion facility is a feature of KiwiSaver that allows members to divert up to half of their personal contributions to their mortgage repayments. However, mortgage diversion is complex and few KiwiSaver members have opted to use the facility. The facility also imposes unnecessary compliance costs on scheme providers and is not fulfilling its intended policy objectives. Funds diverted through the facility can be accessible, which is contrary to the lock-in feature of KiwiSaver. Diverted contributions are also over and above a member's minimum mortgage repayment obligations. The new minimum contribution rate of 2% has also made the facility less effective for its original purpose.

Key features

The KiwiSaver mortgage diversion facility is closed to new participants from 1 June 2009.

Scheme providers and mortgagees are not required to offer mortgage diversion, and may choose to stop offering the facility to existing participants.

New section 236 of the KiwiSaver Act provides protection against any non-compliance with securities-related legislation that may result from the enactment of the Taxation (Budget Tax Measures) Act 2009 (which closed the KiwiSaver mortgage diversion facility to new participants). In particular, this provision provides protection from non-compliance with an enactment related to securities for a limited period from 29 May to 31 July 2009, or if the non-compliance relates to a prospectus or investment statement that was registered or dated before 1 June 2009. This allows time for providers to update prospectuses and investment statements without being at risk of breaching securities regulations.

Application date

Closure of the KiwiSaver mortgage diversion facility to new participants is effective from 1 June 2009.

REPEAL OF CHANGES TO PERSONAL TAX RATES AND INDEPENDENT EARNER TAX CREDIT FOR 2010–11 AND 2011–12 INCOME YEARS

Sections 5(2), 6(2), 7(2), 8(2), 9(2), 10(2) and (3), 11(2) and (3), 12(2) and (3), 13(2) and (3), 14(2) and (3), 16(2), 17(2) and 32 of the Taxation (Urgent Measures and Annual Rates) Act 2008; sections 29(2), 30(2) and 31(2) of the Taxation (Business Tax Measures) Act 2009

In response to the difficult fiscal climate, the personal tax cuts scheduled for the 2010–11 and 2011–12 income years have been repealed. Consequential amendments to extra pays, FBT (fringe benefit tax), ESCT (employer superannuation contribution tax), PAYE tax code threshold amounts, and thresholds for non-filing taxpayers have also been repealed. These amendments were contained in the Taxation (Urgent Measures and Annual Rates) Act 2008. Several FBT amendments contained in the Taxation (Business Tax Measures) Act 2009 that were consequential to the personal tax cuts have also been repealed.

Key features

The personal tax rates for 2009–10 and subsequent income years are as follows:

Income	Tax rate
$0–$14,000	12.5%
$14,001–$48,000	21%
$48,001–$70,000	33%
$70,001 and over	38%

The increase in the independent earner tax credit that was scheduled for the 2010–11 income year has also been cancelled. The maximum tax credit available for 2009–10 and subsequent income years is $520 per year.

Application date

The amendment applies to the tax cuts and increase in the independent earner tax credit that were scheduled for the 2010–11 and 2011–12 income years.

LEGAL DECISIONS – CASE NOTES

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

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

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

TAX ADVICE DOCUMENTS TO BE DISCOVERED

Case	ANZ National Bank Limited & Others v Commissioner of Inland Revenue
Decision date	28 April 2009
Act	Tax Administration Act 1994
Keywords	Relevance, tax advice, discovery, tax avoidance

Summary

ANZ is required to discover to the Commissioner opinions provided by its tax advisor, Pricewaterhouse Coopers (PwC).

Impact of decision

The Court of Appeal confirms that tax opinions are relevant and discoverable in tax avoidance cases. The judgment discusses relevance, admissibility and the taxpayers' non-disclosure right in relation to tax avoidance documents.

Facts

The litigation between ANZ and the Commissioner involves a challenge by ANZ to assessments made by the Commissioner in relation to financing transactions known as "repo" transactions.

ANZ received advice from PwC in relation to the repo transactions that are the subject of the challenge proceedings. At the relevant time, a partner of PwC was providing what was essentially the in-house tax function at ANZ and, in addition, PwC provided "sign off" opinions on the tax aspects of the repo transactions. ANZ accepts that the descriptions of the factual elements of the transactions contained within these tax opinions are discoverable, but says that the actual advice given on the tax aspects of the transactions is not relevant to the Court's decision as to whether the arrangements of which the transactions formed part amounted to tax avoidance, and should not therefore be discoverable.

The principal submission made by ANZ was that the tax advice was not relevant to the question of whether the arrangements of which the repo transactions formed part were tax avoidance arrangements. The determination of whether an arrangement amounts to tax avoidance requires an objective assessment. In light of the objective nature of the assessment required, subjective views of a tax adviser as to the way in which disputed transactions could be effected by tax legislation were of no relevance.

In the High Court Wild J ruled that the tax opinions were discoverable: *ANZ National Bank Ltd v Commissioner of Inland Revenue (No 2)* (2008) 23 NZTC 21,918. ANZ appealed against that ruling.

Decision

The Court of Appeal stated that relevance in terms of the *Peruvian Guano* test is not the same as the test for relevance when determining admissibility of evidence (section 7 of the Evidence Act 2006). In terms of the *Peruvian Guano* test, it is sufficient if the tax opinions could fairly lead the Commissioner to a train of inquiry which may have the effect of advancing his case or damaging that of ANZ. The Court held that the tax opinions meet the broad relevance test for the issues of whether the guarantee procurements fee is a sham and the purpose of the arrangement.

The Court held that the tax advice may assist the Commissioner in establishing the scope of the arrangements at issue. The Court agreed that, if the tax advice include the nature and size of the guarantee procurement fee and the purpose for which that fee is charged, they will be relevant to the Commissioner's sham argument. Whether they will be admissible as evidence can be determined later as already indicated, their discoverability does not necessarily mean they will be admissible.

THE CREATION OF A TRUST GIVES RISE TO A GIFT FOR GIFT DUTY PURPOSES

Case	Begg, Jackson and Jackson v Commissioner of Inland Revenue
Decision date	30 April 2009
Act	Estate and Gift Duties Act 1968
Keywords	Disposition of property

Summary

A deed of gift of money secured by a declaration of trust on a home to secure payment of the money in the future is a gift under the Estate and Gift Duties Act 1968.

Impact of decision

There is no tax implication in this case as each gift was below the exemption level. In the future when the money is actually paid, assuming there is still the same statutory gift duty, there will be no gift duty payable as the money is already gifted.

Facts

The taxpayers executed a deed for the purpose of making a gift of (or promising to give) a sum of money of $27,000 with gifts in subsequent years of lesser sums to family members. Payment of the gifts was deferred to the future upon sale of the home. A trust was declared on their homes "to the extent of their respective interests from time to time" to secure payment of the gifts.

The High Court held that there were no gifts for the purposes of the Estate and Gift Duties Act 1968 ("the Act") made under the deed even though there was a valid trust because, on a narrow interpretation of section 2(2) of the Act, the creation of a trust was not sufficient in itself and there must be conveyance of the gift in order to qualify as "disposition of property".

The taxpayers appealed to the Court of Appeal. Three issues were dealt with by the Court of Appeal:

- In order for an action to amount to a "disposition of property" for the purposes of the Act, must the action come within the general definition of "disposition of property"?
- Did the creation of the trust give rise to a dutiable gift to the children?
- Even if the initial gifts were gifts for gift duty purposes, were the later ones?

Decision

The Court of Appeal granted the appeal.

The legal interpretation of "include" in the definition of "disposition of property" in section 2(2) of the Act is to enlarge or extend the general part of the definition to the specific, subparagraphs of the definition. That the definition in section 2(2) with the specific, subparagraphs is set out differently from the previous 1909 Act is "merely stylistic". An act can amount to a "disposition of property" for the purposes of the Act without coming within the general part of the definition. The creation of a trust is a "disposition of property" within subparagraph (b) of the definition. As there was a valid trust, there was a "disposition of property" and a gift for gift duty purposes.

Perry v Commissioner of Stamps (1913) 32 NZLR 1194 applied as its facts cannot be distinguished from the present appeal. Moreover *Perry* was correctly decided when it held the creation of the trust gave rise to an immediately dutiable gift. There has not been any issue with Perry as an authority and the Court of Appeal declined to overrule it.

Even though not dealt with by the High Court and the Court of Appeal not even sure it was squarely raised on the pleadings, it was held that each subsequent gift is a creation of a separate trust under the deed and is consequently a separate "disposition of property" under subparagraph (b) of the definition in section 2(2) of the Act.

As the individual gifts were below the gift duty exemption, there was no gift duty payable.

COMMISSIONER ALLOWED TO CONTINUE INVESTIGATION

Case	Avowal Administrative Attorneys Ltd & Ors v The District Court at North Shore & The Commissioner of Inland Revenue
Decision date	8 May 2009
Act	Tax Administration Act 1994
Keywords	Stay

Summary

The applicants' application for a stay of the High Court judgment pending resolution of their appeal was denied.

Impact of decision

The Commissioner is able to progress his investigation and is also able to pass on information to the Australian Tax Office notwithstanding the appeal of the substantive judgment to the Court of Appeal.

Facts

On 8 November 2006 the Commissioner of Inland Revenue (the Commissioner) and the Australian Tax Office (ATO) conducted simultaneous access operations on both sides of the Tasman. The operations followed a request by the ATO to the Commissioner in 2004 under Article 26 of the Australia-New Zealand Double Tax Agreement (DTA). The ATO provided background information which indicated that a number of entities based in or operating in New Zealand were promoting, marketing and implementing a wide range of tax avoidance schemes.

Using his powers under section 16 of the Tax Administration Act 1994, the Commissioner entered seven premises, both private and commercial, and removed hardcopy documents and hard drives for copying. Seven applicants commenced judicial review proceedings against the Commissioner, and another applicant later joined the proceedings.

On 22 December 2008, the High Court delivered a judgment upholding the Commissioner's actions and dismissing the judicial review. The High Court ordered the return of three hard drives where the Commissioner had not followed his own processes; otherwise the Commissioner was successful on all bases. The applicants have appealed the High Court decision and sought a stay, from the High Court, of the High Court judgment pending resolution of the appeal. The Commissioner opposed the application for a stay.

Decision

Venning J held that the applicants had failed to make out the case for a stay and dismissed the application.

The applicants' main concern was that if a stay was not granted, then a successful appeal would be worthless, because even though the Commissioner could turn an institutional blind eye to the information, individual officers would not be able to remove the information from their minds, and would make decisions affecting the applicants, and other entities associated with them, on the basis of that information.

The applicants were also particularly concerned at the prospect of information being passed to the ATO on the basis that once the information was out of the country, the IRD and the New Zealand courts would have no control over the information and could not insist on the use of it being unwound. The applicants also cited the difficult relationship that they, particularly Mr Petroulias, have had with the ATO in recent years as a factor that increased their concern.

The Court found that failure to grant a stay would not render a successful appeal nugatory, because the Commissioner would destroy or return the hard drives to the appellants and neither the Commissioner nor the ATO would be able to use the information contained on those hard drives. All information would have to be deleted from IRD records and any assessments based on that information would have to be unwound.

The Court also relied on the role and responsibility of the Commissioner, and the fact that he is a public officer subject to the Official Information Act 1982 and Parliamentary enquiries. The Commissioner and his officers are also subject to secrecy provisions in the legislation.

Conclusion

The High Court held that the Commissioner was entitled to review the electronic information.

The Court also held that the Commissioner was entitled to pass any such information to the ATO once the ATO has provided an affidavit to the Court confirming that the ATO will put in place a process to ensure that any information it receives will be identified so that it can unwind any steps or actions taken on the basis of such information, and also confirming that such an unwind would be at the ATO's cost.

