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New Zealand

Master Tax Guide

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CCH New Zealand Limited
PO Box 2378, Shortland Street
Auckland 1140
Telephone: 0800 500 224
www.cch.co.nz

First published in 1973
 Published annually thereafter

ISSN: 978-0-86475-878-1 (Professional edition)
 978-0-86475-888-0 (Student edition)
 ISSN: 0112 3653

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ISBN: 978-0-86475-878-1 (Professional edition)

978-0-86475-888-0 (Student edition)

ISSN: 0112 3653

Preface

The *2011 New Zealand Master Tax Guide* is an essential guide for tax practitioners and taxpayers preparing 2011 tax returns, working out 2011 provisional tax payments, and looking for an overview of changes made during the 2010/11 income year.

Anyone working in this area will know that tax law is always changing and that the rate of change seems to be increasing. Last year saw ever increasing changes in a wide range of tax areas. In 2010 Parliament passed three taxation amending Acts: the Taxation (Budget Measures) Act 2010, the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 and the Taxation (GST and Remedial Matters) Act 2010. All of the legislative amendments that occurred during 2010 have been incorporated into this edition of the *New Zealand Master Tax Guide*, including, but not limited to, the:

- reduction in personal tax rates and consequential reduction in the rates of RWT, FBT, etc
- increase in the rate of GST from 1 October 2010
- changes to depreciation treatment for buildings with an estimated useful life of more than 50 years
- introduction of the trans-Tasman portability of retirement savings scheme
- changes to business-to-business land transactions rules
- replacement of the principal purpose test for GST input tax
- alteration of the GST adjustment rules
- repeal of the loss-attributing qualifying company (LAQC) rules and
- introduction of the look-through company (LTC) regime.

Many of the changes legislated in 2010 are effective from 1 April 2011, with application for income years beginning 2011/12. In these cases the commentary states the law for the 2010/11 income year but contains notes to alert the reader to the pending changes.

As with previous editions of the *Master Tax Guide*, we have retained these popular features:

- summaries of the changes affecting the 2010/11 tax year and future years in “The year at a glance” and “Looking Ahead”
- a calendar of important tax dates for the 2010/11 tax year, including provisional tax dates
- a table of tax rates, and
- a topic index, section finding list and case table.

As always, there will be new cases, rulings and legislation after publication of this Guide. To discuss our range of updating tax commentary products and services, please call CCH customer services on 0800 500 224.

To keep up to date with changes throughout the year, the *Updating Master Tax Guide* is the logical choice. That version, available both online and on CD-ROM, is updated numerous times each year, with all changes integrated into the relevant chapters. In addition to having a powerful search capability, it provides useful links to the rulings, cases and legislation discussed in the commentary.

CCH wishes to thank the dedicated team responsible for this edition of the *Master Tax Guide*. Particular thanks go to Grant Henderson (Senior Tax Analyst), Vicki Amundsen, Rizwana Saheed, Louise Raynes (Senior Indexer (Tax)) and consultants John Bassett, James Coleman, Marilyn Hay, Daniel Hunt, Mark Keating and Solveig Egenes.

Our tax analysts are here to help if you have any questions arising from the contents of the *2011 New Zealand Master Tax Guide*. We value your feedback and thank those who have contributed ideas for improvement over the past year.

Carla Cross
Editor-in-Chief (Tax & Accounting)
CCH New Zealand Limited
February 2011

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Law

Unless otherwise indicated, law references within the text are to the Income Tax Act 2007 (IT07). A complete list of prefix codes used in law references in this Guide follows:

AC	Accident Compensation Act 2001
C93	Companies Act 1993
CHA	Charities Act 2005
CHS	Child Support Act 1991
EGD	Estate and Gift Duties Act 1968
ELR	Electronic Transactions Regulations 2003
ERA	Employment Relations Act 2000
GA	Gambling Act 2003
GD	Gaming Duties Act 1971
GST	Goods and Services Tax Act 1985
HC	High Court Rules
HOL	Holidays Act 2003
HS	Health and Safety in Employment Act 1992
INT	Interpretation Act 1999
IT07	Income Tax Act 2007
J	Judicature Act 1908
JA	Judicature Amendment Act 1972
KIW	KiwiSaver Act 2006
LP	Limited Partnerships Act 2008
ML	Maori Land Act 1993 (Te Ture Whenua Maori Act 1993)
NZS	New Zealand Superannuation and Retirement Income Act 2001
P	Partnership Act 1908
PRA	Property (Relationships) Act 1976
REA	Real Estate Agents Act 2008
SAR	Student Allowance Regulations 1998
SC	Supreme Court Act 2003
SCD	Stamp and Cheque Duties Act 1971
SCR	Supreme Court Rules 2004
SLS	Student Loan Scheme Act 1992
TAA	Tax Administration Act 1994
TRA	Taxation Review Authorities Regulations 1998
TRU	Trustee Act 1956
TRY	Taxation Review Authorities Act 1994

