

**PUBLIC RULINGS WORK PROGRAMME 2011/12 (as at 10 May 2012)**

If you have any enquiries about the Public Rulings work programme, please contact :

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| KEY                         |                             |                     |
|-----------------------------|-----------------------------|---------------------|
| Int = Internal consultation | Ext = External consultation | TBA = To be advised |
| Projected date              | Actual date                 | On hold             |

**What's new**

- **Recently finalised:** BR Pub 12/01: Deductibility of break fee paid by a landlord to exit early from a fixed interest rate loan; BR Pub 12/02: Deductibility of break fee paid by a landlord to vary the interest rate of an existing fixed interest rate loan; BR Pub 12/03: Deductibility of break fee paid by a landlord to exit early from a fixed interest rate loan on sale of rental property (previously issued as exposure draft XPB00049).
- **Files closed:** XPB00025: Car parks provided by employers - FBT exemption (expired public ruling BR Pub 99/6 will not now be reissued); QWB00013: FBT and car parks provided by employer. Legislative change proposed to the "on-premises" exemption in s CX 23; see issues paper *Recognising salary trade-offs as income*: <http://taxpolicy.ird.govt.nz/publications/2012-ip-salary-tradeoffs-income/overview>.
- **Added to the work programme:** INS00104: Status of Commissioner's advice; QWB00112: Income tax - look-through companies: rental properties and avoidance.
- **Draft recently issued for public consultation:** INS00104: Status of Commissioner's advice.
- **Projected dates:** some changes have been made to projected consultation and finalisation dates to reflect present progress (including extensions to comment deadlines and late submissions received).

| Project no                  | Title   | Topic   | Consultation                   | Finalised | Progress comments  |
|-----------------------------|---|---|--------------------------------|-----------|--|
| <b>INCOME TAX - GENERAL</b> |   |   |                                |           |  |
| QWB00093                    | Income tax and fringe benefit tax - tax treatment of loyalty reward schemes                               | Trade bonuses/reward schemes - income tax implications of business receiving in kind benefits from suppliers of goods or services to them, in consideration for their loyalty, and income tax/GBT implications of reward/point schemes for sole traders and employees | Int: Jul 2011<br>Ext: Oct 2011 | Oct 2011  | Issue referred to Policy Advice and file closed                                |
| ING00017                    | Income tax; GST - employment status for tax purposes (employee or independent contractor?)                | Review and update 1999 Interpretation Guideline (ing00009) in light of legislative change - ITA 2007, Employment Relations Act - and impact if any of <i>Bryson</i> decision.   | Ext: Oct 2011                  | Dec 2011  | Issued as IG 11/01   |
| QWB00040                    | Income tax – whether residual land is part of an undertaking or scheme of development or division of land | Whether scheme of development or division within 10 years of purchase "taints" all the land going forward for the purposes of s CB 12, ITA 2007   | Int: Feb 2012<br>Ext: Apr 2012 | Jun 2012  | Consultation closes 11 May 2012  |
| INS00111                    | Whether "deemed income" can be beneficiary income   | Whether income that is deemed to arise for tax purposes, but not for trust purposes, can give rise to "beneficiary income" pursuant to s HC 6, ITA 2007   | Int: Aug 2011<br>Ext: Nov 2011 | Jun 2012  | Consultation closed 21 Feb 2012  |
| INS00121                    | Interpretation of section BG 1  | Interpretation of sections BG 1 & GA 1 of the Income Tax Act 2007 - anti-avoidance  | Int: May 2011<br>Ext: Dec 2011 | TBA       | Consultation closed 31 Mar 2012; currently waiting for some final submissions. |
| INS00117                    | Residence   | Review and update PIB 180 item on residence rules   | Int: Jun 2012<br>Ext:TBA       | TBA       |  |
| QWB00107                    | Income tax – is a tax credit allowed for state income tax paid in the United States of America?           | Whether a tax credit may be allowed under the Income Tax Act 2007 for state (or local) income tax paid in respect of assessable income sourced in the USA if the state tax has the same nature as New Zealand income tax  | Int: Dec 2011 ✓<br>Ext: TBA    | TBA       |  |
| QWB00100                    | Major development or division - what is "significant expenditure" for the purposes of s CB 13             | Issues as to when s CB 13 applies, especially as regards level of work required, value of work required, whether council contributions are taken into account, and whether the test can be applied to both incurred and intended expenditure                          | TBA                            | TBA       |  |
| PUB00184                    | Foreign currency conversion for branches  | Provide further guidance on how to convert certain types of foreign currency transactions into New Zealand currency   | TBA                            | TBA       |  |