STATUS OF FARNSWORTH AND ZENTRUM DECISIONS REMAINS UNCLEAR

Case	Ben Nevis Forestry Ventures Limited & Ors v Commissioner of Inland Revenue [2009] NZSC 40
Decision date	13 May 2009
Act	Income Tax Act 1994, Tax Administration Act 1994
Keywords	Farnsworth, Zentrum

Summary

Commissioner's application for partial recall of Supreme Court decision, to clarify the status of Farnsworth in light of the decision in *Zentrum*, was refused.

Impact of decision

The status of the respective decisions remains unclear. The Supreme Court confirmed that it has expressed no view on the correctness of either Farnsworth or Zentrum.

Facts

In the recent Supreme Court hearing in Trinity[1], the *Accent Management* appellants endeavoured to raise an argument that the agreement to grant a licence and options fell within the definition of a financial arrangement. The Supreme Court refused to hear that argument and in the judgment, reference[2] is made to the Court of Appeal decision in *Commissioner of Inland Revenue v VH Farnsworth Limited*[3]:

> "Although it was decided on earlier legislation, the leading case on what can be argued at a hearing is [*Farnsworth*]"

The Commissioner made an application for recall of paragraphs 152–155 of the Trinity judgment and requested that the Court omit or (preferably) amend those paragraphs to clarify the status of the decision in *Commissioner of Inland Revenue v Zentrum Holdings Limited*[4], which held that Farnsworth had no application in tax litigation that is preceded by the new disputes process under Part IVA of the Tax Administration Act 1994.

Decision

The Supreme Court dismissed the Commissioner's application for partial recall and said:

> "[2] Inadvertently therefore this Court has created uncertainty as to whether *Zentrum* is a correct statement of the law. The reasons given in paragraphs [152]–[155] should not be regarded as representing this Court's view of the correctness or otherwise of either the *Farnsworth* or the *Zentrum* cases in the light of Part IVA.
>
> [3] We consider this clarification of the position is all that is necessary..."

[1] *Ben Nevis Forestry Ventures Limited & Ors v Commissioner of Inland Revenue* [2008] NZSC 115

[2] at paragraph 153

[3] [1984] 1 NZLR 428 (CA)

[4] [2007] 1 NZLR 145 (CA)

STANDARD PRACTICE STATEMENTS

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

SPS 09/02: VOLUNTARY DISCLOSURES

Introduction

1. This Standard Practice Statement ("SPS") applies to a voluntary disclosure that is made under section 141G or section 141J of the Tax Administration Act 1994 ("TAA") on or after 17 May 2007 and for the purpose of entitlement to a reduction in shortfall penalty. It provides guidelines in respect of:
   a) how to make a voluntary disclosure;
   b) when a taxpayer is treated as having been notified of a pending audit;
   c) what constitutes a full voluntary disclosure;
   d) what rate of reduction will apply if a taxpayer is liable for a shortfall penalty.
2. Unless specified otherwise, all legislative references in this SPS refer to the TAA.
3. This SPS should be read in conjunction with SPS 07/02: *Notification of a pending audit or investigation* (or any subsequent replacement).

Application

4. This SPS replaces SPS INV-251: *Voluntary disclosures* and applies to taxpayers who have made voluntary disclosures on or after 17 May 2007.

Summary

5. A taxpayer can make a full voluntary disclosure for the purpose of a shortfall penalty reduction, either:
   a) before the taxpayer is first notified that a tax audit is pending ("pre-notification disclosure"), or
   b) after the taxpayer is first notified of a pending audit but before the audit starts ("post-notification disclosure").
6. See SPS 07/02: *Notification of a pending audit or investigation* published in *Tax Information Bulletin* Vol.19, No.3 (April 2007) which provides details regarding when notification that an audit is pending will occur and the form in which that notification must be provided.
7. Section 141G(1) does not apply unless the taxpayer makes a full voluntary disclosure. Section 141G(2) allows the Commissioner to specify what information must be provided by the taxpayer to be a full disclosure and the form in which the disclosure must be provided (see the discussion in paragraphs 38–49).
8. Where a taxpayer makes a full voluntary disclosure a reduction will be allowed in the shortfall penalty rate as follows:
   a) by 100% under section 141G(3)(a)(i) if the taxpayer makes a pre-notification disclosure, and
      - the shortfall penalty is for not taking reasonable care (section 141A); or
      - the shortfall penalty is for taking an unacceptable tax position or is an unacceptable interpretation (section 141B); or
   b) by 100% under section 141J(2)(a)(i) if:
      - a taxpayer makes a pre-notification disclosure, and
      - the shortfall penalty is imposed under either section 141A or 141B and relates to a temporary tax shortfall, or
   c) by 75% under section 141G(3)(a)(ii) if:
      - the taxpayer makes a pre-notification disclosure, and
      - the shortfall penalty is for gross carelessness (section 141C), an abusive tax position (section 141D), evasion or similar act (section 141E) or a promoter penalty (section 141EB), or
   d) by 75% under section 141J(2)(b) if:
      - the taxpayer makes a pre-notification disclosure and the shortfall penalty is imposed under any of sections 141C to 141EB and relates to a temporary tax shortfall, or
      - makes a post-notification disclosure and the shortfall penalty is imposed under any of sections 141A to 141EB and relates to a temporary tax shortfall, or
   e) by 40% under section 141G(3)(b) if the taxpayer makes a post notification disclosure.
9. When a taxpayer makes a pre-notification disclosure, the Commissioner's practice is not to consider subsequent prosecution action against them in respect

of the tax shortfall that they have voluntarily disclosed. However, Inland Revenue may consider prosecution action when a taxpayer makes a post-notification disclosure that involves evasion or similar offending.

Background

10. The New Zealand tax system is based on voluntary compliance and most taxpayers voluntarily meet their obligations under the tax laws, for example, by filing tax returns on time and returning all income.

11. The voluntary disclosure rules provide an incentive to taxpayers to determine their correct tax liability. The rules also reflect the savings to Inland Revenue from voluntary admissions of irregularities and other benefits of co-operation by taxpayers. By making a full voluntary disclosure, a taxpayer will attain the advantage of either a full or partial reduction of any shortfall penalty for which they are liable and may also avoid prosecution action.

12. Section 141G(3)(a) has been amended to increase the reduction rate of certain shortfall penalties when a pre-notification disclosure is made. The amended section 141G applies to voluntary disclosures that are made on or after 17 May 2007.

13. Section 141J has been amended to increase the reduction rate of certain shortfall penalties when a disclosure is made in respect of a temporary tax shortfall.

Legislation

14. The relevant legislative provisions are sections 141G and 141J.

15. Section 141G reads as follows:

141G Reduction in penalty for voluntary disclosure of tax shortfall—

(1) A shortfall penalty payable by a taxpayer under any of sections 141A to 141EB may be reduced if, in the Commissioner's opinion, the taxpayer makes a full voluntary disclosure to the Commissioner of all the details of the tax shortfall, either—

(a) Before the taxpayer is first notified of a pending tax audit or investigation (referred to in this section as "pre-notification disclosure"); or

(b) After the taxpayer is notified of a pending tax audit or investigation, but before the Commissioner starts the audit or investigation (referred to in this section as "post-notification disclosure").

(2) The Commissioner may from time to time—

(a) Specify the information required for a full voluntary disclosure; and

(b) The form in which it must be provided.

(3) The level by which the shortfall penalty is reduced—

(a) for pre-notification disclosure is—

(i) 100%, if the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for an unacceptable interpretation; or

(ii) 75%, if subparagraph (i) does not apply:

(b) For post-notification disclosure is 40%.

(4) A taxpayer is deemed to have been notified of a pending tax audit or investigation, or that the tax audit or investigation has started, if—

(a) The taxpayer; or

(b) An officer of the taxpayer; or

(c) A shareholder of the taxpayer, if the taxpayer is a close company; or

(d) A tax adviser acting for the taxpayer; or

(e) A partner in partnership with the taxpayer; or

(f) A person acting for or on behalf of or as a fiduciary of the taxpayer,—

is notified of the pending tax audit or investigation, or that the tax audit or investigation has started.

(5) An audit or investigation starts at the earlier of—

(a) The end of the first interview an officer of the Department has with the taxpayer or the taxpayer's representative after the taxpayer receives the notice referred to in subsection (4); and

(b) The time when—

(i) An officer of the Department inspects information (including books or records) of the taxpayer after the taxpayer receives the notice referred to in subsection (4); and

(ii) The taxpayer is notified of the inspection.

16. Section 141J reads as follows:

141J Limitation on reduction of shortfall penalty—

(1) This section applies to a shortfall penalty payable by a taxpayer if—

(a) the taxpayer makes a voluntary disclosure; and

(b) the shortfall penalty is payable in respect of a temporary tax shortfall; and

(c) the shortfall penalty would be reduced under section 141G or 141H in the absence of this section.

(2) The shortfall penalty is reduced by—

(a) 100%, if—

(i) the shortfall penalty is for not taking reasonable care, for taking an unacceptable position, or for taking a tax position involving an unacceptable interpretation of a tax law; and

(ii) the tax shortfall is voluntarily disclosed under section 141G before notification of a pending tax audit or investigation; or

(b) 75%, if paragraph (a) does not apply.

(3) A shortfall penalty to which this section applies is not reduced under any other section.

Discussion

Voluntary disclosure methods

17. A taxpayer can make a voluntary disclosure:
    a) in person at an Inland Revenue office, or
    b) by telephone, or
    c) in writing, or
    d) during the first interview that forms part of the audit.

Making a voluntary disclosure in person

18. A taxpayer can make a voluntary disclosure in person at an Inland Revenue office during normal business hours. If the taxpayer cannot make the voluntary disclosure in writing, an Inland Revenue officer will record the voluntary disclosure details on an Inland Revenue form (*IR 281 Voluntary disclosure*) and ask that the taxpayer sign it.

Making a voluntary disclosure by telephone

19. A taxpayer can make a voluntary disclosure by telephoning Inland Revenue. The taxpayer should provide as much information as possible when making the disclosure including the types of information that are required by the Commissioner (see paragraphs 46–49).
20. If the tax shortfall and the facts are straightforward, Inland Revenue will accept the taxpayer's verbal disclosure without asking them to make the voluntary disclosure in writing. Inland Revenue will make a record of the matters disclosed.
21. However, if the tax shortfall and the facts are complex, an Inland Revenue officer will endeavour to record all the details of the tax shortfall and ascertain whether there has been a full voluntary disclosure.
22. If the information is unclear, the taxpayer may be asked to make the full voluntary disclosure in writing. This may include completing an Inland Revenue form (*IR 281 Voluntary disclosure*).

Making a voluntary disclosure in writing

23. A taxpayer can make a voluntary disclosure in writing by:
    a) completing an Inland Revenue form *(IR 281 Voluntary disclosure)*, or
    b) by sending:
        i) a letter, or
        ii) a facsimile, or
        iii) an email to Inland Revenue's Secure Online Correspondence Service.
24. Inland Revenue will accept written disclosures that are not made on the relevant form provided that they meet the information requirements specified in this SPS and any other statutory requirements under section 141G(2).
25. A voluntary disclosure can be made at any time but in order to get the benefit of the reduction in any applicable penalty it will need to be made by or on the date that the tax audit starts.
26. Inland Revenue will acknowledge in writing that it has received the taxpayer's voluntary disclosure.

Making a voluntary disclosure during the first tax audit or investigation interview

27. A taxpayer can make a post-notification voluntary disclosure during or before the first interview that forms part of the audit. At the interview the Inland Revenue officer will consider whether the disclosure is complete and contains all the information necessary to determine the correct tax position and shortfall and will clarify any matters which are unclear. The officer will advise the outcome as soon as practicable and preferably at the interview.