HIGHLIGHTS

¶1 2010 — The year at a glance

Legislation

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 rewrote the entire subpart HL of the Income Tax Act 2007 as subpart HM to ensure that all technical problems were identified and addressed, and that the portfolio investment entity (PIE) rules were consistent with the plain language drafting approach adopted generally across other parts of the Income Tax Act. Commentary on PIEs has been rewritten. Subpart HM is effective from 1 April 2010. See ¶29-100 et seq.

The Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 introduced new rules relating to the issue of income statements. See ¶2-029.

On 19 November 2009, the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill 2009 was tabled in Parliament. The Bill introduced changes to the tax rules to allow New Zealanders returning home from Australia to bring their retirement savings with them. It also included a number of technical changes to the rules surrounding KiwiSaver, gift duty exemptions and binding rulings to improve the way the rules work and reduce compliance costs for taxpayers.

Supplementary Order Paper No 144 to the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill 2009 was introduced to Parliament on 22 June 2010. The supplementary order paper (SOP) proposed an extension to the contribution rates for KiwiSaver to include 6% and 10% contribution rates. The contents of this SOP were not taken up in the final version of the Act.

The Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 was passed on 25 February 2010 and received Royal assent on 6 March 2010. The Act extends the eligibility for interest-free student loans to those who live in countries that are part of the realm of New Zealand, and to those engaged in full-time study in a formal exchange programme. The Act also increases the grace period in which a borrower may repay their loan fully without incurring further interest from 15 to 30 days. See ¶8-010 et seq.

On 24 March 2010, the Securities Trustees and Statutory Supervisors Bill 2009 (114-2) was introduced. See ¶29-200.

The Accident Compensation Amendment Act 2010 received the Royal assent on 2 March 2010. It renamed and amended the Injury Prevention, Rehabilitation, and Compensation Act 2001 (IPRC Act) to make it the Accident Compensation Act 2001. All references in other legislation to the IPRC Act are now simply taken to refer to the Accident Compensation Act 2001. See for example ¶3-180.

On 19 May 2010, the Finance and Expenditure Committee reported to Parliament on the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill 2009 (100-2).

On 21 May 2010, a Bill introducing tax changes announced in Budget 2010 passed its final stages in Parliament. The Taxation (Budget Measures) Bill 2010 (155-1) was introduced

under urgency on 20 May 2010 to give effect to the personal and company tax cuts, a rise in the GST rate to 15%, and changes to the investment property rules. The Taxation (Budget Measures) Act 2010 introduced, inter alia:

- Reduced personal and corporate tax rates. See ¶1-420 and ¶50-040.
- Increased the GST rate to 15% with effect from 1 October 2010. See ¶32-015 and ¶50-068.
- Reduced the employer's superannuation contribution tax rates to align with the reduction in personal tax rates, effective from 1 October 2010. See ¶29-420 and ¶50-078.
- Reduced the rates of resident withholding tax (RWT). See ¶2-028.
- Removed depreciation deductions for most buildings from the start of the 2011/12 income year. See ¶13-410.
- Removed depreciation loading for assets purchased after 20 May 2010. See ¶13-410
- Changed the law by allowing the Commissioner to attach funds held in a joint bank account where the defaulting taxpayer can make withdrawals from the account without the signature of the other person. See ¶2-190.

On 16 August 2010, the Taxation (Income-sharing Tax Credit) Bill 2010 (185-1) was tabled in Parliament. See ¶12-110.

The Limitation Act 2010 received Royal assent on 7 September 2010. See ¶2-165.