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|------------|--|---|----------------------------|-----------|--|
| 3162       | Treatment of employee-related payments - sections CE 5(3)(c) and CW 17(1)-(3) of the Income Tax Act 2007 | Sets out the general principles in applying s CW 17 in respect of a number of allowances or payments made to employees that could be seen to be of a private or domestic nature, or capital nature. | Ext: Dec 2009              | TBA       | Statement on hold pending Policy Advice review   |
| ING00018   | Taxing foreign retirement savings  | Clarify the correct tax treatment of certain payments from foreign superannuation schemes   | Int: Jun 2011 ✓<br>Ext:TBA | TBA       | Policy Advice is to issue a discussion document on this issue in 2012; see Minister of Revenue's announcement: <a href="http://taxpolicy.ird.govt.nz/news/2011-11-11-speech-nzica#speech">http://taxpolicy.ird.govt.nz/news/2011-11-11-speech-nzica#speech</a> |
| PUB00158   | Meaning of "acquired"  | When is land "acquired" for the purposes of s CD 1(2)(a) ITA 1994 (s CB 1(2)(a) ITA 2004; s CB 6(1) ITA 2007)   | TBA                        | TBA       | On hold - litigation pending   |
| XPB00041   | Trading stock—Tax treatment of sales and agreements to sell  | Vendor and purchaser treating dates of sale/purchase differently for tax purposes - clarify. Review expired BR Pub 04/06  | TBA                        | TBA       | On hold pending resolution of PUB00158: Meaning of "acquired"  |

#### CORPORATE/ENTITY ISSUES

|          |  |  |                                |          |                                      |
|----------|--|--|--------------------------------|----------|--------------------------------------|
| QWB00092 | Income tax - look-through companies and interest deductibility   | Interest deductibility under the new look-through company rules - implications of refinancing  | Int: Aug 2011<br>Ext: Sep 2011 | Nov 2011 | Issued as QB 11/03                   |
| QWB00076 | Timing of share transfers for the continuity provisions          | Timing of share transfers for the continuity provisions  | Int: Apr 2011<br>Ext: Mar 2012 | May 2012 | Consultation closed 11 Apr 2012      |
| QWB00112 | Income tax - look-through companies: rental properties           | Income tax - look-through companies: rental properties and avoidance   | Int/ext: May 2012              | Jun 2012 |                                      |
| PUB00185 | Share divisions under the Companies Act 1993                     | Clarify the relevant time of acquisition of the divided shares for the purposes of determining the application of s CB 4 of the Income Tax Act 2007 (i.e. the time of the acquisition of the original shares or the time of the share division).   | Int: Aug 2012<br>Ext: TBA      | TBA      |                                      |
| PUB00176 | ASC rules and amalgamated companies                              | Whether the "subscriptions" amount in the available subscribed capital amount calculation in s CD 43 of the ITA 2007 for an amalgamated company includes post-30 June 1994 consideration received by the company that becomes the amalgamated company, or whether it is excluded by the operation of s CD 43(15)(a)(iii) | TBA                            | TBA      |                                      |
| QWB00097 | Shareholder decision-making rights & Companies Act s 117         | Whether rights conferred by s 117 of the Companies Act 1993 are, or could give rise to, "shareholder decision-making rights" as defined in s YA 1 of the ITA 2007  | TBA                            | TBA      |                                      |
| QWB00101 | Changes in partnership composition – effect on existing partners | In what circumstances will a partner be treated as having disposed of an interest in a partnership for tax purposes?   | TBA                            | TBA      |                                      |
| INS00098 | Dividends - timing of when paid or derived                       | Dividends - timing of when paid or derived   | Int: May 2011 ✓<br>Ext: TBA    | TBA      | On hold pending Policy Advice review |

