Public Information Bulletin

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CONTENTS

	Page
Adverse Events Taxation Relief	1
Computer-produced Listing of Payment Details	3
Corporate Credit Card Schemes	2
Deduction for Combs and Cutters and Handpieces	4
Fringe Benefit Tax	
1. Emergency Call Exemption	
2. Work Related Vehicle Exemption	
3. Press Release – Minor Amendment	5
Gisborne Flood Relief Appeal	4
Investors in Film Production Ventures	7
New Zealand/Kingdom of Denmark Protocol	7
Payments made under restraint of Trade Agreements	2
The Status of Contract Milkers	7
1985 Legislation – Land Tax Amendment Act 1985	8

ADVERSE EVENTS– RELIEF IN TERMS OF SECTION 94 INCOME TAX ACT 1976

1. An abnormally low autumn rainfall and continuing dry conditions have been affecting the Te Kuiti Sub Region. These conditions have been declared an adverse event for the purposes of section 94, with effect from 1 January 1985.

   Farmers in and adjoining that area may be entitled to tax relief in terms of section 94 of the Income Tax Act 1976.

2. The flooding which affected various parts of the East Coast as a result of the exceptionally heavy rain which fell over the period 24–26 July 1985 has been declared an "adverse event".

   The areas affected are:

   - Cook County
   - The Kanakanaia, Waipoa, Karaka, Ngatapa and Waihuka Ridings of the Waikohu County
   - The Waiau, Mangahopai and Mohaka Survey Districts of the Wairoa County
   - The Waikare, Petane and Puketapu Ridings of the Hawkes Bay County.

   Farmers in and adjoining the above areas may be entitled to tax relief in terms of section 94 of the Income Tax Act 1976.

Your nearest Inland Revenue Office will be pleased to assist you if you require any further information on this subject.

PAYMENTS MADE UNDER RESTRAINT OF TRADE AGREEMENTS

The Department has recently considered the question of the taxation of certain payments made by employers to employees on leaving their employment. These payments were made under restraint of trade agreements.

Under this kind of agreement an employee agrees not to compete with his former employer once he has left his employment. Contracts in restraint of trade are prima facie void. Such an agreement is valid if it can be shown that the restraint is reasonable. The onus of proof is on the party alleging that the agreement is reasonable. It has been held in many cases that it is reasonable for an employer to restrain an employee from working in the same trade or business for a limited time and within a limited area when he leaves his employment. This kind of restraint is only valid where the employee has acquired trade secrets or confidential information, or where the employer wants to protect his trade connections, i.e., to prevent his customers going to the employee when that employee starts up in business. An employer has no legitimate interest in preventing an employee after leaving his service from entering the service of a competitor merely on the ground that the new employer is a competitor.

Ordinarily a payment made under an agreement in restraint of trade is capital in nature and not taxable; see, for example, **Buckley & Young Ltd** v **Commissioner of Inland Revenue** 1978 2 NZLR 485.

The Department only accepts that a payment is capital and not taxable where it is made under a valid restraint agreement. Where the contract is illegal and void then the payment made under it is taxable. The reason is simply that where the contract is void the character of the payment cannot be determined by the nature of the agreement as there is no agreement. The result is that the employer is making a payment to his employee which is taxable under section 65(2)(b) of the Income Tax Act as monetary remuneration.

Employers wishing to make lump sum payments to employees on the cessation of their employment may, of course, qualify for the concessionary treatment available under section 68 of the Income Tax Act.

CORPORATE CREDIT CARD SCHEMES

The Department has recently been informed that a number of companies have introduced business expense charging systems which are to be sold to business taxpayers.

The companies are advising prospective customers that by using the system they can control legitimate travel and entertainment expenses in a manner that the Department will accept.

The Department has no objection to taxpayers using such a system. However, claims must be for legitimate expenses incurred in the production of the assessable income. Also the expenses claimed must be supported by suitable documentation recording the expenditure incurred and its purpose.

COMPUTER-PRODUCED LISTING OF PAYMENT DETAIL – NEW SERVICE AVAILABLE FOR TAX PRACTITIONERS

The Department will now accept computer-produced listings of income tax payment details in place of individual pay-in slips.

The method of payment will be for March and September payment periods only.

Before supplying client payment detail on a computer listing, tax practitioners should discuss the prerequisites with their local tax office responsible for processing the payments.