On 7 September 2010, the Taxation (Annual Rates, Trans-Tasman Savings Portability, Kiwisaver, and Remedial Matters) Act 2010 received Royal assent. Some of the main amendments are:

- Trans-Tasman portability of retirement savings. See ¶29-200.
- New rules for under-18-year-olds seeking to enrol in KiwiSaver. See ¶29-215.
- Flexibility in a provision applying to resident co-operative companies that require members to hold shares in proportion to their trading stock transactions with the company. See ¶16-750.
- A number of new rules relating to binding rulings.
- The repeal of fund withdrawal tax. See ¶29-430.
- An exemption from gift duty for gifts made to local or central government, donee organisations, and distributions of property made in accordance with certain court orders.
- The addition of Cure Kids to the list of charitable donee organisations. The Act also makes various minor technical amendments.
- Transitional arrangements for the GST rate increase announced in Budget 2010 have also been enacted. See ¶32-010 et seq.
- Extension of the original five-year exemption on income derived by a non-resident company from petroleum mining exploration and development activities to end on 31 December 2014, rather than 2009. See ¶28-135.

The Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 and the Taxation (GST and Remedial Matters) Act 2010 made changes to the Emissions Trading Scheme. Most significant are changes made to the valuation of free units and the introduction of a new anti-avoidance provision. See ¶9-062.

On 5 August 2010, the Taxation (GST and Remedial Matters) Act 2010 was introduced to Parliament. It received Royal assent on 20 December 2010. Some of the amendments contained in the Act are:

- The introduction of new ss 120W and 141B(1D) to ensure that taxpayers who rely on a Commissioner's official opinion will not be subject to use of money interest, or the unacceptable tax position penalty. See ¶14-115 and ¶14-200. The Act also introduced new s 183AA to assist businesses that make errors to GST returns during the transition to the new GST rate. See ¶14-050 and ¶14-180.
- The repeal of the loss-attributing qualifying company (LAQC) regime and amendment of the qualifying company (QC) regime so that losses can no longer be attributed to shareholders for income years beginning on or after 1 April 2011. See ¶19-010.
- The introduction of a new tax entity, the look-through company (LTC) for income years commencing on or after 1 April 2011. QCs and LAQCs will have an option to transition to the new LTC, partnership or sole tradership. See ¶19-150.
- Sweeping changes to the Goods and Services Tax Act 1985 — making business-to-business land transactions zero-rated (see ¶32-036), changing the principal purpose test (see ¶32-022 for input tax changes) and amending the change-of-use adjustments (see ¶32-088 for apportionment and adjustments).

On 14 September 2010, the Financial Markets (Regulators and KiwiSaver) Bill 2010 (211-1) was introduced. See ¶29-200.

The Income Tax (Social Assistance Suspensory Loans) Amendment Order 2010 came into force on 1 July 2010. See ¶29-200.

Budget 2010

On 20 May 2010, Finance Minister Hon. Bill English delivered the Budget. This Budget focused on reduction of personal tax rates, an increase to the GST rate and changes to depreciation in respect of buildings.

Interpretation statements

On 31 March 2010, the Commissioner issued interpretation statement IS 10/01, "Residential rental properties — depreciation of items of depreciable property". See ¶13-410.

Interpretation statement IS 10/02, "Meaning of 'building' in the depreciation provisions" was issued by the Inland Revenue Department (IRD) on 30 April 2010 and considers that for the purposes of the depreciation provisions, the ordinary or conventional meaning should be used. See ¶13-410.

On 1 July 2010, the IRD released interpretation statement IS 10/04: "Non-resident contractor schedular payments". This item replaces "Non-resident contractor's withholding tax — who is affected by the withholding tax rules". See ¶26-480.

Interpretation statement IS 10/05, "Depreciation — estimated useful life and lease terms" was issued by the IRD on 16 August 2010 and addresses whether a lease term is a relevant factor in determining an item's estimated useful life for the purposes of setting a special depreciation rate. See ¶13-126.

Interpretation statement IS 10/06, “Deductibility of business relocation costs” was released by the IRD on 23 August 2010. The interpretation statement considers the deductibility of business relocation costs incurred when an existing business relocates from one location to another location within New Zealand. See ¶10-071 and ¶10-810.

Interpretation statement IS 10/07, “‘Care and management of the taxes covered by the Inland Revenue Acts’ — section 6A(2) and (3) of the Tax Administration Act 1994” was released by the IRD on 20 October 2010. The interpretation statement sets out the Commissioner’s view on his “care and management” responsibility in s 6A(2) and his duty in s 6A(3) of the Tax Administration Act 1994. See ¶1-512, ¶4-118 and ¶4-232.

Interpretation statement IS 10/08, “Retirement villages — GST treatment” was released by the IRD on 26 October 2010. See ¶32-052.