*Notification of a tax audit**

28. Under section 141G(4), a taxpayer is treated as having been notified that a tax audit is pending or has started, if any of the following persons has received the notification:
    a) the taxpayer, or
    b) an officer of the taxpayer, or
    c) a shareholder of the taxpayer (for close companies), or
    d) a tax adviser acting for the taxpayer, or
    e) a partner in a partnership, or
    f) a person acting for, on behalf of, or as a fiduciary of the taxpayer.
29. Pursuant to the definition of "officer" under section 3(1), an officer of the taxpayer includes:
    a) a director, secretary and other statutory officer of a company, and
    b) a receiver or manager of any company property and a person who has similar powers or responsibilities to a receiver or manager, and
    c) a company liquidator.
30. An employee is not generally an "officer" for the purposes of section 141G, unless they are also a person who satisfies any of the criteria in paragraph 29.

* This section should be read in conjunction with SPS 07/02: *Notification of a pending audit or investigation*.

Time of notification

31. Notification will be treated as occurring at the earlier of the date that the taxpayer or their agent receives written notice advising them of a pending audit, or a telephone call advising of a pending audit, or when an Inland Revenue officer makes an unannounced visit (see paragraph 33).
32. If the exact time that the written notice was received becomes critical, it will be determined from the time that the notice is expected to reach its destination as specified by section 14B(8). Any telephone call advising that a tax audit or investigation is pending will be followed up in writing as soon as possible.

Unannounced visits

33. In respect of unannounced visits, notification will be treated as occurring on the date that Inland Revenue first makes contact with the taxpayer. This means that taxpayers will not be able to make a pre-notification disclosure, but may still be able to make a post-notification disclosure (see paragraph 27 on making a voluntary disclosure during the first audit interview).

Disclosure by a company's subsidiary

34. A tax audit of a parent company or one of its subsidiaries may necessitate the audit of other subsidiaries within the same group of companies. In such cases, whether there is a pre-notification or post-notification disclosure depends on which entity in the group has been notified of the audit and whether that notification related to one or more companies in the group or to the entire group.
35. For example, a group of companies consists of a parent company and two subsidiaries. If only the parent company has been notified that a tax audit of the parent company is pending, any voluntary disclosure that a subsidiary of the group subsequently makes must be treated as a pre-notification disclosure (provided that it meets the requirements for full disclosure).
36. However, if the subsidiaries have also been notified that a tax audit is pending, any voluntary disclosure that a subsidiary makes before the tax audit starts will be treated as a post-notification disclosure.
37. When a company has a branch, the branch and company are considered to have been notified that a tax audit or investigation is pending at the same time. This is because the branch is not a separate legal entity from the company.

Full disclosure

38. Inland Revenue will consider all valid voluntary disclosures. Subject to the applicable time bar and other relevant limitations the Commissioner can exercise the discretion under section 113 to amend an assessment to reflect the taxpayer's voluntary disclosure. See SPS 07/03: *Requests to amend assessments*, in *Tax Information Bulletin*, Vol 19, No 5 (June 2007) for details.
39. Section 141G requires that the voluntary disclosure be full. It is not the Commissioner's role where a penalty reduction is sought to elicit the required information from the taxpayer. This does not necessarily mean disclosing discrepancies to the last dollar but does require that the taxpayer provides sufficient information to enable the Commissioner to make a correct assessment. Each case must be considered on its own merits, however, if any subsequent investigation reveals a further shortfall that should have been included in the disclosure then the taxpayer will not be entitled to the reduction in respect to the voluntary disclosure.
40. For example, a taxpayer makes a voluntary disclosure in respect of previously unreturned interest income from money on fixed-term deposit. On investigation it is revealed that the taxpayer also has other interest income that was not included in the voluntary disclosure. The voluntary disclosure was not a full disclosure in that other income was not included. The taxpayer will not be entitled to any reduction in respect of the disclosure.
41. If the taxpayer provides information relating to a tax shortfall pursuant to a legal requirement, eg, a request made under section 17, the taxpayer cannot be said to have made a voluntary disclosure.
42. Similarly, if Inland Revenue has already identified and verified that there has been a tax shortfall, the taxpayer cannot make a voluntary disclosure. Any subsequent verification of the tax shortfall by the taxpayer would merely confirm the Commissioner's prior knowledge of that tax shortfall.
43. However, if the taxpayer makes a disclosure of another tax shortfall that is not already known to the Commissioner (even if the disclosure arises as a result of a statutory request for information) the taxpayer's additional disclosure will be treated as a voluntary disclosure provided the other requirements of section 141G(2) are satisfied.

44. If the disclosure is not fully detailed, and the taxpayer cannot provide full details at their first point of contact with Inland Revenue, the Commissioner will allow the taxpayer reasonable time to obtain more information. The time period for obtaining this information will be negotiated between the taxpayer and the Inland Revenue officer.

45. If the taxpayer provides the clarifying information within the agreed period, and provided the information then constitutes a full disclosure, the taxpayer will be treated as having made a full disclosure on that initial date.

Minimum details required

46. To satisfy the requirement for full disclosure a taxpayer should provide the following minimum details:
    a) the taxpayer's details (name, trade name, IRD number, address, contact telephone number, and
    b) the nature of the errors or omissions, and
    c) an explanation as to why the errors or omissions occurred, and
    d) adequate information to enable a correct assessment of the tax shortfall to be made, and
    e) any further information that is necessary to make an assessment.

47. Where all this information is not provided, the Commissioner will consider on a case-by-case basis whether the information provided is sufficient to satisfy the full disclosure requirements.

48. In doing so, the Commissioner will have regard to the taxpayer's reasons for not providing all of the information listed in paragraph 46. (See the discussion regarding when the taxpayer cannot provide full details of the tax shortfall at the first point of contact in paragraph 44.)

49. In addition to the minimum details stated in paragraph 46, taxpayers should consider the following situations to ensure that a full voluntary disclosure is made.

More than one tax shortfall

50. Where a taxpayer has more than one tax shortfall each shortfall will be considered separately. For the purpose of section 141G, a distinction is drawn between a tax shortfall that is voluntarily disclosed and one that has been detected by an Inland Revenue tax audit. The latter cannot qualify for a shortfall penalty reduction under section 141G(3).

51. A taxpayer can sometimes discover two matters that are relevant to the same tax position and shortfall. The taxpayer should disclose both matters when making the voluntary disclosure to Inland Revenue.

52. If one of the matters is not disclosed until after the tax audit starts (for example, after the first audit interview has ended), the taxpayer cannot qualify for a shortfall penalty reduction under section 141G(3). This is because the taxpayer has not provided "all the details of the tax shortfall" necessary for full disclosure under section 141G(1).

Disclosure of another tax type

53. If a taxpayer:
    a) is subject to a tax audit on one tax type, and
    b) makes a voluntary disclosure that satisfies the information requirements under section 141G(1) and (2) in respect of another tax type, and
    c) has not been notified that a tax audit or investigation is pending in respect of that other tax type,

    the taxpayer's voluntary disclosure will qualify as a pre-notification disclosure.

54. For example, a taxpayer is subject to an audit regarding PAYE because they paid wages without deducting tax pursuant to the PAYE rules. The taxpayer makes a full voluntary disclosure in respect of income tax for the 2007 year because they have omitted some sales in their income tax return. The taxpayer has not been notified that an audit is pending in respect of the income tax shortfall. The taxpayer's voluntary disclosure is a pre-notification disclosure for the purposes of section 141G(1)(a).

Disclosure of another period

55. Inland Revenue's notification that a tax audit is pending will generally inform the taxpayer of the tax periods that are subject to the audit (though this period may be subsequently amended). The taxpayer can still make a pre-notification disclosure for another tax period that is not stipulated in the notification.

56. However, Inland Revenue can extend the tax audit to other tax periods. Inland Revenue will notify the taxpayer promptly if the audit's scope widens during the audit and other tax types and/or periods are to be reviewed.

57. If the taxpayer does not disclose all the details of a tax shortfall for a tax period until after they are notified that a tax audit is pending for that tax period, the taxpayer's voluntary disclosure cannot be a pre-notification disclosure under section 141G(3)(a). However, the taxpayer's full voluntary disclosure can be a post-notification disclosure if it is made before the tax audit starts (as defined in section 141G(5)).

The taxpayer's disclosure must be voluntary and unconditional

58. Whether a taxpayer's disclosure is voluntary is a matter to be determined on a case-by-case basis. A taxpayer's disclosure of a tax shortfall is voluntary where the taxpayer has provided the information of their own free will, impulse or choice.

59. Inland Revenue accepts that a taxpayer's disclosure is still a voluntary one even if it is prompted by the notification that a tax audit is pending. Section 141G(1)(b) provides that a taxpayer can make a post-notification disclosure in these circumstances provided that the requirement for full disclosure are met.

60. However, sometimes Inland Revenue may advise the taxpayer of a known tax shortfall and request that the taxpayer provides specific information to verify the exact details of the shortfall—perhaps including timing of transactions and exact amounts of money involved—in order to raise the assessment. In this circumstance Inland Revenue has prompted the provision of the specific information and it is clear they already know about the tax shortfall so it cannot be said that a voluntary disclosure has been made.

61. Inland Revenue occasionally receives information from taxpayers purporting to limit the Commissioner's use of it or containing conditions on how the information may be used. For example, a taxpayer may send a letter regarding an amount of income that had been treated as being non-taxable. The taxpayer's letter also contains a further condition that Inland Revenue should accept the information in full and final settlement of all other taxes and not investigate further (or discontinue an existing investigation). The Commissioner cannot be bound in this way and would be obligated to act on the information provided in the taxpayer's letter. If on further investigation no further shortfalls are found, the taxpayer's letter could still be a full disclosure, and provided it also meets the other criteria in this SPS the taxpayer's letter would still be a voluntary disclosure. However, if on further investigation, additional shortfalls are revealed, then the taxpayer's letter cannot be a voluntary disclosure as the disclosure was not full. In those circumstances the taxpayer would not be entitled to a reduction in respect to the information provided in the letter.

Prosecution

62. If a taxpayer makes a pre-notification disclosure, Inland Revenue will not consider prosecution action against them in respect of the tax shortfall that has been voluntarily disclosed.

63. However, Inland Revenue may consider prosecution action where a taxpayer makes a post-notification disclosure that involves evasion or similar offending.

This Standard Practice Statement is signed on 26th May 2009.

Rob Wells
LTS Manager, Technical Standards

Examples

The following examples are provided to further explain the Commissioner's view on voluntary disclosures. The example are for the purposes of clarification only and do not form part of the SPS.

Example 1

A taxpayer provides information regarding a tax shortfall pursuant to an information demand made by Inland Revenue under section 17. The information that the taxpayer has provided does not amount to a voluntary disclosure.

Example 2

An employer files their Employer Monthly Statement without an accompanying payment. The employer cannot voluntarily disclose the non-payment of the PAYE because Inland Revenue will already know that payment has not been made.

Example 3

An Inland Revenue officer has sufficient information to establish that a taxpayer who is a builder has not returned income tax on the proceeds from the sale of three houses (Houses A, B and C) in the 2008 tax year and the officer has sufficient information to verify the amount of the unreturned income tax.

The officer notifies the taxpayer that a tax audit or investigation is pending in respect of the 2008 tax year. In the letter, the officer sets out the facts and tax shortfalls. The officer also asks the taxpayer to provide specific information about these tax shortfalls.

The taxpayer has not made a voluntary disclosure for the purpose of section 141G. This is because Inland Revenue has prompted the taxpayer to provide the specific information and already knows about this tax shortfall.

The taxpayer in the above example can make a voluntary disclosure of other tax shortfalls that are not stipulated in the notification or known to Inland Revenue (see examples 4 and 5).