Conditions relating to the use of this payment method are:

- "Person" and "Company" payments must be shown on separate schedules of not less than 10 and not more than 80 transactions. A transaction refers to each individual payment, i.e., one taxpayer with a terminal and provisional tax payment is counted as one transaction. If there are less than 10 transactions the individual pay-in forms (IR 901A, IR 901C) must be used.
- Each schedule must be totalled.
- No limit to the number of schedules that may be provided.
- Printing used on the schedules must be legible and in recognisable standard English characters – no wider than standard double spacing (5 mm. approximately) and no narrower than standard single spacing (3 mm.).
- Each listing must be headed with the Tax Practitioner's Name, IRD Number, date and number of schedules involved. This information must be repeated above each schedule with the additional notation of "persons" or "companies" as applicable.
- Client names must be listed in a single column down the left hand side of the page with other necessary detail appearing from left to right.

Payments without IRD Numbers are not to be included on the listing. They must be made using the standard pay-in forms.

In cases where an acknowledgement of payment is required tax practitioners should indicate on the listing whether they want the Department's "summary of payments – Rev 902" or individual receipts.

DEDUCTION FOR COMBS AND CUTTERS AND HANDPIECES FOR EMPLOYEE AND SELF-EMPLOYED SHEARERS

With the disappearance of the "combs and cutters allowance" for PAYE tax purposes from 1 April 1985 the Department has recently considered the question of a deduction for income tax purposes of the costs incurred for combs and cutters and for handpieces by shearers. The following sets out the position for employee shearers and self-employed shearers.

Combs and Cutters

Both employee and self-employed shearers may claim the cost incurred in the purchase of new and replacement combs and cutters. (Combs cost about $5.00 and cutters about $21.00.)

Handpiece

(A handpiece costs about $400).

- **Employee Shearers**

  In terms of the New Zealand Shearers and Shedhands – Award 494 provision is made for the payment of a handpiece allowance. The current rate is $1.75 per 100 sheep shorn and is payable tax-free.

  Clause 4 of the Fourth Schedule to the Income Tax Act 1976 allows a deduction for expenditure of up to $250 per item in respect of the purchase, maintenance or repair of any hand tool, equipment or technical aid.

  Employee shearers incurring expenditure for the purchase, maintenance or repair of a handpiece may claim that expenditure up to a maximum of $250 **reduced** by the amount of the non-taxable handpiece allowance received.

- **Self-employed Shearers**

  It has been decided that a handpiece is a **loose tool** and should accordingly be treated for income tax purpose as follows:

  – The initial cost of establishing a basic stock of loose tools (which includes a handpiece) is to be capitalised and is not subject to depreciation;

  – The subsequent purchase of replacement handpieces can be written-off as a revenue expense in the year in which the expenditure is incurred.

- **Shearers who are both an employee and self-employed**

  The rules applying to self-employed shearers will operate to the extent that the claim for expenditure incurred is reduced by the amount of the non-taxable handpiece allowance received while engaged as an employee shearer.

GISBORNE FLOOD RELIEF APPEAL

Cash donations made by individuals and public companies to assist those affected by the recent floods in the Gisborne region will qualify for the tax concessions available under sections 56A and 147 of the Income Tax Act 1976.

Individuals may claim a tax rebate of up to $200 for the year ended 31 March 1986 in respect of their total donations. In terms of section 56A, however, the minimum qualifying donation that may be made by an individual is limited to $5.00. Public companies can receive tax relief on donations up to $4,000 subject to certain overriding conditions.

The official collecting agents for donations are Branches of the Bank of New Zealand and offices of local authorities.

Receipts issued by the Bank of New Zealand will be endorsed "Gisborne Flood Relief Appeal" and have the teller's stamp and initials on them.

Where the donation is made to a local authority the receipt will have the same endorsement as above along with the signature of the receiving officer.

FRINGE BENEFIT TAX

1. Emergency Call Exemption

Various questions have been asked of the Department about the relevance of the emergency call exemption to local and public authorities. The most common type of question relates to meetings attended by local authority employees after hours.

The exemption provides that:

'The performance of the services is essential to the maintenance of any service provided by any public authority or local authority ...'

The question of whether or not an exemption is allowable in respect of a particular day is essentially one for determination on its own facts. As a general proposition, the authority must be able to demonstrate that the callout was essential to the maintenance of the service being provided by it.

2. Work Related Vehicle Exemption – Minibuses

There have been some problems with the work-related vehicle exemption as it applies to minibuses. There is no definition of minibus in the Transport Act or the FBT legislation. We, therefore, have to adopt an administratively workable meaning of the term.

For the purposes of the exemption a minibus will be accepted as being a motor vehicle other than a motocar with three or more rows of fixed seats – including front seat . The direction in which the seats face is unimportant; in all other respects the vehicle must be a work related vehicle, i.e., have the employer's name permanently affixed to it.