LAQC issues paper released

On 20 May 2010, the officials’ issue paper *Qualifying companies: implementation of flow-through tax treatment* was released seeking comment on the implementation and transition details of moving QCs to flow-through treatment for income tax purposes. The issues paper was released as a result of the announcement in Budget 2010 that the current QC rules are to change.

On 23 December 2010, after the final legislation was contained in the Taxation (GST and Remedial Matters) Act 2010, two special reports from the Policy and Advice Division of the IRD were released. Entitled *Changes to the qualifying company rules* and *New look-through company rules*, they provide information on the changes enacted. The new LTC regime comes into existence from 1 April 2011, for income years beginning on or after 1 April 2011. See ¶19-150 for the transitional rules.

Officials’ issues papers released

An officials’ issues paper, *Disputes: a review*, was released in July 2010. The issues paper responds to a joint submission on the tax disputes process made by the Taxation Committee of the New Zealand Law Society (NZLS) and the National Tax Committee of the New Zealand Institute of Chartered Accountants. See ¶4-120.

On 30 August 2010, an officials’ issues paper, *Social assistance integrity: defining family income*, was released. See ¶12-125.

Standard practice statements

On 30 June 2010, the IRD issued standard practice statement SPS 10/01, “Recording Inland Revenue interviews”. This standard practice statement (SPS) applies from 1 July 2010. See ¶11-610.

On 3 August 2010, the IRD released standard practice statement SPS 10/02, “Imaging of electronic storage media”. The SPS sets out the IRD’s practice when taking an image of a taxpayer’s electronic storage media.

On 15 July 2010, the IRD released standard practice statement SPS 10/03, “Acceptance of late objections under section 92(2) of the Child Support Act 1991”. The matter was previously included in withdrawn SPS INV-300, “Acceptance of late objections under section 126 of the Tax Administration Act 1994”, published in March 1997. Notice of the withdrawal of SPS INV-300 was published in *Tax Information Bulletin* Vol 21, No 3, May 2009.

On 12 November 2010, the IRD released draft standard practice statement ED0129, “Child support debt — requesting an instalment arrangement”. See ¶12-060.

On 12 November 2010, the IRD released draft standard practice statement ED0130, “Student loans — relief from repayment obligations”. See ¶8-110.

The IRD announced that, from 1 April 2010, a number of administrative enhancements to the disputes resolution process have been implemented to improve the process. The IRD also revised standard practice statements SPS 08/01, “Disputes resolution process commenced by the Commissioner of Inland Revenue” and SPS 08/02, “Disputes resolution process commenced by a taxpayer” to reflect the administrative changes to the disputes process.

On 25 November 2010, the IRD released standard practice statement SPS 10/04, “Disputes resolution process commenced by the Commissioner of Inland Revenue”. This SPS applies from 8 November 2010 and incorporates administrative changes to the disputes process that were implemented by the IRD on 1 April 2010. It replaces standard practice statement SPS 08/01. See ¶4-125.

On 25 November 2010, the IRD released standard practice statement SPS 10/05, “Disputes resolution process commenced by a taxpayer”. This SPS applies from 8 November 2010 and incorporates administrative changes to the disputes process that were implemented by the IRD on 1 April 2010. It replaces standard practice statement SPS 08/02. See ¶4-125.

Determinations

On 6 June 2010, the IRD released *Determination S16: Financial Arrangement Income or Expenditure from Certain Retirement Village Arrangement*. The determination relates to an occupation right agreement between an operator of a retirement village and a resident. See ¶6-600.

Determination S17: Utilisation of a Profit Emerging Basis for Purchased Debt Ledgers by a Certain New Zealand Company Limited was issued on 17 December 2010. See ¶6-600.

Depreciation determinations

On 22 September 2010, the IRD released *Determination DEP75: Tax Depreciation Rates General Determination Number 75* for marine fender systems. This asset class has been added into the “Building and Structures” asset category. The determination applies to taxpayers who own marine fender systems that have been acquired during the 2009/10 and subsequent income years.

The IRD issued *Determination PROV20: Tax Depreciation Rates Provisional Determination Number PROV20* for equestrian arenas consisting of permanent construction materials.

Public binding rulings issued

On 16 December 2009, the IRD released public binding ruling BR Pub 09/09, “Deductibility of break fee paid by a landlord to exit early from a fixed interest rate loan”. See ¶10-190.