Example 4

Applying the same facts as in example 3, the taxpayer discloses a tax shortfall relating to the sale proceeds of a fourth house (House X)—also in the 2008 tax year. The taxpayer has made a voluntary disclosure in respect of this tax shortfall, notwithstanding that the audit notification may have prompted the taxpayer's disclosure.

This is because Inland Revenue has not specifically requested information regarding the fourth transaction. The taxpayer is entitled to a 40% post-notification disclosure reduction of any shortfall penalty payable in respect of this tax shortfall under section 141G(3)(b) and could be entitled to a further penalty reduction for previous behaviour under section 141FB (see SPS 06/03: *Reduction of shortfall penalties for previous behaviour*).

Example 5

Applying the same facts as in example 3, the information that the taxpayer has disclosed shows that they have omitted income on three sales (Houses A, B and Y) for the 2008 tax year. The disclosed information also shows that they did not in fact complete one of the sales (that is, in respect of House C) as asserted by the Inland Revenue officer.

In this example, the taxpayer has made a voluntary disclosure of the tax shortfall in respect of the sale of House Y that is unknown to Inland Revenue. The taxpayer is entitled to a 40% post-notification reduction of any shortfall penalty payable in respect of this tax shortfall under section 141G(3)(b) and could be entitled to a further penalty reduction for previous behaviour under section 141FB (see SPS 06/03: *Reduction of shortfall penalties for previous behaviour*).

The taxpayer is not entitled to any shortfall penalty reduction under section 141G(3) in respect of tax shortfalls that arise from the other two transactions, because they are already known to Inland Revenue.

Example 6

As part of a project to investigate specific concerns regarding the GST consequences where owners of serviced apartments change the way in which those apartments are used (for example, where the owner may have purchased an apartment as a investment property but subsequently moved into the property themselves), Inland Revenue writes to a number of apartments owners. The letter advises the taxpayers that they may need to make adjustments for non-taxable use of the apartment. The taxpayers were selected where Inland Revenue had information showing the property was the same as the address used by the taxpayer for other activities although Inland Revenue had not yet formed an intention to actively investigate all or any of the group. The letter reminds the taxpayer of a need to make appropriate adjustments should the taxpayer occupy the property themselves.

In response to the above letter a taxpayer has made a voluntary disclosure of a tax shortfall in respect of their private use of a property. The letter from Inland Revenue did not contain details of a specific tax shortfall, nor did it advise of a pending audit. That being the case, the taxpayer is entitled to a 100% pre-notification reduction of any shortfall penalty payable, notwithstanding the disclosure may have been prompted by the letter sent to the taxpayers advising of Inland Revenue's interest in this matter.*

* The circumstances in example 6 can be distinguished from that described in paragraph 42 of the SPS. This is because in example 6 Inland Revenue had not verified that a shortfall existed, nor the amount of any shortfall.

Example 7

Inland Revenue does a preliminary risk review exercise in order to determine which taxpayers ought to be investigated. As part of that risk review an investigator writes to a taxpayer and requests a copy of their financial statements for the period of the risk review. The taxpayer realises there is an error in the income tax return filed for that period and along with the information requested also makes a voluntary disclosure.

The request for financial statements made as part of the risk review exercise is not notification of an audit. Provided the other criteria for a full disclosure, as set out in paragraphs 38–49 of the SPS, are met, the taxpayer would be entitled to a pre-notification deduction. This is despite the fact that the taxpayer may have inferred an audit was likely to eventuate following the "risk review".

Example 8

A taxpayer files a GST return showing a large refund. As part of a refund check conducted by Inland Revenue, an officer contacts the taxpayer to ask about the large refund. The taxpayer advises they have purchased a large property. The officer asks to be shown the documentation relating to that purchase. Before sending the documents the taxpayer notes that they do not have a valid tax invoice in respect of the input tax claimed and so makes a voluntary disclosure.

The request for information relating to the large refund was not notice of a pending audit or investigation. Therefore the taxpayer is entitled to a pre-notification reduction for the voluntary disclosure.

Note: In respect of examples 7 and 8 a request for information in similar circumstances may include notification of an audit or investigation. However, consistent with SPS 07/02: *Notification of a pending audit or investigation*, this would be clearly brought to the taxpayer's attention by using the words "audit" or "investigation".

REWRITE ADVISORY PANEL

PANEL STATEMENT RAP 002: PROCESS FOR RESOLVING POTENTIAL UNINTENDED LEGISLATIVE CHANGES IN THE INCOME TAX ACT 2007

Introduction

1. The Rewrite Advisory Panel (the Panel) is an independent committee formed to advise on the rewrite of the Income Tax Act 1994 (ITA 1994). The Panel's role includes considering whether any unintended legislative changes arise under the Income Tax Act 2007 (ITA 2007).
2. In 2007 the Panel was further invited to monitor and report back to Ministers on the ITA 2007 and its continuing consistency with the objectives of the rewrite project.
3. The Panel will consider all issues submitted, and make recommendations to Government on how any unintended changes should be dealt with.
4. This Panel Statement sets out the process for taxpayers and agents to refer potential unintended legislative changes in the ITA 2007 to the Panel, and how the Panel will deal with those issues. This Panel Statement is not intended to amend any part of Rewrite Advisory Panel Statement 001, although it repeats some of the content of the earlier Panel Statement.
5. Potential unintended legislative changes identified in the Income Tax Act 2004 (ITA 2004) can still be raised with the Panel. The process for making submissions on potential unintended legislative changes in the ITA 2004 is outlined in the Rewrite Advisory Panel Statement RAP 001, which can be found on the Rewrite Advisory Panel website at **www.rewriteadvisory.govt.nz**

Background

6. The ITA 2007 is the fourth and final stage of New Zealand's income tax legislation Rewrite programme which aims to make the legislation clear, plainly expressed and easy to understand. This will assist with understanding tax rights and obligations.
7. The rewrite programme introduced the alphanumeric numbering system and set out the core provisions in the ITA 1994; progressively rewrote the provisions into plain language and restructured the provisions into a more logical scheme through the ITA 2004 and the ITA 2007.
8. The intention of the drafting of the ITA was to ensure no change to the pre-existing law was made, except in respect of a limited number of intended policy changes specified in Schedule 51 of the ITA 2007.
9. In 2003, the Finance and Expenditure Committee (FEC) noted that unintended changes in the law may arise from the difference in language between the old and new Acts, despite the best efforts of the drafters to avoid this.
10. The FEC proposed the appointment of an independent committee to review submissions regarding any differences between the old and new Acts and to recommend appropriate action. The Rewrite Advisory Panel was invited to take on this role.
11. A formal process was called for to identify such issues and refer them to the Government for consideration.
12. Upon identification of an unintended legislative change, the Government will decide whether to:
    - enact an amendment to reinstate or modify the meaning of the pre-existing law, or
    - permit the unintended change to be retained in the legislation.
13. The Government will also decide whether the issue merits wider consultation under the generic tax policy process, eg, whether a Government Discussion Document is warranted.
14. The Rewrite Advisory Panel is currently chaired by David McLay and includes representatives from the New Zealand Institute of Chartered Accountants (NZICA), the New Zealand Law Society (NZLS), The Treasury and Inland Revenue.

Panel secretariat and administration

15. Inland Revenue's LTS Technical Standards unit performs a secretariat role to support the Panel. The Secretariat undertakes administrative functions and maintains a database and website dedicated to the process.
16. LTS Technical Standards is an Inland Revenue business unit comprising solicitors and technical advisors.
17. The Rewrite Advisory Panel website provides the main avenue for new issues to be submitted by taxpayers and agents, and for tracking the progress of each issue. This website can be viewed at **www.rewriteadvisory.govt.nz** Issues can also be submitted by post to the Panel at the address provided at paragraph 30.

18. This website contains:
    - a description of the process
    - details of the Panel members
    - a register of issues and their status
    - an online submission form.
19. Recommendations of the Panel and outcomes of the process will be communicated to the person raising the issue, on the website and through other channels, depending upon the significance of the issue.
20. "Unintended legislative change issue"—this term is used in this Panel Statement to refer to the identification of an instance when the meaning of a provision in the ITA 2007 has potentially changed from the meaning of the corresponding provision in the ITA 2004 and is not included in the intended policy changes listed in Schedule 51 of the ITA 2007.
21. The complexity of each issue and the volume of issues will influence the length of time needed to complete the process. It is acknowledged that timeliness is important and issues raised through this process will be treated expeditiously.
22. Issues raised by Inland Revenue will also follow this process.
23. Maintenance items such as corrections of cross-references, spelling and punctuation in the ITA 2004 or ITA 2007 are considered by Inland Revenue officials. These items are reported to the Panel but are not considered in detail by the Panel. They are generally incorporated into an available Amendment Bill. A summary of maintenance items can be found in the Maintenance Items Log on the Panel's website.

The process

24. This section covers the following:
    - Overview
    - Submitting issues
    - Content/form of submissions
    - Inland Revenue analysis
    - The Panel process
    - Outcomes and communication
    - Penalties and interest
    - Disputes and rulings processes.

Overview

25. A potential unintended legislative change issue can be referred to the Panel Secretariat. The Secretariat will refer all issues to the Panel and to Inland Revenue officials for their analysis and comment.
26. Following Inland Revenue analysis, a report will be forwarded to the Panel to consider whether there is an unintended legislative change and to recommend a course of action. A copy of Inland Revenue's report will be made available to the submitter for their consideration and comment. The submitter may forward any comments to the Secretariat within 10 working days. If time is an issue, this should be raised with the Secretariat.
27. Simple changes such as typographical errors or incorrect cross-references will also be brought to the Panel's attention, but it will not formally review these. (See paragraph 23.)
28. Once the Panel has considered an issue it will make a recommendation to the Government. The Government will then determine the appropriate response to an unintended legislative change.

Submitting issues

29. Potential unintended legislative change issues will come from a variety of sources, including:
    - Inland Revenue
    - taxpayers and their agents
    - NZICA or NZLS tax committees
    - any other interested persons.
30. The Panel wants to ensure submitting issues for its consideration is straightforward. An issue can be submitted in the following ways:
    - by using the online form on the Rewrite Advisory Panel website **www.rewriteadvisory.govt.nz**
    - by posting the appended form to:
      Rewrite Advisory Panel Secretariat
      PO Box 2198
      WELLINGTON
    - through the Tax Committees of NZICA and NZLS
    - through the websites of NZICA and NZLS.
31. When received, each issue will be registered by the Secretariat, and an acknowledgement sent to the submitter. Concurrently the issue will be sent to the Panel.
32. If a duplicate issue is received, the Secretariat will notify the submitter that the issue has already been raised and advise the status of the original issue. The Panel will be advised of duplications.

Content/form of submissions

33. Each submission should include:
    - the section reference under the ITA 2007
    - the corresponding section reference under the ITA 2004

- a brief interpretation of the ITA 2004 (or earlier legislation)
- a brief interpretation of the corresponding provision under the ITA 2007
- a reference to any policy and practice under the ITA 2004 (or earlier legislation)
- practical examples of the effect of the change
- the name and contact details of the submitter.

34. Additional documentation may also be included to support your submission.
35. A form for submissions is appended to this Panel Statement (see Appendix).

Inland Revenue analysis

36. The Secretariat will refer every issue to Inland Revenue's LTS Technical Standards unit for analysis.
37. Inland Revenue analysis involves researching the provision affected, both in its pre- and post-rewrite forms, identifying the interpretation of the corresponding provision prior to the rewrite and establishing a view as to whether or not there has been a change in the law.
38. Inland Revenue officials will also highlight their preferred means of resolving the matter.

