RECENT CHANGES IN FISCAL LEGISLATION

Wallace R. Bell*

Some recent changes in fiscal legislation, which have arisen from recommendations by the Ross Taxation Review Committee and which may be of interest to both practitioners and students, can be summarised as follows:

ASSIGNMENTS OR SETTLEMENTS OF INCOME

Section 4 of the Finance Act (No. 2) 1967, substituted a new s. 105 in the Land and Income Tax Act 1954. This new section applies to assignments or settlements made on or after 9 November 1967 and is designed to catch a much wider range of this type of transaction than did the previous provision, in that it applies to assignments or settlements for charitable purposes and to non-relatives as well as to those to or for the benefit of relatives of the assignor or settlor and companies under his control or the control of any of his relatives. It continues to use the yardstick of the "prescribed period" which, where the transferor or, as the case may be, the settlor is not a company means (in general terms) a period of not less than seven years or the unelapsed minority of any infant beneficiary.

In brief, the new section provides that where by the terms of any settlement made by any person (hereinafter referred to as "the settlor"), the income of the settled property is payable to or to be applied or accumulated for the benefit of any other person for a period that is less than the prescribed period *and* the settlement provides that the corpus shall revert to the settlor, a relative or a company in which he or one of his relatives is a shareholder *or* that the right to dispose of the corpus shall be reserved to the settlor, a relative or a company in which he or one of his relatives is a shareholder, the income from the settled property shall, so long as it is not derived by a beneficiary who is entitled to the corpus, be deemed to be income derived by the settlor.

Summarised, the "prescribed period" means (where the settlor is not a company):

(i) In the case of a settlement in favour of a child of the settlor, either a period which cannot be less than seven years from the date from which income is payable to or to be applied or accumulated for the benefit of the child, or the period calculated from that date which must elapse before the child will attain the age of twenty-one years whichever is the longer.

(ii) In the case of a settlement in favour of a person other than a child of the settlor or for any specified purpose or object, a period which cannot be less than seven years from the date on which income is payable to or to be applied or accumulated for the benefit of that person or applied or accumulated for that purpose or

* Estate Planning Officer, National Mutual Life Association Ltd., Wellington.

object under the settlement *provided* that where the settlement includes a provision whereby the payment, application or accumulation of income shall or may cease on the death of the settlor before the expiry of the period specified in the settlement, that provision shall not be taken into account for the purposes of this paragraph.

"Relative" means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption and includes a trustee for a relative.

"Settlement" includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets.

While it is probable that the Taxation Review Committee's recommendations and the new legislation which followed were prompted to some extent by the decision in *Govan* v. *Commissioner of Inland Revenue* [1968] N.Z.L.R. 163, it is perhaps a surprising result that if, under the terms of what might be described as an everyday inter vivos settlement made by a man for the benefit of his wife and children after 9 November 1967, the trustees are given power to distribute the capital at their discretion at any time, that part of the income from the settlement falling under the description of "trustees' income" can be deemed to be income derived by the settlor. It appears however that if the trustees' power to distribute capital were restricted to distributions not earlier than seven years from the date of the settlement or not earlier than the date on which any infant beneficiary attains the age of twenty-one years, whichever is the later, this situation would be avoided.

It should be noted that the new section does not apply with respect to any transfer or settlement made before 9 November 1967, nor to any transfer or settlement under which the income is payable or to be applied for the benefit of any person during the whole of his life nor to any transfer of the right to any income made by will.

THE TAXATION OF TRUSTS

Two of the main recommendations of the Taxation Review Committee in this field were:

(a) The abolition of the exemption of $400 p.a. in respect of "trustees' income".

(b) The taxation of "trustees' income" either at a flat rate of 35c in the $ or at individual rates, whichever is the greater.

These recommendations have been adopted by s. 32 of the Land and Income Tax Amendment Act (No. 2) 1968, which repeals the former s. 155 of the Land and Income Tax Act 1954 and substitutes new ss. 155 and 155 A to 155 D. The new sections will apply with respect to the tax on income derived in the income year which commenced 1 April 1968 and in subsequent years.

In general, trusts are now divided into two groups for tax purposes, namely "Specified Trusts" and, for want of a better term, "Other Trusts".

"Specified Trusts" are inter vivos trusts created on or after 19 July 1968, other than trusts created by any Court order or any enactment, or which are compensation trusts or charitable trusts.