#### DEDUCTIBILITY

|          |   |   |                                |          |                                     |
|----------|---|---|--------------------------------|----------|-------------------------------------|
| XPB00049 | Mortgage break fees - deductibility   | Mortgage break fees - deductibility: review expiring BR Pub 09/09, 09/10 and BR Pub 10/20 (expire end of 2011/12 income year)   | Int/ext: Mar 2012              | Apr 2012 | Issued as BR Pub 12/01-Br Pub 12/03 |
| INS00119 | Income tax - deductibility of expenditure incurred in borrowing money - section DB 5 and DA 1 | Interpretation of section DB 5 - deduction for borrowing costs  | Int: Aug 2011<br>Ext: Feb 2012 | Jun 2012 | Consultation closed 16 Mar 2012     |
| INS00120 | Income tax - deductibility of expenditure repairs and maintenance costs - general principles  | Applying capital v revenue principles to deductibility of repairs and maintenance costs; considering capital improvements if expenditure is capital (incorporating PUB00169: Replacement of the motor of a car )  | Int: Aug 2011<br>Ext: Feb 2012 | Jun 2012 | Consultation closed 23 Mar 2012     |
| QWB00108 | Interest deductibility: look-through companies - borrowing to repay a shareholder             | When interest is deductible where a look-through company borrows money to repay current account loans from its shareholders   | Int: Dec 2011<br>Ext: Mar 2012 | Jun 2012 | Consultation closes 11 May 2012     |
| QWB00109 | Interest deductibility: look-through companies - borrowing based on a revaluation             | Whether interest will be deductible where a look-through company borrows to make payments to shareholders that reflect the increase in value in an asset owned by the look-through company  | Int: Dec 2011<br>Ext: Mar 2012 | Jun 2012 | Consultation closes 11 May 2012     |
| QWB00096 | Donations - deductibility   | Where a subscriber enters into a contract with a charity, under which a cash "donation" is made and a certain number of "complimentary" tickets is received, is the donation deductible/creditable to the donor to the extent it is not compensated for by the tickets? | Int: Jul 2012<br>Ext: Sep 2012 | TBA      |                                     |
| PUB00168 | Private/revenue expenses  | Deductibility of expenses that are private and revenue in nature - whether all deductible or apportionment required   | TBA                            | TBA      |                                     |

| Project no | Title  | Topic   | Consultation  | Finalised | Progress comments                           |
|------------|--|---|---------------|-----------|---|
| QWB00082   | Farm mortgage: apportionment of interest                                     | Are full-time farmers required to apportion interest payable on a mortgage secured on a farm between amounts applicable to the dwelling and the farming business? | TBA           | TBA       |   |
| PUB00171   | Resource consent - deductibility of costs associated with obtaining consents | Tax treatment of costs associated with resource consents other than those within schedule 14 (10) of the ITA 2007   | TBA           | TBA       | On hold - litigation pending                |
| INS00033   | Deductibility of company administration costs                                | Income tax treatment of certain company expenditure, including cost of holding AGM/ shareholders' meeting and maintaining share registry                          | Ext: Sep 2011 | TBA       | On hold pending Policy Advice consideration |

#### DEPRECIATION (NONE AT THIS TIME)

#### FINANCIAL ARRANGEMENTS RULES (NONE AT THIS TIME)

#### FBT

|          |   |   |                                |          |  |
|----------|---|---|--------------------------------|----------|--|
| QWB00095 | Fringe benefit tax - "availability" benefits    | FBT - meaning of 'availability for private use or enjoyment'. Review correctness of TIB item: TIB 6:10:3 (March 1995)   | Int: Jul 2011<br>Ext: Feb 2012 | Mar 2012 | Issued as QB 12/06   |
| XPB00025 | Car parks provided by employers - FBT exemption | Whether FBT payable on car parks. Review expired public ruling BR Pub 99/6  | Int: Apr 2009<br>Ext: Aug 2009 | Apr 2012 | Files closed: legislative change proposed to the "on-premises" exemption in s CX 23; see issues paper <i>Recognising salary trade-offs as income</i> : <a href="http://taxpolicy.ird.govt.nz/publications/2012-ip-salary-tradeoffs-income/overview">http://taxpolicy.ird.govt.nz/publications/2012-ip-salary-tradeoffs-income/overview</a> |
| QWB00013 | FBT & car parks provided by employer            | Whether FBT is payable when employers provide car parks for employees when the employees are required to use their own vehicles for business purposes; whether or not that parking expense paid by the employer is a benefit to the employee. |                                |          |  |