The Panel process

39. Submissions will be referred by the Secretariat to the Panel in a timely manner, along with a report from Inland Revenue officials setting out their analysis, options and recommendation for dealing with the issue—the timing of this will depend on the complexity of the issue.
40. The Secretariat will forward a copy of Inland Revenue's report to the submitter and the submitter may make further comment to the Secretariat within 10 working days from the date the report is sent.
41. The Panel will meet as required to consider the issues and, in particular, whether there has been an unintended change in the law through the rewrite process.
42. If the Panel considers there has been an unintended change in the law, it will make a recommendation to the Minister of Revenue as to the appropriate course of action, eg, whether the ITA 2007 should be amended or whether the change should be retained.
43. In some cases urgency may be required, eg, in the case of a dispute with Inland Revenue over the interpretation of the ITA 2007. If this is the case, the Panel is prepared to consider the matter expeditiously. Any need for urgency will need to be brought to the Secretariat's attention at the time an issue is submitted. In such cases it may be necessary to depart from the process outlined above.

Outcomes and communication

44. When an unintended legislative change is confirmed by the Panel, it will make a recommendation to the Government as to the preferred resolution. However, ultimately it is the Government's decision.
45. The Panel anticipates that the Government will decide to:
    - amend the ITA 2007 to reinstate the outcome given under the ITA 2004
    - permit the unintended change to be retained in the legislation, or
    - if the legislation is amended retrospectively, enact a savings provision to address the position of taxpayers who have relied on the unintended change.
46. Given the circumstances of the case, the Government may also decide if the issue merits wider consultation, under the generic tax policy process, before any amendment is undertaken. The Government will also decide the application date of any amendment, and whether the Act will be amended retrospectively.
47. Submitters will be notified directly of the outcome. The Panel's website will also record the outcome in the Issues Log.
48. Inland Revenue will also publish the outcome of issues reviewed by the Panel in Inland Revenue's *Tax Information Bulletin*.

Penalties and interest

49. This process does not remove the need for taxpayers to take care in preparing tax positions. The following paragraphs summarise the position proposed by the Commissioner.
50. In most cases when interpreting a rewritten provision under the ITA 2007, taxpayers will be able to rely on existing interpretations of the corresponding ITA 2004 provision. If a taxpayer has taken an acceptable tax position, a taxpayer will not be liable to a shortfall penalty.
51. If the meaning of the ITA 2007 is unambiguous, it should be applied, even if it appears that there has been an unintended change.
52. However, if a taxpayer has not taken an acceptable tax position then a shortfall penalty will be imposed.
53. Inland Revenue has provided more details on the treatment of penalties and interest arising from unintended legislative changes in Standard Practice Statement 08/03 published in the *Tax Information Bulletin* Vol 20, No 10 (December 2008).

Disputes and rulings processes

54. The unintended legislative change process set out in this Panel Statement does not affect the operation of the disputes process or the rulings process. The unintended legislative change process sits alongside those statutory processes.

55. In each case, taxpayers and Inland Revenue will need to consider whether commencement of a dispute could be delayed or continuation of a dispute be suspended while an issue is referred through this process. This process does not override existing legislative time-bar or response periods.

56. Please note the ITA 2007 contains savings provisions that allow existing binding rulings to continue to apply.

APPENDIX

Income Tax Act 2007 – Rewrite Advisory Panel Secretariat Submission of Unintended Legislative Change Issue		
Name of submitter:		
Firm name (where applicable):		
Is this an item for the Maintenance Items Log on the website?	Yes	No
Can we publish your name on the submission log?	Yes	No
Mailing address:		
Phone:		
Email address:		
Brief description of issue:		
Section/provision of the Income Tax Act 2007:		
Your interpretation of the section/provision under the 2007 Act:		
Section/provision of the Income Tax Act 2004 (or earlier legislation):		
Your interpretation under the 2004 Act (or earlier legislation):		
Policy and practice under the 2004 Act (or earlier legislation):		
Please provide practical examples to illustrate the effect of your submission:		
Please indicate if urgency is required and give reasons:		

Note: Supporting or explanatory material may be attached.

QUESTIONS WE'VE BEEN ASKED

QB 09/03: DECISIONS ON APPLICATION OF SECTION CA 1(2) – COMMON LAW INTEREST AND INCOME UNDER ORDINARY CONCEPTS

All references are to the Income Tax Act 2007, unless otherwise stated.

Question

We have been asked whether the Commissioner accepts, as a broader principle, all the reasoning in the High Court decisions *CIR v Buis and Burston* (2005) 22 NZTC 19,278 on the application of section CA 1(2) (income under ordinary concepts) to so-called "common law interest" payments. [Common law interest payments are payments which might be described as akin to "interest" but are not connected with lending, eg, late payment "interest" for settlement of a contract, "interest" awarded as part of a damages claim.]

In *Buis and Burston* France J held that section CD 5 of the Income Tax Act 1994 (now section CA 1(2)) could not apply to tax common law interest payments, because interest could be taxed only under the provision dealing with interest so defined (section CE 1 of the Income Tax Act 1994 (now section CC 4(1)). In his Honour's view, common law interest payments were not taxable because they did not come within the definition of "interest" in section OB 1 of the Income Tax Act 1994 (now section YA 1).

Answer

While the Commissioner decided not to appeal the decisions in the *Buis and Burston* cases, he does not accept the correctness of *this aspect* of the decisions as a generally applicable principle. The Commissioner intends to have the matter considered further by the courts when an opportunity arises in the future.

Explanation

CIR v Buis and Burston concerned the taxation of payments received by the taxpayers under section 72 of the Accident Rehabilitation and Compensation Insurance Act 1992 (interest paid in relation to the late payment of earnings related compensation). The Commissioner sought to tax those payments as income under ordinary concepts.

The Commissioner and the taxpayers accepted that the payments did not fall within the definition of "interest", which applies only to payments arising from "money lent" (also a defined term).

In the High Court, France J found that the payments were not income, being in the nature of a penalty imposed on the Accident Compensation Corporation. The Commissioner accepts this aspect of the decision.

However, his Honour also concluded that the payments could not be income under ordinary concepts in any event as the payments were in the nature of interest and interest could be taxed only under the provision dealing with interest as defined (section CE 1 of the Income Tax Act 1994 (now section CC 4(1)). In France J's opinion, section CD 5 of the Income Tax Act 1994 (now section CA 1(2)) must be read subject to section CE 1 of the Income Tax Act 1994 and could not be used to tax any interest payments that did not fall within the general interest provision.

The Commissioner does not agree with this aspect of the decision. Section YA 1 defines "interest" as being a payment made to a person by another person for money lent. The Income Tax Act did not originally define "interest". However, in 1983 a definition was inserted by section 3(1) of the Income Tax Amendment Act (No 4) 1983. This definition was inserted to ensure that certain money market transactions that were in the nature of loans, but that in law were not classed as money-lending, would be taxed: *Marac Life Assurance Ltd v CIR* (1986) 8 NZTC 5,086. The definition was not a codification of the taxation of all forms of interest.

In many instances payments which might be described as akin to "interest" under common law or ordinary concepts are not connected with "money lent"—late payment "interest" for settlement of a contract being a common example. "Interest as damages" where the damages are a reflection of a loss of profits is another. In the Commissioner's view the inclusion of a definition of "interest" in respect of money lent was not intended by Parliament to have excluded from taxation amounts that are akin to interest and are income under ordinary concepts.

The Commissioner considers that the Act must be read in its entirety and section CC 4(1) must be read as applying to situations falling within the definition of "money lent"; leaving those transactions that do not fit within that definition to be governed under the general charge of income under ordinary concepts: section CA 1(2). In those cases, it would be necessary to consider the true nature of the payment in the hands of the recipient to determine whether it is income and therefore taxable: *IRC v Ballantine* (1924) 8 TC 595 and *Riches v Westminster Bank Limited* [1947] 1 All ER 469.

ITEMS OF INTEREST

INLAND REVENUE'S PUBLIC RULINGS UNIT

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I. INTRODUCTION

The Public Rulings Unit is a division of the Office of the Chief Tax Counsel ("OCTC"), Inland Revenue. The Unit's key function is to determine and disseminate the Commissioner of Inland Revenue's position on various tax issues through the issuing of primarily binding public rulings, interpretation statements and interpretation guidelines. Before the Unit was established as a separate function in 1999, public advice work was provided by the other units making up the OCTC (then known as the Adjudication & Rulings business group). The Unit was established to provide a real focus on, and commitment to, the provision of public rulings and statements, given their important role in clarifying areas of uncertainty and fostering compliance. Since 1999, the Unit has generated many items on a wide range of taxation issues, ranging from, by way of example, the deductibility of feasibility studies expenditure, to whether an agreement for the sale and purchase of property is an "invoice" for GST purposes[1]. These items are the result of significant research, legal analysis and consultative consideration—the overriding aim is to provide greater certainty for taxpayers and their advisors on difficult areas of taxation law and sometimes on general areas of law that impact on taxation outcomes (for example, trust law and company law).

This article explains the types of public advice (referred to in this article as "public items") provided by the Unit, who makes up the Unit, how topics are selected and consulted on, the future of the Unit and its role within Inland Revenue.

II. PUBLIC ITEMS

Public items produced by the Unit currently take four forms:

1. binding public rulings
2. interpretation statements or guidelines
3. "questions we've been asked"[2]
4. various statutory determinations[3].

1. Public rulings

A public ruling is an interpretation issued by Inland Revenue to show how a taxation law applies to taxpayers and specific types of arrangements. Taxpayers whose circumstances match those in a ruling may apply it, but are not obliged to do so. A public ruling will relate to a particular arrangement or situation, and will normally only apply for a specified period. It is also important to note that a public ruling is binding on the Commissioner. Therefore, if a taxpayer calculates their tax liability according to an applicable public binding ruling, and the facts of the taxpayer's arrangement are not materially different from the ruling, the Commissioner must assess according to that ruling. For this reason, binding public rulings are the most valuable form of advice provided by Inland Revenue. No other form of advice, written or verbal is strictly binding on the Commissioner. For that reason, it is perhaps worthwhile briefly setting out the statutory framework for binding rulings.

Public rulings are issued by the Commissioner[4] pursuant to Part VA of the Tax Administration Act 1994[5]. Section 91A sets out the purpose of the regime:

- to provide taxpayers with certainty about the way the Commissioner will apply taxation laws; and
- help them to meet their obligations under those laws

—by enabling the Commissioner to issue rulings that will bind the Commissioner on the application of those laws.

[1] Refer Appendix I for outputs for 2000/2001 and subsequent years.

[2] As the name suggests, literally questions asked of the Commissioner which are generally able to be answered in a succinct manner.

[3] From 1 July 2008 the Public Rulings Unit no longer is responsible for the issuing of depreciation determinations. They are now dealt with by the Technical Standards group, which is part of the Service Delivery operational area of Inland Revenue.

[4] Through his or her officers with the requisite delegations.

[5] The binding rulings regime also provides for the issuing of private and product rulings, which unlike public rulings are provided to a specific taxpayer or class of taxpayers, or relate to a specified product.

The section goes on to state: "[t]he Part also recognises the importance of collecting the taxes imposed by Parliament and the need for full and accurate disclosure by taxpayers who seek to obtain binding rulings".[6]

The Commissioner may make at any time a public ruling on how a taxation law applies in relation to any type of person and any type of arrangement.[7] The term "taxation law" is a defined one[8], but essentially includes most provisions of the Income Tax Act 2007[9], the Goods and Services Tax Act 1985[10], and the Estate and Gift Duties Act 1968. However, the Commissioner cannot issue binding rulings on Inland Revenue's rights or obligations to exercise powers regarding the administration of the tax system. This includes imposing or remitting penalties, inquiries into the correctness of returns or information supplied to it, prosecution, or debt recovery.[11]

To be a public ruling, the item must contain certain prescribed elements. It must state:

- that it is a public ruling made under section 91D; and
- the taxation law or laws on which it is a ruling; and
- the arrangement to which it applies; and
- how the taxation law or laws apply to the arrangement; and
- either the period or tax year for which the ruling applies or, in the case of a ruling issued for an indefinite period, the date or tax year from which the ruling applies.