There also appears to be some confusion about how a minibus can qualify for the work related vehicle exemption when it has passengers aboard. The following is an explanation of how the exemption applies:

The legislation requires that in order to meet the work related vehicle definition on any particular day, any driver of the vehicle, who is an employee, must not, on that day, receive a benefit that consists of the private use or enjoyment, or the availability for private use or enjoyment, in or for travel other than:

- Travel to or from the driver's home in the course of, and as a condition of, his or her employment;
- Other private travel which is purely incidental to travel required in discharging the duties of his or her employment.

If the employee who is the driver of the vehicle meets these restrictions the vehicle is a work related vehicle on that day.

If other employees travel to or from their homes in that vehicle on that day, they are in receipt of a fringe benefit within the meaning of that term as defined in section 336N. Applying section 336N(4), the fringe benefits so received by them are deemed to be reduced to one fringe benefit. Section 336O(1) then sets out the basis on which that fringe benefit is to be valued. In terms of Y of the formula, that day on which the benefit is received is also a day on which the vehicle is a work related vehicle and accordingly is not taken into account in calculating FBT liability.

The net effect is that a vehicle is not subject to FBT on any day on which it meets the definition of a work related vehicle. Provided the employee or employees who drive the vehicle meet the restrictions on private use contained in the definition of work related vehicle, benefits received by passengers from travel in that vehicle on that day are exempt from FBT.

3. Press Release – Minor Amendment to Fringe Benefit Tax

The following is the text of a press release issued on 16 July 1985 by the Under-Secretary to the Minister of Finance, Mr Trevor De Cleene.

"The Under-Secretary to the Minister of Finance, Mr Trevor de Cleene, today announced that the Government has approved the drafting of legislation to make several minor amendments to the fringe benefit tax legislation. Mr de Cleene said that some of the amendments are required to correct minor drafting errors and will have no effect on the interpretation of the legislation which has been given by the Inland Revenue Department up until

now. However, some of the proposed amendments consist of minor alterations to the legislation to more clearly reflect the Government's intention. These amendments are being announced now as they will either apply with effect from 1 April 1985 or have an effect on taxpayers' future decisions.

The changes which have the most general application relate to the requirement that "work related vehicles" must have the employer's name permanently affixed to the vehicle. The legislation as drafted did not make it clear where the name should be displayed, making it possible for the sign to be hidden from public view. 'It is intended to rectify this weakness by the inclusion of a requirement that the sign be on the exterior of the vehicle. We could have gone further and specified a minimum size of the lettering used or required the sign to be capable of being read from a particular distance', Mr de Cleene said, 'but we decided to leave the matter to the common-sense of employers rather than bring in complex rules to govern what is really a minor aspect of the tax.' Mr de Cleene confirmed that the amendment will not apply for the quarters ended 30 June or 30 September 1985. It will come into force on the first day of the quarter which follows the date on which the empowering legislation is assented to by the Governor-General.

Mr de Cleene explained that the Government also intends to clear up a problem which has emerged over the acceptability of logos or other means of business identification. Under the existing legislation, the employer's name must be displayed on a work related vehicle. The use of logos, acronyms or other means of identification does not meet this requirement, which means that vehicles displaying such signs without the added inclusion of the employer's name cannot qualify for exemption as work related vehicles. 'The Government has agreed to amend the legislation, with effect from 1 April this year, to ensure that logos, acronyms and other similar means of identification regularly used in the employer's business will be acceptable. In addition, it has been agreed the display of the name, logo etc., of a rental vehicle on vehicles rented from that business by an employer will be sufficient to discharge the name display condition,' Mr de Cleene said.

The Government also proposed to clarify a point in relation to group term life insurance schemes. Under these schemes, an employer pays a fixed premium which provides cover over the lives of some or all employees. Under the definition of the new term "monetary remuneration", the premiums in these policies are taxable income of the employees where the proceeds are payable to the employee or applied on his or her behalf. 'This result was never intended by the Government and an amendment will be made to make sure that these premiums are not taxable to the employees concerned. Their exclusion from income tax will of course leave them to be considered under the fringe benefit tax legislation, but a specific exemption contained in that legislation will ensure that the premiums are not liable for that tax either. Instead, the appropriate tax treatment for these premiums will be considered as part of the present review of life insurance and superannuation,' Mr de Cleene said.

The other principal amendment proposed is an extension of the exemption which applies where the allowance of a normal staff discount on goods which are on "special" to the public reduces the amount paid by the employee below cost to the employer. 'It has been agreed that such an exemption should apply in all cases where the mark-up is so low that the allowance of a small staff discount brings the cost to the employee below cost to the employer. The new provision will apply only where the staff discount is 5 percent or less and the sale value of the items of goods to the public is $200 or less,' Mr de Cleene said. This amendment will also apply from the first of April this year.