#### GST

|          |   |   |                                |          |                                 |
|----------|---|---|--------------------------------|----------|---------------------------------|
| QWB00111 | GST – treatment of transitional services supplied as part of a transaction involving the supply of land | Whether zero-rating of land extends to related services that may be included in the price, and also whether ancillary services relating to the sale of the land should also be zero-rated | Int: Jan 2012<br>Ext: Mar 2012 | May 2012 | Consultation closed 25 Apr 2012 |
| INS00110 | GST on immigration services   | Immigration services provided to non-resident - zero rating   | Int: Jun 2011<br>Ext: Mar 2012 | TBA      | Consultation closed 11 Apr 2012 |
| INS00109 | GST and retirement villages   | Review IS 10/08: GST and retirement villages for changes consequent on Taxation (GST and Remedial Matters) Act 2010   | Int: Jun 2012<br>Ext: TBA      | TBA      |                                 |
| QWB00014 | GST - value of consideration in relationship property agreement   | GST - value of consideration in a matrimonial/ relationship property agreement  | Int: Jun 2012<br>Ext: TBA      | TBA      |                                 |
| QWB00078 | GST - non-profit bodies and section 3A(4A)  | Does a non-profit body need to conduct a taxable activity and make supplies in the course of that taxable activity to claim input credits?  | Int: Jul 2012<br>Ext: TBA      | TBA      |                                 |

#### TAX ADMINISTRATION

|          |   |   |                                  |          |                                 |
|----------|---|---|----------------------------------|----------|---------------------------------|
| ING00016 | Sham - meaning of term  | To clarify what is meant by 'sham' at law, to provide assistance to those involved in tax practice and administration.  | Int/ext: Feb 2012                | May 2012 | Consultation closed 31 Mar 2012 |
| INS00104 | Status of Commissioner's advice                                   | Sets out the status of advice given by the Commissioner (other than binding rulings)  | Ext: May 2012                    | TBA      | Consultation closes 22 Jun 2012 |
| QWB00110 | Abusive tax position shortfall penalty and avoidance arrangements | If s BG 1 is successfully invoked and it is concluded the taxpayer took an unacceptable tax position, is the penalty inevitably an ATP penalty (100%) or is something more required to move from the 20% unacceptable tax position penalty to the 100% ATP penalty? | Int: Dec 2011 ✓<br>Ext: Jun 2012 | Jun 2012 |                                 |

#### REFERRALS FROM PIB REVIEW

|          |  |  |                                |          |                    |
|----------|--|--|--------------------------------|----------|--------------------|
| QWB00102 | Inlet race to dairy shed - income tax treatment                | How is expenditure on the construction of an inlet race to a dairy shed treated for income tax purposes? | Int: Sep 2011<br>Ext: Nov 2011 | Jan 2012 | Issued as QB 12/01 |
| QWB00104 | Income tax - deductibility of expenditure on cattle stops      | How is expenditure on the construction of a cattle stop treated for income tax purposes?                 | Int: Oct 2011<br>Ext: Feb 2012 | Mar 2012 | Issued as QB 12/03 |
| QWB00105 | Income tax - deductibility of expenditure on farm access roads | How is expenditure on the widening or metalling of farm access roads treated for income tax purposes?    | Int: Oct 2011<br>Ext: Feb 2012 | Mar 2012 | Issued as QB 12/04 |
| QWB00103 | Income tax – deductibility of expenditure on stock yards       | How is expenditure on the construction of a stock yard treated for income tax purposes?                  | Int: Oct 2011<br>Ext: Feb 2012 | Mar 2012 | Issued as QB 12/05 |
| PUB00174 | Overseas travel expenses – deductibility                       | Update item in PIB 12, p3: "Regular overseas travel: a new approach"                                     | TBA                            | TBA      |                    |