On 16 December 2009, the IRD released public binding ruling BR Pub 09/10, “Deductibility of break fee paid by a landlord to vary the interest rate of a fixed interest rate loan”. See ¶10-190.

On 25 March 2010 the IRD issued public binding rulings BR Pub 10/01, “Australian source income earned by Australian limited partnership and foreign tax credits”, BR Pub 10/02, “Distributions made by Australian limited partnership and foreign tax credits”, BR Pub 10/03, “Distributions made by Australian unit trust to Australian limited partnership and foreign tax credits”, BR Pub 10/04, “Franked dividend received by Australian limited partnership and foreign tax credits”, and BR Pub 10/05, “Tax paid by an Australian limited partnership as a ‘head company’ and foreign tax credits”. See ¶23-182.

On 17 May 2010, the IRD released public ruling BR Pub 10/06, “‘Anything occurring on liquidation’ when a company requests removal from the register of companies”. The ruling is essentially the same as BR Pub 05/14 and reaches the same conclusion.

On 29 April 2010, the IRD released public ruling BR Pub 10/07, “Commissions received by life agents on their own policies and those of associated persons — income implications”. The ruling is essentially the same as the views expressed on this subject in BR Pub 96/9A and BR Pub 00/01. See ¶21-535.

On 29 April 2010, the IRD released public ruling BR Pub 10/08, “Discounted premiums on life insurance policies provided to life agents and associated persons — fringe benefit tax implications”. The views expressed by the Commissioner in BR Pub 10/08 differ in part from the previous rulings on this subject which are BR Pub 96/9A and BR Pub 00/02.

On 27 October 2010, the IRD released six public rulings on interest deductibility. Public binding rulings BR Pub 10/14–10/19, “Interest deductibility — *Roberts and Smith* — Borrowing to replace and repay amounts invested in an income earning activity or business”, are a reissue of public rulings BR Pub 07/04–07/09. The rulings address the deductibility of interest when borrowed funds replace funds invested in an income-earning activity or business, and the original funds are repaid to the investor. See ¶10-650 and ¶23-136.

On 27 October 2010, the IRD issued BR Pub 10/14, “Interest deductibility — funds borrowed by a partnership to return capital contributions”, BR Pub 10/15, “Interest deductibility — funds borrowed by a partnership to return profits”, BR Pub 10/18, “Interest deductibility — funds borrowed to repay debt”. See ¶23-136.

On 28 October 2010, the IRD released public binding ruling BR Pub 10/20, “Deductibility of break fee paid by a landlord to exit early from a fixed interest rate loan on sale of rental property”. See ¶10-190 and ¶7-520.

On 16 December 2010, the IRD released public binding ruling BR Pub 10/21, “Interest repayments required as a result of the early repayment of a financial arrangement — deductibility”. See ¶10-650.

Use of money interest changes

The Taxation (Use of Money Interest Rates) Amendment Regulations 2010 amend regulations 2 and 3 of the Taxation (Use of Money Interest Rates) Regulations 1998 by (1) reducing from 8.91% to 8.89% the taxpayer’s paying rate of interest on unpaid tax, and (2) increasing from 1.82% to 2.18% the Commissioner’s paying rate on overpaid tax. The regulations came into force on 16 January 2011. See ¶50-083.

Questions we’ve been asked issued

The IRD issued QB 10/01, “Reimbursing shareholder-employees for motor vehicle expenses and the use of the Commissioner’s mileage rate”. See ¶3-445.

On 23 June 2010, the IRD issued a “Questions we’ve been asked”, QB 10/04 relating to the shortfall penalty for evasion under s 141E of the Tax Administration Act 1994.

On 21 July 2010, the IRD published a “Questions we’ve been asked”, QB 10/03 relating to the value of motor vehicles for the purposes of fringe benefit tax (FBT) where the vehicle was owned previously by the employer or a person associated with the employer. The item applies to FBT periods beginning on or after the first day of the 2009/09 income year.

The IRD has released a “Questions we’ve been asked” QB 10/06, “Elections for qualifying company status”. The item explains who should sign a notice of shareholder election for qualifying company status where a nominee shareholder or bare trustee shareholder is involved. See ¶19-055.

Double tax agreements and tax information exchange agreements

During 2010 New Zealand has signed several new double tax agreements (DTAs) and tax information exchange agreements (TIEAs). For updated commentary on the importance on DTAs, and other international agreements, see ¶26-280 et seq.