In this way, a public ruling can be easily identified as such, and distinguished from other written advice provided by Inland Revenue. The making of a public ruling must be gazetted and published.[12] It is Inland Revenue's practice to publish public rulings in its monthly *Taxation Information Bulletin* and on its website.[13]

Public rulings are only binding on the Commissioner, and not taxpayers. If a public ruling on a taxation law applies to a person and their arrangement, and **the person applies the taxation law in the way stated in the ruling**, the Commissioner must apply the ruling[14] for the period or tax year for which the ruling applies, or in the case of a ruling issued for an indefinite period, indefinitely[15]. However, to reflect the fact that rulings are not intended to be binding on taxpayers, this will not be the case where a taxpayer has issued the Commissioner with a notice of proposed adjustment to change the effect of a ruling previously applied by the taxpayer.[16]

The Commissioner may at any time withdraw a public ruling, but must notify the withdrawal by giving adequate notice in the Gazette. If the Commissioner withdraws a public ruling, the ruling does not apply to any arrangement entered into after the date of the withdrawal. However, the ruling continues to apply to any arrangements to which it previously applied that were entered into before the date of withdrawal for the remainder of the period or tax year specified in the ruling or, in the case of a ruling issued for an indefinite period, for three years after the date of withdrawal.[17] To date there has only been one withdrawal of a public ruling.[18]

Finally, a binding ruling does not apply from the date a taxation law which is the subject of the ruling is repealed or amended, to the extent the repeal or amendment changes the way the taxation law applies in the ruling.[19]

As noted previously, public rulings may be issued for a stipulated period, or number of taxation years, or indefinitely. There is no guidance in the legislation as to how long such a period should be, or for how many taxation years, or in what circumstances the Commissioner should issue an indefinite ruling. It has become Inland Revenue's administrative practice generally to issue a ruling for the first time for a period of three calendar or tax years and any second "reissue" for five calendar or tax years. The practice for any subsequent reissue, assuming the law is now quite settled and no substantial changes had to be made when re-considering the issues, is to issue for an indefinite period. In this way the Commissioner can best ensure that rulings are current, comprehensive and accurate. In the

[6] The latter part of this statement being more applicable to the private and product rulings aspects of the regime.

[7] Section 91D

[8] Section 91C

[9] The key exceptions being where it is possible to obtain some kind of determination under the Income Tax Act, eg, depreciation determination, accrual rules determination, petroleum mining determination.

[10] Except sections 12 [imported goods] and 13 [goods liable to excise duty and supplied at "in bond" prices—now repealed].

[11] Section 91C(3)

[12] Section 91DA

[13] **www.ird.govt.nz/technical-tax/tib/**

[14] Section 91DB

[15] Section 91DC(1)

[16] Section 91DC(2)

[17] Section 91DE

[18] BR Pub 00/09 (Directors' fees and GST), published in TIB Vol 12, No 9, contained an application period which it was thought could have been seen to be retrospective, which was not intended. The Commissioner's usual practice is to apply binding public rulings prospectively where his view of the law has altered. For this reason, BR Pub 00/09 was withdrawn and a new public binding ruling, BR Pub 00/11, issued with a new application period.

[19] Section 91G TAA 1994

case of indefinite rulings, over time the possibility of a law change eroding the application of a binding ruling becomes greater. As an administrative matter, indefinite rulings are reviewed periodically, subject to resources, but Inland Revenue, taxpayers and their advisers' always need to be mindful of the potential overriding effect of subsequent repeals and amendments.

Another administrative practice adopted in relation to each public ruling is to append a quite detailed commentary. The objective is to provide assistance in understanding and applying the conclusions reached in the ruling. Such commentaries are not however binding.

2. Interpretation statements and interpretation guidelines

An interpretation statement sets out the Commissioner's view on taxation laws in a particular situation or in relation to a certain set of circumstances. It is used where a public ruling cannot be issued or is not considered appropriate (for example where an arrangement cannot be identified or established, as would be required for a public ruling). Effort is made to ensure that an issue is dealt with wherever possible as a binding ruling. However, in some cases it is considered that a more general discussion of the law, its interpretation and scope in an interpretation statement format would be more useful for taxpayers and their advisors.[20]

An interpretation guideline discusses the Commissioner's approach to the interpretation of areas of law that have tax implications. Interpretation guidelines tend to be more extensive in their length and scope than an interpretation statement, eg, past topics have included guidance on the deductibility of interest on money borrowed. Interpretation statements and guidelines are not binding on the Commissioner.

3. "Questions we've been asked"

"Questions we've been asked" (QWBAs) are published items setting out the answers to enquiries Inland Revenue has received about specific tax issues, which may be of general interest to taxpayers. These items are normally the shortest of the three types of interpretative item, and generally address specific questions relating to less complex or contentious issues and legislation. They contain less technical analysis when published than other public items, and are not binding on the Commissioner.

4. Statutory determinations

Until quite recently the Public Rulings Unit was also responsible for issuing general, provisional and special depreciation determinations. It is still responsible for several livestock determinations[21], but it is envisaged that these will be handled by Service Delivery in the 09/10 income year and following. The devolvement of the making of these determinations reflects that these functions are better handled by the operational area of Inland Revenue, rather than OCTC with its interpretative focus.

III. THE PUBLIC RULINGS UNIT

The composition of the Unit

As mentioned, the Public Rulings Unit sits within the OCTC—a separate business group within Inland Revenue led by Inland Revenue's Chief Tax Counsel. The Unit is a small one—currently comprising a Director, and three managers—all qualified lawyers and/or accountants and ten analysts—all legally trained and/or having significant taxation experience. The Unit also includes a programme coordinator, who is responsible for a range of functions within the Unit, including the project management aspects of the technical work programme, and continuous improvement of processes.

Public items take the form of projects that are assigned to teams within the Public Rulings Unit depending on their priority. Each team consists of an analyst, a manager, and the Director, Public Rulings or the Chief Tax Counsel, whose role is to sign off the project once complete. These teams are responsible for carrying out the necessary research and analysis which supports and ultimately results in the public item.

The role of programme co-ordinator was created in 2008. The programme co-ordinator plays a critical role in ensuring the delivery of the technical work programme, through managing the programme and providing the Director with regular reporting on delivery progress and performance. The creation of this role reflects the Unit's commitment to adopting sound project planning methodologies to ensure it meets its delivery obligations. The programme co-ordinator also champions continuous improvement of processes and internal and external relationships.

The public rulings process is centralised within the Public Rulings Unit. No other area within Inland Revenue has the delegated authority to make public rulings, which helps to maintain quality and consistency of the rulings process and

[20] Perhaps a recent example of this is the interpretation statement on the deductibility of feasibility study expenditure [refer IS 08/02] which includes a comprehensive discussion of the law in this area and examples of its application.

[21] The annual National Standard Livestock Costs determination and the annual Livestock National Average Market Values determination.

items produced. The Unit is also the only area producing purely interpretative statements, guidelines and QWBAs.[22]

Other areas of Inland Revenue

The Unit works closely with many other areas of Inland Revenue, but in particular the Policy Advice Division (PAD) and the Technical Standards group within Service Delivery.

From time to time, the interpretative work undertaken by the Unit results in referrals of issues to PAD for legislative amendment. This can arise where it is thought that a purely interpretative response is unlikely to lead to a workable situation for taxpayers, and/or where the interpretative outcome is not aligned with the original intended policy aim. When this does occur, the Unit's work is often very useful to the legislative drafters in terms of providing a better understanding of the existing statutory position, and the background to and pressure points surrounding the issue.

The Public Rulings Unit also works closely with Service Delivery's Technical Standards area. Many issues addressed by the Unit will have operational implications—in terms of their day to day implementation, application dates and transitional issues, where there has been a change in view from an existing position or practice. The Unit consults with Technical Standards through the development of a public item to ensure that these issues have also been addressed and communicated effectively.

IV. PROCESS

How are the topics for public items selected?

Suggestions for potential topics come from a wide range of sources, including taxpayers, various professional and industry bodies, and accounting and legal firms and from other areas of Inland Revenue. Additionally issues are sometimes highlighted in the course of other projects undertaken within OCTC (eg, a taxpayer adjudication where legislative uncertainties have been identified, or issues raised during the course of a private binding ruling).

Until the 08/09 financial year, the priority to be given to an identified issue and the type of item that would be published was decided at a regular meeting of the Public Items Panel (PIP). The panel was made up of the Director, Public Rulings, Unit managers, and representatives from Inland Revenue's Policy Advice and Technical Standards groups. Each item was given priority based on a number of factors including: the importance of the issues involved, the level of uncertainty/ambiguity, the number of taxpayers potentially affected and the potential revenue implications. Each item was then placed on a waitlist to be allocated in due course to a project team, as resources permitted.

However, over time it had been found that this approach could lead to inefficiencies—not least of all being slowness to react to current issues, an inability to assess the importance of projects currently being worked on against new ones arriving at any point in time, and effectively no input from anyone external to Inland Revenue.

With these considerations in mind a different approach has been adopted for the 08/09 financial year. In July 2008 an assessment was made of all public advice work on hand and on the Unit's waitlist. Criteria similar to those referred to above (as applied by PIP) were applied and a list of potential projects was drawn up. This list was then circulated within Inland Revenue and refined. Following this, the list was provided to the New Zealand Institute of Chartered Accountants and the Taxation Committee of the New Zealand Law Society for comment and input.

This has resulted in a programme of priority work (work programme) for the 08/09 financial year. This has the advantage of permitting the Unit to plan in advance its work commitments and better ensure that it produces timely and relevant items. However, if other issues subsequently arise, there is some flexibility for the Unit to re-prioritise its work programme to include such issues, in preference to existing topics. It is intended to repeat the process for the 09/10 financial year with the aim of seeking input earlier than July 09 if possible.

Although available to some of the Unit's key stakeholders, currently the work programme is not widely published. However, the aim is to publish once the setting of the work programme process has bedded down, hopefully in the 09/10 year. [23]

How are public items consulted on?

Once an initial draft public item of any type has been prepared, it is generally consulted on internally within Inland Revenue, and then externally with the general public, representative bodies in the accounting and taxation industry, and other interested parties.

The internal consultation period typically lasts a minimum of four weeks. Standard internal Inland Revenue commentators are the Policy Advice Division, various Legal and Technical Support groups, Litigation Management, Technical Standards, and the Large Enterprises unit.

[22] The Technical Standards area of Service Delivery generally produces Standard Practice Statements and QWBAs with an operational or administrative focus.

[23] Compare by way of example the ATO's approach to the publication of its public rulings work programme: **www.ato.gov.au** – public rulings programme.

Submissions received are carefully considered and the item modified accordingly. Once signed off, the revised item is then circulated to the Minister of Revenue, Treasury and Inland Revenue's senior management team prior to its release for external comment.

The external consultation period generally runs for a minimum of six weeks[24], and is conducted by publishing notification of the draft item in the *Tax Information Bulletin* and electronically notifying a large number of standing commentators (approximately 900 at present), again made up predominantly of professional bodies, accounting and law firms, the major law publishers and tax agents and advisers. Contact is also made with relevant industry groups during the draft creation and consultation process, where applicable.