'Other amendments proposed merely tidy up minor drafting errors and will not affect employers' understanding of the application of the legislation. The Inland Revenue Department has, in my view, quite correctly, been interpreting the legislation as though those deficiencies did not exist so the amending legislation will simply confirm present practice. It will therefore apply from 1 April 1985,' Mr de Cleene said. 'For the technically minded, these amendments will correct drafting errors in paragraphs (i) and (j)(x) of the definition of "fringe benefit" in section 336N, in subsection (6) of section 336O in subsection (2) of section 336P and in paragraph (d) of the new Tenth Schedule' ".

INVESTORS IN FILM PRODUCTION VENTURES

Concern has been expressed at the lengthy delays in issuing assessments for investors in film production ventures. For the information of interested parties the Department would like to make the following comments:

Despite the difficulties encountered such as obtaining information, urgency is being given by the Department to all aspects of the review of film ventures. Every endeavour is being made, by a special team, to isolate acceptable cases, at the time when returns are first filed. Where cases are identified which may involve delays, it is the Department's policy to write to all the persons concerned advising them of the potential delay.

The files under review, and related correspondence, are regularly monitored to ensure no unnecessary delays are caused by the Department. Regular meetings are held with special team members and Head Office personnel, to resolve difficulties and to ensure continuity of the review.

It is suggested that if taxpayers have specific cases of concern to themselves they should take the matter up with the promoters of the particular film.

NEW ZEALAND/KINGDOM OF DENMARK PROTOCOL: ADDITION TO THE DOUBLE TAXATION RELIEF (DENMARK) ORDER 1981

A protocol to the 1981 New Zealand/Kingdom of Denmark Double Taxation Convention was signed in Copenhagen on 12 March 1985.

The purpose of the protocol is explained in Public Information Bulletin No. 112 Supplement No. 6A. The distribution for this series is limited to accountants in public practice.

Copies are available from any Inland Revenue Office for other interested parties.

THE STATUS OF CONTRACT MILKERS

In Public Information Bulletin 135 dated May 1985 there appeared an item on contract milkers. Readers were advised that the Department would be treating contract milkers as employees for income tax purposes.

In view of doubts that have arisen over the correctness of this decision the Department will continue to accept contract milkers as being self-employed for the 1985/86 dairy season. Where a contractor is working under the terms of a contract that in past years has been regarded as a contract of service then he will still be treated as an employee.

The matter is to be reviewed later this year and a decision made for the 1986/87 dairy season.

1985 LEGISLATION
LAND TAX AMENDMENT ACT 1985

This Act was assented to on 29 March 1985.

Section 1: Short Title

This Act has the above title and is to be read together with and deemed part of the Land Tax Act 1976.

Section 2: Application

Provides that this Act applies with respect to the assessments of land tax in respect of land held at noon on 31 March 1985.

Section 3: Objections to Assessments

This section amends section 45(1) of the principal Act.

Section 45 has always provided that the provisions of sections 30 to 35 of the Income Tax Act 1976 apply to land tax, i.e., objections to assessments of land tax are subject to the provisions of sections 30–35 of the Income Tax Act and those objections are to be treated in the same manner as an objection to an assessment of income tax is treated.

The amendment made to section 45(1) provides that the new provisions relating to the collection and payment of income tax in dispute, as introduced in sections 7, 8 and 40 of the Income Tax Amendment (No. 2) Act 1985 and contained in sections 34, 34A, and 398 of the Income Tax Act 1976, will also apply to land tax.

Those new provisions are set out fully in PIB 136 Part 2, Appendix A, Part II.

Paragraph (a)

Paragraph (a) of this section amends paragraph (a) of section 45 and provides that every reference in sections 30 to 34A of the Income Tax Act to income tax or to tax are to be treated as if those references were references to land tax.

Paragraph (b)

Paragraph (b) of this section amends paragraph (b) of section 45 and provides that every reference in sections 34, 34A and 35 of the Income Tax Act to income are to be treated as if those references were references to land.

Section 4: Additional tax to be charged if default made in payment of tax

The section repeals and substitutes section 47 of the principal Act.

Section 47 provides for additional tax to be charged on default in payment of land tax.

The section provides that the provisions of section 398 of the Income Tax Act shall with the **exceptions** of subsections **(6) and (7)** of section 398 apply to land tax.

The new provisions of section 398 provide for:

- the inclusion of the new "incremental" additional tax provisions;
- the inclusion of an "in lieu" additional tax calculated at a daily interest rate in respect of an amount of deferrable tax.

The facility for the automatic 50 percent remission of additional tax where payment of unpaid land tax is made within three months after the due date has been removed.

For full details of the new provisions of section 398 of the Income Tax Act refer to PIB 136 Part 2, Appendix A.

The Department's Technical Policy Circulars are reproduced in this Bulletin.

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