The Double Tax Agreements (Singapore) Order 2010 came into force on 10 June 2010. The Order incorporates into New Zealand domestic law the DTA signed with Singapore on 21 August 2009. The Order also revokes the previous DTA signed in 1973. The new agreement, which is drafted along the lines of New Zealand's new standard treaty, differs from the previous agreement in several respects.

On 4 August 2010, Prime Minister John Key and the Prime Minister of Vanuatu, Edward Natapei, witnessed the signing of a TIEA between the Governments of New Zealand and the Republic of Vanuatu as part of international efforts to strengthen cooperation in the area of tax evasion and tax avoidance. The agreement has not yet entered into force.

On 1 December 2010, Finance Minister Bill English signed a DTA with Hong Kong. The Minister said the agreement was an important step forward in strengthening New Zealand's economic relationship with Hong Kong and a significant addition to New Zealand's network of DTAs.

Several Orders have been made for international TIEAs.

The Double Tax Agreements (Turkey) Order (2010/311) came into force on 14 October 2010, giving effect to an agreement and protocol between New Zealand and Turkey signed on 22 April 2010. The agreement and protocol relate to providing relief from double taxation and preventing fiscal evasion, and facilitates the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes. The agreement and protocol also contain an "assistance in collection" provision, which relates to recovering unpaid tax. The Order was notified in the *New Zealand Gazette* on 16 September 2010.

OECD updates

The Organisation for Economic Co-operation and Development (OECD) has released two reports. The first is on granting of treaty benefits with respect to the income of collective investment vehicles, and the second is on the draft contents of the 2010 update to the Model Convention.

The OECD's Committee on Fiscal Affairs is completing its work on two transfer pricing policy projects.

Non-portfolio FIFs exemption

On 19 March 2010, the Revenue Minister, the Hon Peter Dunne, released an officials' issues paper seeking feedback on suggested changes to the treatment of non-portfolio foreign investment funds.

Transfer pricing

The OECD published updated *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration* on 18 August 2010. See 26-600 et seq for a brief overview.

Student loans interest rate reduced

The formula for setting the interest rate has also been moved from the Student Loan Scheme (Interest Rates Formulas) Regulations 2006 to the Student Loan Scheme Act. The interest rate under the student loan scheme is reduced from 6.8% to 6.6% for the 2010/2011 income year. See ¶8-020.

Minimum family tax credit

The annual amount of the minimum family tax credit that guarantees a family's after-tax income rose from \$20,540 to \$21,008 from 1 April 2010. See ¶12-160 and ¶50-041. The minimum family tax credit will rise from \$21,008 to \$22,204 from 1 April 2011. See ¶12-160.

Redundancy tax credit extended

The Minister of Revenue, the Hon Peter Dunne, announced on 30 September 2010 that the redundancy tax credit will be extended. The tax credit was repealed in Budget 2010 with effect from 1 October 2010 but will now be extended to 31 March 2011. See ¶11-065.

GST committee

On 21 May 2010, the Government announced that it has set up a special advisory panel to help ease the transition for businesses implementing the GST rate increase from 12.5% to 15% announced in Budget 2010.

Savings Working Group

An independent Savings Working Group announced on 24 August 2010 has a wide brief to consider how New Zealand can improve its national savings. The Working Group will be supported by the Treasury, which will publish a discussion paper setting out savings and investment issues and trends. See ¶29-200.

Livestock determination issued

On 20 May 2010, the IRD issued the National Average Market Values of Specified Livestock Determination 2010. The determination is made in terms of s EC 15 of the Income Tax Act 2007 and applies to specified livestock on hand at the end of the 2009/10 income year. See ¶27-264.

The National Standard Costs for Specified Livestock Determination 2011 was released 31 January 2011. See ¶27-267.

Officials' policy papers

On 8 July 2010, the Minister of Revenue, the Hon Peter Dunne, and the Commissioner of Inland Revenue invited feedback on proposed improvements to the tax disputes process. The issues paper examines the concerns raised in a submission from the New Zealand Institute of Chartered Accountants and the New Zealand Law Society.

An officials' issues paper — *Social assistance integrity: defining family income* — was released on 30 August 2010 and sought feedback on suggested changes to improve the fairness of access to social assistance programmes. The purpose of the paper is to broaden the definition of income used for these social assistance programmes. This is intended to counter people structuring their affairs to inflate their social assistance and address gaps in the current definition of income.