Sub-section 2 of the new s. 155 provides that where in any case a trust is created on or after 19 July 1968 by the transfer of property on trust to trustees of another trust created before that date, to be held on the same terms as that other trust, and both trusts are administered jointly as one trust, the first-mentioned trust shall not be a specified trust. Readers will be familiar with the decision in *Tucker* v. *Commissioner of Inland Revenue* [1965] N.Z.L.R. 1027, which established that where, for example, a taxpayer transfers property to a trust created by a "nominal" settlor for the benefit of his (the taxpayer's) children, the taxpayer "creates" a trust in respect of the property so transferred. Clearly, the words "a trust . . . created . . . by the transfer of property on trust to trustees of another trust created before that date", where used in sub-section 2 envisage similar circumstances. The point of importance, of course, is that any intending settlor who had a trust in being prior to 19 July 1968 for the benefit of his dependents, whether or not he is named as the "settlor", may transfer property to the trustees to be held on the same terms as the original trust without the income from that property being affected by the new provisions.

In broad general terms the taxation of beneficaries' income remains much the same as under the former s. 155 (a). A new and practically helpful provision states that income paid to or applied for the benefit of a beneficiary within six months after the end of any income year, by a bona fide transaction which places that income beyond the possession and control of the trustee, shall be deemed to be income to which the beneficiary is entitled in possession during that income year. This acknowledges the administrative difficulties imposed in recent years where it was necessary to pay or apply income to, or for the benefit of, a beneficiary within the confines of the income year if that income was to be assessed as beneficiaries' income and not as trustees' income.

There is, however, a not unreasonable restriction that the income concerned must be placed beyond "the possession and control" of the trustee. This is amplified in a proviso to s. 155A (3) to the effect that where the trust is a specified trust and the beneficiary is an infant, any income shall not be deemed to have been paid to or applied for the benefit of that beneficiary if, while the beneficiary remains an infant and whether directly or indirectly in any form, it comes within the possession or control of the trustee (in his capacity as trustee of that trust) or is used for the purposes of any business carried on by the trustee in that capacity, whether or not in partnership with any other person. If any such income comes within the possession or control of the trustee the Commissioner may re-open any earlier assessment and re-assess it as "trustees' income". There is no limitation on the time in which any such amended assessment may be made.

Under the new s. 155 B, trustees of specified trusts are not entitled to any special exemption. All "trustees' income" in specified trusts will be assessable to the trustees at the rate of 35c in the $ or at the appropriate individual rate, whichever is the greater.

Under a further amendment made by the Land and Income Tax Amendment Act (No. 3) 1968, which came into force on 1 April 1969, the absence of any special exemption for trustees' income in specified trusts is confirmed while the former special exemption of $400 p.a. for trustees' income in other trusts is reduced to $100 p.a.

Some thought on these changes suggests the probability of further amendments in the future but no doubt readers will agree that the imagination of the Commissioner and his officers runs inordinately free and that there would be little purpose in offering any suggestions here on the possibilities which lie ahead.

NEW SPECIAL EXEMPTIONS

The most sweeping changes embodied in the Land and Income Tax Amendment Act (No. 3) 1968 are firstly, a new single income tax to replace the former ordinary income tax and social security income tax and secondly, new special exemptions for individual taxpayers.

The new single tax rates are as follows:

Taxable Income	Tax Percent	Cumulative Total $
From 1 to 650	7.85	51.02
From 651 to 1,700	21.00	271.52
From 1,701 to 2,000	24.50	345.02
From 2,001 to 2,500	27.50	482.52
From 2,501 to 3,000	33.00	647.52
From 3,001 to 3,500	34.00	817.52
From 3,501 to 4,000	37.00	1,002.52
From 4,001 to 4,500	40.00	1,202.52
From 4,501 to 5,000	43.00	1,417.52
From 5,001 to 5,500	45.00	1,642.52
From 5,501 to 6,000	49.00	1,887.52
From 6,001 to 6,500	50.00	2,137.52
From 6,501 to 7,000	54,00	2,407.52
From 7,001 to 7,500	60.00	2,707.52
From 7,501 to 8,000	65.00	3,032.52
From 8,001 to 10,000	66.00	4,352.52
From 10,001 to 12,000	67.00	5,692.52
over 12,000	67.50	

The major new special exemptions to be allowed against the new single income tax are as follows:

Personal Exemption	$275	
Wife Exemption	$240	Reduced by $1 for every $1 by which wife's income exceeds $375
Housekeeper	$240	Reduced by 1/12 for each complete month housekeeper is not employed
Child Exemption	$135	For each of first four dependent children
	$140	For each additional child
Dependent Relative	$135	
Donations	$50)	
School Fees to 'private schools	) $100)	Maximum exemption $100
Insurance and Superannuation		85% of contribution. Maximum exemption $425 or, if not a member of an employer-subsidised scheme, $553

It should be noted that in order to gain the benefit of the maximum exemptions for life insurance, superannuation contributions, etc., it is still necessary for the taxpayer to meet premiums of at least $650 p.a. or at least $500 p.a. if a member of an employer-subsidised superannuation fund. The new exemption is an amount equal to *85% of the premiums and/or contributions* with maximum exemptions of $553 and $425. From 1 April 1969 the maximum rate of tax on dividends received by individual taxpayers is 32.5 cents in the $.

ESTATE AND GIFT DUTIES ACT 1968

The new Act which came into force on 1 January 1969 consolidates and amends the law relating to estate duty and gift duty. In general it re-enacts the principles of the 1955 Act but it is regarded as having been written in somewhat simpler language. Transitional provisions contained in the last section (s. 101) protect certain antecedent transactions comprising gifts of foreign realty, the treatment of gift duty on dutiable gifts made within three years prior to death as part of the dutiable estate of the donor and the liability for duty on the proceeds of policies of assurance disposed of by the deceased prior to 1 January 1969.

One of the most interesting aspects of this legislation is that the old s. 5 has been divided into ten new sections. Foreign realty which was previously excluded, now forms part of the dutiable estate as does gift duty paid on dutiable gifts made within three years prior to the date of death.

The former s. 5 (1) (f) of the 1955 Act has been changed considerably and now appears in its new form as s. 14. It states the circumstances in which the proceeds of any policy of assurance on the life of the deceased where he has disposed of that policy within three years prior to his death, are to be brought into his estate. If any such policy or beneficial interest therein has been disposed of by the deceased to any person not connected with the deceased by blood, marriage, or adoption, or not being a "controlled company" as defined in the Act; or not being a trustee for the deceased or for any such person or controlled company, for full consideration in money or money's worth within three years prior to his death, the proceeds of such policy or interest therein are not dutiable. Where a policy on his life or an interest therein has been disposed of by him by way of sale or gift other than to any of the aforementioned persons, a proportion of the gross proceeds will be dutiable if death occurs within three years of the disposition. Section 15 re-enacts the former s. 5 (1) (g) of the 1955 Act and subsequent amendments thereto.

The dutiability of life assurance proceeds can be summarised as follows:

(a) Where the proceeds of the policy pass under the will or intestacy of the deceased (s. 7), or

(b) Where on his death the deceased and some other person own a policy on his life as joint tenants and where the deceased has met all the premiums, or

(c) Where the deceased has disposed of the policy to a relative, a controlled company or a trustee for a relative within three years prior to his death, or

(d) Where a beneficial interest in the policy accrues to some other person on his death or because they have survived him.

In the circumstances described in (b) where the deceased has met some of the premiums and the joint tenant has met the balance, that proportion of the proceeds arising from the proportion of the premiums met by the deceased will be included in his dutiable estate.

In the circumstances described in (c), only that proportion of the proceeds arising from the proportion of the total premiums met prior to the date of disposition will be included in the dutiable estate, but this proportion will be reduced by the value of any consideration where the deceased disposed of the policy for consideration in money or money's worth. In the circumstances described in (c) only that proportion of the proceeds arising from the proportion of the total premiums met by the deceased during the currency of the policy will be included in the dutiable estate.

New provisions in ss. 23 and 24 cover the valuation of debts due to the deceased and the interest of the deceased in any partnership. They are designed to avoid the effect of restrictive provisions regarding payment of debts and sales of partnership interests.

Section 26 introduces in subs. 3 a provision to cover the valuation of a widowhood interest. The possibility of a widow re-marrying is no longer deemed to be a contingency for the purposes of the Act, a widowhood interest being valued in accordance with a new table based on the statistical probability of remarriage at the relevant time.

The Department of Inland Revenue has published notes for the guidance of practitioners and others who may be interested or concerned with the new legislation. These can be obtained from the Department and when read in conjunction with the Act give full coverage of all points of importance.