Once the consultation period is over, submissions are considered by the team and changes made if appropriate, before a final item is produced and published. In cases where submissions have led to a change in view or significant rework, further consultation will be sought with regard to the item to ensure that all stakeholders have sufficient opportunity to make further comments before finalisation. This can extend the time taken to produce a public item, but it is considered warranted given the potential importance of many of the areas addressed in items and the desire to ensure items are as correct and comprehensive as possible to better ensure their endurance and usefulness over time. The Unit considers consultation a key part of the development of an item. Accordingly, all comments are fairly and completely considered. In some cases, where a view submitted is considered but ultimately not followed, this may result in an item including an "alternative arguments" section to explain opposing views and why they have not been thought to be ultimately persuasive.

Once an item is finalised, each submitter receives a letter thanking them for their submission and setting out how their submission has been taken into account.

How are public items made public?

The main method of publication of finalised public items is the monthly *Tax Information Bulletin* (TIB), an Inland Revenue publication comprising various rulings, guidelines, case notes, policy statements, and determinations. This is sent to approximately 4,700 subscribers, mostly tax practitioners and professionals, and is available to any member of the public on request.

The TIB is also available on the Inland Revenue website.[25] Any member of the public can email Inland Revenue to be placed on a list of subscribers who receive regular notification when a new TIB is available. At present there are approximately 5,800 subscribers.

The Public Rulings Unit also publishes its items online, on an internal site as part of the Inland Revenue intranet, and on a specific part of the Inland Revenue website dedicated to public items. At the same time an electronic copy of the item is sent via a group email to just over 100 contacts who have previously requested to be specifically notified, such as New Zealand's major accounting firms, the New Zealand Institute of Chartered Accountants, and the New Zealand Law Society. Soft copies are also provided to law publishers, for further dissemination through their usual publication channels.

In the case of public rulings and determinations, a further method of publication is the *New Zealand Gazette*, a government publication produced weekly by the Department of Internal Affairs. This is part of Inland Revenue's legislative requirements when making public rulings and determinations. A short notification, including the legislative basis of the ruling, is published.

How many public items are issued each year?

The number of public items issued by the Public Rulings Unit can vary somewhat depending on demand and available resources. From soon after the establishment of the binding rulings system in 1995 through to the present, the focus has been on identifying and clarifying more difficult and/or important issues, rather than aiming to produce large numbers of less difficult and/or important issues. The complexity of the issues addressed has often meant that projects are substantial and contentious and give rise to the need for extensive consultation (and in some cases, re-consultation) before being able to be finalised.

The Public Rulings Unit is expected, under its external performance standards, to finalise 30–50 public items a year (including determinations). The following table shows the numbers and types of items issued in the financial years 2000/01–2007/08.

[24] But may be deliberately longer if the item is highly complex and/or likely to draw significant attention and comment.

[25] **www.ird.govt.nz/technical-tax/tib**

Public Rulings outputs by type – 2000/01 to 2007/08

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Public rulings	13	3	14	12	12	8	9	3
Interpretation statements	2	0	5	0	4	5	3	2
Interpretation guidelines	0	0	0	1	1	0	0	0
Questions we've been asked	5	1	1	7	1	5	4	3
Determinations	2	6	8	6	4	8	19	16
Technical correspondence	2	2	10	0	0	0	2	2
Analysis completed – file closed	0	0	0	15	7	4	2	10
Analysis completed – referred to Policy	0	0	0	0	2	0	0	2
TIB notice	0	0	1	0	0	0	0	1
TOTAL	**24**	**12**	**39**	**41**	**31**	**30**	**39**	**39**

What are the time frames for providing public items?

A project plan is created at the start of every project with an initial timeframe depending on the complexity and background of the project, and the experience and resources of the team. Given the diverse nature of the projects, there are currently no standard timeframes laid down for public items. Projects can range anywhere from two to three months (eg, a re-issue of a previously issued public ruling with minimal new work required) to over a year, bearing in mind this includes various consultation periods.

The timeframes for projects can expand or contract depending on the number and nature of submissions received once the first draft has been published. The Unit is aware of the need to take into account considerations of timeliness and efficiency while ensuring a result of the highest possible quality. As noted above, in some cases consultation can result in an item needing to be re-consulted to ensure changes made can be adequately considered by interested parties. This inevitably extends out the time taken to complete an item and can result, in some cases, in items taking many years to complete. The Unit is highly aware of the need for items to be finalised in the shortest time possible—so as to be of the greatest usefulness to taxpayers and their advisers—but this cannot be at the expense of the robustness of the item and the need to ensure all views are considered comprehensively.

V. THE FUTURE

The Public Rulings Unit has been in existence for 10 years. The Unit continues to strive to reduce the time it takes to produce high quality and relevant interpretative advice, with somewhat limited resources. An ongoing challenge for the Public Rulings Unit—as for many in the taxation profession—is to recruit and retain suitably qualified and experienced staff to best perform its role as the provider of such advice.

Customer survey

In early 2009 the Unit undertook a customer survey seeking to better understand the needs of those who use and/or provide comment on public items. At the time of writing the results from the survey are still being considered.[26] Findings from the survey will be used to modify and improve services for the 09/10 financial year and beyond. It is envisaged that the results from this survey, and related recommendations for process improvements, will be made available shortly. However, some ideas for enhancements to the Unit's service are set out below.

Stakeholder relationships/communication

The Unit continues to seek to strengthen its relationship with key stakeholders, including the New Zealand Institute of Chartered Accountants, and the Taxation Committee of the Law Society, and their members. As noted above, where possible the Unit plans to increase the involvement of such stakeholders in the selection and prioritisation of its work programme.

Focus is also being given to involving such bodies and, where applicable, industry groups, earlier in the preparation of items.

[26] A report is now available, see note at end of this article.

In addition, the Unit will introduce an online customer feedback service in respect of each of its public items as another avenue for interested parties to provide feedback on an ongoing basis.[27]

Consideration is also being given to making publicly available a summary of the key submissions received on an item during the consultation phase, and the response to those submissions, so this information is widely available after an item is finalised. This would be done in such a way as to ensure submitters' anonymity.

Process enhancements

Further consideration is being given to the Unit's internal practices to streamline workflows. In particular, moving away from the routine use of detailed reports supporting the conclusions made in public items and adopting different practices based on the complexity of the issues so as to improve timeliness, without compromising quality. It is envisaged that the Unit will also shortly move to adopting timeliness standards based on the type and complexity of public item. Expected timeframes for delivery of drafts and finalised items would then be published with the work programme.

VI. CONCLUSION

The Public Rulings Unit's work within OCTC has the potential to assist a large number of taxpayers and their advisors to comply with their tax obligations. However, the ongoing challenge is to ensure that advice is available as promptly as possible, while maintaining the highest quality through a transparent and comprehensive consultative process. The challenge of producing accurate, relevant and timely tax technical public advice through the production of the Commissioner's public rulings and interpretative statements is unlikely to become any easier in the future, but the need remains for this service to assist in providing taxpayers and their advisors with certainty as to their obligations.

Contact information

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Public Rulings customer feedback survey 2009

In early 2009, the Public Rulings Unit ran a customer survey to explore ways of improving its public items and its consultation and publication processes.

A short report is now available on the Inland Revenue website setting out what actions the Unit is taking based on the comments and suggestions received, together with some brief highlights of the responses. The report can be found at: **www.ird.govt.nz/aboutir/who-we-are/structure/adjudications-rulings/aboutir-who-public-rulings.html**

[27] For example in relation to issues found in applying an item in practice or related interpretative issues.

Appendix 1: Public items issued 2000–2008

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
2000	
BR Pub 00/01	Commissions received by life agents on own policies and family policies – income tax implications – reissue of 96/9A
BR Pub 00/02	Discounts enjoyed by life agents and their families on life policy premiums – FBT implications – reissue of 96/9A
BR Pub 00/03	Bad debts – writing off debts as bad for GST and income tax purposes – reissue of 96/3A
BR Pub 00/04	Supplies paid for in foreign currency – GST treatment – reissue of 95/12
BR Pub 00/05	Associated persons test – timing in relation to gross income derived from the sale or other disposition of land
BR Pub 00/06	Advertising space and time supplied to non-residents – GST – reissue of 96/10
BR Pub 00/07	Debt factoring arrangements and GST
BR Pub 00/08	Charitable organisations and FBT – reissue of 97/6
BR Pub 00/09	Directors' fees and GST – withdrawn – replaced by BR Pub 00/11
BR Pub 00/10	"Cost price of the motor vehicle" – meaning of term for FBT purposes
BR Pub 00/11	Directors' fees and GST
BR Pub 00/12	Lease surrender payments received by landlord – income tax treatment – reissue of 97/1A
L/stock det	National Standard Costs for Specified Livestock Determination 2000
IS0025	Dairy farming – deductibility of certain expenditure
IS2228	Transferable term fishing quota – acquisition and conversions 1976 Act
Extension	Notice extending public ruling 97/10 for a further 5 years
Non-renewal	Notice that BR Pub 95/5A will not be renewed
Withdrawal	Notice that item in TIB Vol 1, No 6 on GST and matrimonial property agreements is withdrawn
IS0044	Financial planning fees – income tax deductibility
L/stock det	National Average Market Values for Specified Livestock Determination 2000
DEP45	Boat lift storage systems – general depreciation determination DEP45
QB0019	Web site expenditure – deductibility
QB0039	Real estate sale and purchase – GST apportionments of income and expenditure
IS3175	Assets under construction – depreciation
Withdrawal	Notice of withdrawal re BR Pub 00/09 and replacement by BR Pub 00/11
2001	
BR Pub 01/01	GST – When the supply of leasehold land is an exempt supply – reissue of 96/7
BR Pub 01/02	"Transitional capital amount" – definition – reissue of 98/1
BR Pub 01/03	Rent deemed to be payable – deductibility – reissue of 97/13
BR Pub 01/04	Assessability of payments under the ERA for humiliation, loss of dignity, etc – reissue of 97/3, 3A
BR Pub 01/05	FICA – FBT liability
BR Pub 01/06	Employment Court awards for lost wages - Employers' liability to make tax deductions – reissue of 97/7, 7A
BR Pub 01/07	Maori Trust Boards: Declaration of trust for charitable purposes made under section 24B Maori Trust Boards Act 1955 – income tax consequences – reissue of 97/8
BR Pub 01/08	Forestry rights – Secondhand goods GST input tax deduction – reissue of 98/5
BR Pub 01/09	Taxability of payments under the HRA for humiliation, loss of dignity, etc – reissue of 98/2

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
QWBA	Tourism service providers' payments to tour guides or drivers – income tax liability of those parties and tour operator employing guide or driver
L/stock det	National standard costs for specified livestock determination 2001
QWBA	Qualifying foreign private annuity exemption from the FIF regime
QWBA	Cash prizes in sporting competitions – GST implications for organising club
L/stock det	National average market values of specified livestock determination 2001
IS0052	Financial planning fees – GST treatment
QWBA	Payments made by funeral directors – GST
DetPROV	Trough covers
DetPROV	Telecommunications – right to use capacity in Southern Cross Cable Network
2002	
BR Pub 02/01	Subsidised transport provided by employers to employees – Value for FBT purposes
BR Pub 02/02	Disposition of real property for inadequate consideration where following a grant of a life estate the balance is transferred to another person – Gift duty and income tax implications
BR Pub 02/03	Disposition of real property for inadequate consideration where following a grant of a lease the balance is transferred to another person – Gift duty and income tax implications
BR Pub 02/04	Disposition of real property for inadequate consideration where following the transfer to another person a life estate is granted back – Gift duty and income tax implications
BR Pub 02/05	Disposition of real property for inadequate consideration where following the transfer to another person a lease is granted back – Gift duty and income tax implications
BR Pub 02/06	Disposition of real property for inadequate consideration where following the transfer to another person a licence is granted back – Gift duty and income tax implications
BR Pub 02/07	Disposition of real property for inadequate consideration where the transferor purports to grant him or herself a licence to occupy and transfer the balance – Gift duty and income tax implications
BR Pub 02/08	Disposition of real property for inadequate consideration where there is a "simultaneous" grant of a life estate and transfer of the balance to another person – Gift duty and income tax implications
BR Pub 02/09	Disposition of real property for inadequate consideration where there is a "simultaneous" grant of a lease and transfer of the balance to another person – Gift duty and income tax implications
BR Pub 02/10	Disposition of real property for inadequate consideration where the transferor purports to "simultaneously" grant a licence and transfer the balance to another person – Gift duty and income tax implications
L/stock det	National standard costs for specified livestock determination 2002
L/stock det	National average market values of specified livestock determination 2002
IS (XPB0006)	Easements – Deductibility of costs of preparation, stamping, and registration (replaces expired BR Pub 98/07)
IS3229	Deductibility of sponsorship expenditure
IS3427	Treaty of Waitangi settlements – GST treatment
DetPROV	Pipeline crawler, inflatable pipeline plug
DEP46	Carpets (modular nylon tile construction)
IS3387	GST treatment of court awards and out of court settlements
DEP47	Graders (capsicums)
DEP48	Prints (including limited edition prints), paintings and drawings
2003	
BR Pub 03/01	Netherlands social security pensions – Taxation when recipient a New Zealand resident
BR Pub 03/02	Tertiary student association fees