Issues paper

On 11 August 2010, the Government released a tax policy issues paper *Post-budget depreciation issues* which sought feedback on suggested changes to depreciation of non-residential building fit-outs and to the grandparenting of depreciation loading for assets acquired before Budget 2010. *Review of trust law in New Zealand: introductory issues paper* was released by the Law Commission in November 2010. Another issues paper "*Some issues with the law of trusts in New Zealand*" was released in December 2010. See ¶25-010.

Discussion documents

On 2 September 2010, the Government released a child support discussion document which looks at ways of making the child support system fairer. Amongst other things, the discussion document considers options for revising the child support formula to take account of the issues of better recognition of shared care, the income of both parents, and the current expenditure for raising children in New Zealand.

RWT announcement

On 8 December 2010, the Government announced that the tax treatment of RWT on trustee income is to be amended so that RWT credits can be allocated at the trustee's discretion. Once enacted the amendment will have retrospective application from the 2010/2011 tax year.

Change in rates for attributed fringe benefits

The Taxation (Budget Measures) Act 2010 amended the fringe benefit tax (FBT) thresholds and rates for the 2010/11 income year, and the 2011/12 income year and subsequent income years. See ¶50-081.

FBT — increased prescribed interest rate

The prescribed rate used to calculate FBT on low-interest, employment-related loans has increased from 6.00% to 6.24% from 1 October 2010. See ¶21-360 and ¶50-082.

Charities delisted

The Charities Commission has delisted a number of organisations. Consequently they have lost their charitable status. It is up to taxpayers to ascertain if the charity to which they wish to give is registered with the Charities Commission.

Media releases

In a media release dated 1 July 2010, the IRD has advised that it is focusing attention on New Zealand residents with undeclared taxable offshore income. The IRD is particularly targeting the non-disclosure of offshore bank accounts, the use of foreign credit/debit cards, overseas life insurance policies and superannuation funds.

Revenue Alert

The Commissioner has released *Revenue Alert* RA 10/01 which sets out the Commissioner's view on income diversion. See ¶33-135.

Canterbury earthquake — tax assistance measures

In a media release dated 8 September 2010, the Minister of Revenue, the Hon Peter Dunne, said that the IRD will take into account issues facing Canterbury customers affected by the Christchurch earthquake on 4 September 2010. The Minister also advised that cash donations over \$5 by individuals towards earthquake relief will be eligible for a tax credit, and will be tax deductible when made by companies.

The Minister of Revenue, the Hon Peter Dunne, announced on 14 September 2010 that the IRD has been given the power to waive interest on late tax payments for Canterbury earthquake victims.

On 16 September 2010, the Tax Administration (Emergency Event — Canterbury Earthquake) Order 2010 was made. See ¶27-062.

On 23 September 2010, the Agriculture Minister, the Hon David Carter, declared a medium-level adverse event in Southland and South Otago. This will enable storm-stricken farmers in those areas to get assistance from the Government. On 24 September 2010, the Revenue Minister, the Hon Peter Dunne, confirmed that the IRD will offer Southland and South Otago taxpayers its usual adverse event assistance as the area recovers from the impact of brutal snow storms. The Revenue Minister said that, in particular, he had instructed the IRD to show discretion on late income equalisation deposits and early withdrawals for farmers.

The IRD has issued a factsheet AD66, "Earthquake — tax relief for the Canterbury region" in September 2010. There may need to be a re-estimate for provisional tax purposes. See ¶22-082. Farmers who have money deposited in an income equalization scheme may be able to deposit funds from forced sale of livestock or make an early withdrawal. See ¶27-065.

Recent cases

The following recent cases have been referred to in the commentary:

- *Avowal Administrative Attorneys Ltd v District Court at North Shore* (2010) 24 NZTC 24,252. The Court of Appeal dismissed the appellants appeal on issues raised about the scope of the power of the Commissioner to access premises and obtain information under s 16 of the Tax Administration Act 1994 (TAA) and the manner in which those powers be exercised. The Court also discussed the duty to maintain secrecy under s 81 of the TAA and the exception under s 88 of the TAA. See ¶1-630.
- *C of IR v Chesterfield Preschools Ltd (No 2)* (2010) 24 NZTC 24,500. The Court of Appeal held that the Commissioner was bound by the first judicial review judgment and the Commissioner had accepted that he was bound by it both in terms of legal and factual findings. See ¶4-275.
- *FC of T v Anstis* 2010 ATC 20-221. The Australian High Court commented on the periodicity of receipts and how it affects the character of income. See ¶5-021.
- *Tepe Holdings Ltd v C of IR* (2010) 24 NZTC 24,551. The High Court held that the sale of shares which gave rise to occupancy rights in a building could not amount to a going concern. See ¶7-660.
- *Foodstuffs (Wellington) Co-operative Society Ltd v C of IR* (2010) 24 NZTC 23,959. The High Court confirmed that when shares that are held as trading stock are cancelled on amalgamation, the market value of those shares is income to the shareholder. See ¶9-087.
- *Canterbury Development Corp v Charities Commission; Canterbury Development Corp Trust v Charities Commission; CEDF Trustee Ltd as Trustee of the Canterbury Economic Development Fund v Charities Commission* (2010) 24 NZTC 24,143. The High Court found that a “community development purpose” was not a charitable purpose. See ¶24-195.
- *In re Education New Zealand Trust* (2010) 24 NZTC 24,354. While the High Court found that the charitable purpose of the advancement of education did exist, the trust could not be granted charitable status because the public benefit test was not met. See ¶24-250.
- *Dorchester Finance Ltd v Ngahua Ltd* (2010) 3 NZTR ¶20-001. The trustees of several statutory trusts (established under the Te Ture Whenua Maori Act 1993) signed refinancing loan agreements. For one trust, the majority of trustees signed; for the other trusts, only a minority of trustees signed. This is a partly successful summary judgment application against those trustees who signed the documentation. See ¶25-685.
- A number of recent cases including *De Bernardo v De Bernardo* (2010) 3 NZTR ¶20-011, *Shanks v Shanks* (2010) 3 NZTR ¶20-021 and *McKnight v Craig* (2010) 3 NZTR ¶20-019 have considered the issues surrounding variation of trust in accordance to the Court’s discretion pursuant to s 64A of the Trustee Act 1956. See ¶25-605.
- In the recent High Court decision of *Krukziener v C of IR (No 3)* (2010) 24 NZTC 24,563 current account loans of long standing made to a beneficiary were recharacterised as income. See ¶25-505.
- *Cockburn v CS Development No 2 Ltd* (2011) 25 NZTC ¶20-007 (SC). If the failure to correctly treat the supply as zero-rated was due to the default or deceit of the purchaser, the vendor can recover the subsequent GST liability as damages for breach of contract. See ¶32-035 and ¶32-036.

- *Contract Pacific Ltd v C of IR* (2011) 25 NZTC ¶20-006 (SC). The Supreme Court unanimously upheld the Court of Appeal's decision that the Commissioner satisfied the time limits set by s 46 because he notified the taxpayer of his intention to investigate a refund claim within the 15-working-day time period. Also, after that, requests for further information in conjunction with the investigation did not need to be made within any time limit. Accordingly, the Commissioner's request for information was valid and so there was no obligation to make a refund to the taxpayer. See also *Riccarton Construction Ltd v C of IR* (2010) 24 NZTC 24,191 (HC). See ¶32-240.
- *Education Administration Ltd v C of IR* (2010) 24 NZTC 24,238. Even supplies by payments basis taxpayers below \$225,000 may still be caught by s 76 of the GST Act 1985. See ¶32-280.
- *Penny and Hooper v C of IR* (2010) 24 NZTC 24,396. The appellants failed to establish that their use of their corporate and family trust structures did not constitute taxable arrangements for the purposes of s BG 1 of the Income Tax Act 1994. See ¶33-095 and ¶33-170.
- ▶ **Note:** The Supreme Court has granted Messrs Penny and Hooper leave to appeal the Court of Appeal's judgment reported as *C of IR v Penny and Hooper* (2010) 24 NZTC 24,287. The approved ground of appeal is "whether the Court of Appeal was right to find that the appellants had failed to establish that their use of their corporate and family trust structures did not constitute taxable arrangements for the purposes of s BG 1 of the Income Tax Act 1994". The appeal is set down for hearing in March 2011.
- *Krukziener v C of IR (No 3)* (2010) 24 NZTC 24,563. Loans the taxpayer had received from 1991 to 2002 worth \$5m through current accounts with trusts and companies forming part of his group of companies and trading trusts could be classified as income and be taxed. The taxpayer living off loans over an extended period amounted to a contrived and artificial arrangement. See ¶33-105.
- *White v C of IR* (2010) 24 NZTC 24,600. Subjective evidence admitted to provide context as to circumstance when arrangement brought into being. See ¶33-105.