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
BR Pub 03/03	Advertising space and advertising time supplied to non-residents – GST treatment
BR Pub 03/04	Payments made by parents or guardians of students to state schools – GST treatment
BR Pub 03/05	Associated persons test – timing in relation to gross income derived from the sale or other disposition of land (not reissued)
BR Pub 03/06	"Cost price of the motor vehicle" – meaning of the term for FBT purposes
BR Pub 03/07	Fishing quota and secondhand goods input tax credits
BR Pub 03/08	Marine farming leases and secondhand goods input tax credits
BR Pub 03/09	Marine farming licences and secondhand goods input tax credits
BR Pub 03/10	Coastal permits, certificates of compliance, marine farming permits, and secondhand goods input tax credits
L/stock det	National standard costs for specified livestock determination 2003
DEP49	Compact disc players, digital versatile disc players, video game players, and related assets
TIB statement	Time limits for new companies to make qualifying company elections – Where extension of time arrangements with tax agents exist – Previous policy withdrawn
IS0056	Tax treatment of payments received by petrol retailers in return for trade ties
DEP50	Commercial fishing nets
L/stock det	NAMV Specified Livestock Determination 2003
QWBA	Commercial fishing nets – associated QWBA
QWBA	Trophies and animal products derived from the tourist, hunting and safari industry: zero-rating under GST
IG0007	Non-resident software suppliers' payments derived from NZ – Income tax treatment
QWBA	Managing communications associated with a dispute referred to the Adjudication Unit
QWBA	Application of the anonymous version of Determination S13
2004	
BR Pub 04/01	Supplies paid for in foreign currency – GST treatment
BR Pub 04/02	Licensed premises' operators – deductibility of entertainment expenditure
BR Pub 04/03	FBT and motor vehicle multi-leases
BR Pub 04/04	Land sales – whether income tax exemptions for farm land apply to non-natural persons
BR Pub 04/05	Provision of benefits by third parties: FBT consequences – section CI 2(1)
BR Pub 04/06	Trading stock – Tax treatment of sales and agreements to sell
L/stock det	National standard costs for specified livestock determination 2004
QWBA	Disputing or challenging a PAYE determination made under s NC 1(2) ITA; s 138M, TAA – Wrong PAYE deduction determination a ground for challenge
DEP51	Outboard motors
L/stock det	National average market values for specified livestock determination 2004
QWBA	Livestock valuation – Election of method
QWBA	When does derivation occur in relation to land sales with a deferred settlement, by business taxpayers who provide vendor finance?
QWBA	Do statutory time bar provisions apply to shortfall penalties?
IS	Shortfall penalty for gross carelessness
IS	Income tax treatment of Treaty of Waitangi settlements
DEP52	Digital photographic minilabs
IS	Travel by motor vehicle between home and work – deductibility of expenditure and FBT implications
IG	Work of a minor nature

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
DetPROV12	Integrated silk flower arrangements
2005	
BR Pub 05/01	Bad debts – Writing off debts as bad for GST and income tax purposes
BR Pub 05/02	Disposition of real property for inadequate consideration where following a grant of a life estate the balance is transferred to another person – Gift duty and income tax implications
BR Pub 05/03	Disposition of real property for inadequate consideration where following a grant of a lease the balance is transferred to another person – Gift duty and income tax implications
BR Pub 05/04	Disposition of real property for inadequate consideration where following the transfer to another person a life estate is granted back – Gift duty and income tax implications
BR Pub 05/05	Disposition of real property for inadequate consideration where following the transfer to another person a lease is granted back – Gift duty and income tax implications
BR Pub 05/06	Disposition of real property for inadequate consideration where following the transfer to another person a licence is granted back – Gift duty and income tax implications
BR Pub 05/07	Disposition of real property for inadequate consideration where the transferor purports to grant him or herself a licence to occupy and transfer the balance – Gift duty and income tax implications
BR Pub 05/08	Disposition of real property for inadequate consideration where there is a "simultaneous" grant of a life estate and transfer of the balance to another person – Gift duty and income tax implications
BR Pub 05/09	Disposition of real property for inadequate consideration where there is a "simultaneous" grant of a lease and transfer of the balance to another person – Gift duty and income tax implications
BR Pub 05/10	Disposition of real property for inadequate consideration where the transferor purports to "simultaneously" grant a licence and transfer the balance to another person – Gift duty and income tax implications
BR Pub 05/11	Tertiary student association fees
BR Pub 05/12	Taxability of payments under the HRA for humiliation, loss of dignity, etc – reissue of 01/09
BR Pub 05/13	Director's fees & GST
BR Pub 05/14	"Anything occurring on liquidation" when a company requests removal from the register of companies
L/stock det	National standard costs for specified livestock determination 2005
QWBA	GST consequences of a cancelled contract
L/stock det	National average market value for specified livestock determination 2005
L/stock det	National standard costs for specified livestock determination 2005 – reissue
IS	The impact of company amalgamations on binding rulings
DepDet	Dairy farm milk shed building, plant and machinery
IS	Shortfall penalty for not taking reasonable care
IS	Shortfall penalty – unacceptable interpretation and unacceptable tax position
IS	Income tax treatment of New Zealand patents
QWBA	The impact of company amalgamations on financial arrangement determinations
IS	Shortfall penalty for taking an abusive tax position
2006	
BR Pub 06/01	Debt factoring arrangements and GST
BR Pub 06/02	Section GD 10 – Income Tax Act 2004 – Rent deemed to be payable
BR Pub 06/03	Importers and GST input tax deductions
BR Pub 06/04	"Paid-up capital amount" definition: section CD 32(4)
BR Pub 06/05	Assessability of payments under the ERA for humiliation etc – reissue of BR Pub 01/04
BR Pub 06/06	Employment Court awards for lost wages etc – reissue of BR Pub 01/06

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
QWBA	FBT – value of brokerage provided by sharebrokers to employees
QWBA	The meaning of "benefit" for FBT purposes
L/stock det	National standard costs for specified livestock determination 2006
QWBA	Effect of repeal of ITA 1994 on depreciation determinations issued before repeal
DepDet	General Depreciation Determination Dep54
IS	Interest deductibility – Public Trustee v CIR
L/stock det	National average market values of specified livestock determination 2006
QWBA	Exemption from gift duty for dispositions of property made by or under an order of the Court: section 75A(5) Estates and Gift Duties Act 1968
DetPROV13	Pipeline crawler, inflatable pipeline plug
DetPROV14	Integrated silk flower arrangements
DetPROV15	Trough covers (polyethylene)
DetPROV16	Marble rock instruments
DEP55	Psychological testing sets (replaces PROV2)
DEP56	Metal speed humps (replaces PROV3)
DEP57	Wintering pads (rubber) (replaces PROV5)
DEP58	Kiwiplus – Kiwifruit Software Package – designed for a specific tax year (replaces PROV6)
DEP59	Peurulus (baby crayfish) traps (replaces PROV7)
DEP60	Builders' planks (wooden)
QWBA	Tax treatment of wooden scaffolding planks
QWBA	GST treatment of funding provided to Treaty of Waitangi claimants through the Office of Treaty Settlements
IS	Shortfall penalty – evasion
2007	
BR Pub 07/01	Forestry rights – Secondhand goods GST input tax deduction – reissue of 01/08
BR Pub 07/02	Federal Insurance Contributions Act (FICA) – FBT liability – reissue of 01/05
BR Pub 07/03	GST: zero-rating of legal and other services to non-residents
BR Pub 07/04	Interest deductibility – funds borrowed by a partnership to return capital contributions
BR Pub 07/05	Interest deductibility – funds borrowed by a partnership to return profits
BR Pub 07/06	Interest deductibility – funds borrowed by a company to repurchase shares
BR Pub 07/07	Interest deductibility – funds borrowed by a company to pay dividends
BR Pub 07/08	Interest deductibility – funds borrowed to repay debt
BR Pub 07/09	Interest deductibility – funds borrowed to make a payment to a group company
BR Pub 07/10	Netherlands social security pensions – taxation when the recipient is a New Zealand resident
BR Pub 07/11	GST lottery operators and promoters
L/stock det	National standard costs for specified livestock determination 2007
DepPROV17	Furniture (loose)
IS 07/01	GST treatment of sale of long-term rental residential properties
L/stock det	NAMV specified livestock determination 2007
DEP 61	Child restraints (capsules and car seats) for hire
IS 07/02	Is an agreement for sale and purchase of property an "invoice" for GST purposes
QB 07/04	Trophies and animal products derived from tourism, mounted in NZ – zero-rating

PUBLIC ITEMS ISSUED 2000–2008	
Type	**Title**
QB 07/03	Trustees in the context of the GST Act 1985
DEP 62	Depreciation on buildings and structures
DEP 63	Depreciation on software
DEP 64	Depreciation on LED Screens
QB 07/05	Whether Commissioner can finalise private ruling where arrangement being audited
DEP 65	Depreciation on Speed humps
2008	
BR Pub 08/01	GST – When the supply of leasehold land is an exempt supply
BR Pub 08/02	Maori Trust Boards: Declaration of trust for charitable purposes made under section 24B of the Maori Trust Boards Act 1955 – Income tax consequences
BR Pub 08/03	Projects to reduce emissions programme – Income tax treatment
BR Pub 08/04	Projects to reduce emissions programme – GST treatment
Dep PROV18	Set-top boxes with hard drive and personal video recorders with hard drive
DEP 66	Set-top boxes without HD and personal video recorders without HD
L/stock det	National Standard Costs for Specified Livestock Determination 2008
Statement	Depreciation Rates Table
DEP 67	Baby gear for hire (excluding child restraints (capsules and car seats))
IS 08/01	Interpretation of section 5(14) GST Act
QB 08/01	Tax Administration Act 1994 – Section 91E(4)(f) and self-assessment
DEP 68	Satellites (geosynchronous orbit)
L/stock det	National Average Market Values of Specified Livestock Determination 2008
DEP 69	Flight Simulators
IS 08/02	Deductibility of Feasibility Expenditure
DEP 70	Plant Supports (hanging retractable wire)
QB 08/02	Retrospective Replacement Rulings
QB 08/03	Status of mutual agreement procedures
Statement	Timing of Associated Persons Test – BR Pub 03/05 not reissued
Statement	Expense items in Table of Depreciation Rates
IS 08/03	Resource consent application fees and provision of works, etc – GST treatment
QB 08/04	Income Tax Act 2007: Research and Development Credits (Subpart LH) – tax avoidance (section BG 1)

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

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

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