

C O R P O R A T E S C O N T A C T

N U M B E R T H I R T Y ~ J U L Y 2 0 0 6

Corporates' position regarding providing non-binding opinions

Corporates will generally no longer be providing non-binding opinions.

We have been issuing certain binding rulings since mid-2003. At the time we advised the intention was that **"over time the binding rulings service will replace the current non-binding opinions service"**. This was confirmed again last year at the International Fiscal Association conference. The binding rulings process is now well embedded.

Corporates will, however, continue to exchange correspondence with taxpayers. In evaluating a request for a technical opinion to be expressed in correspondence we will take into account Corporates' desire to continue to work with businesses to ensure correct and consistent outcomes. Alongside this must be the recognition by taxpayers that we have limited resources and cannot spend extensive hours on complex issues or on requests that are not clear cut, are very fact-specific, have many tax aspects to be considered or are more appropriately dealt with by a binding ruling.

New Zealand's self-assessment regime requires reasonable care to be taken and often this means taxpayers will seek external advice in meeting their statutory obligations. The binding rulings regime is also available to assist taxpayers achieve certainty. The changes to the non-binding opinion process are made with a specific intention to ensure more capacity to speed up the issuing of binding rulings. Businesses should consider identifying at an earlier stage if a binding ruling is required.

We are aware that there are situations where a binding ruling cannot be issued, for example, where a ruling is sought on provisions that are not within section 91C of the Tax Administration Act 1994, or where there is no "arrangement" upon which the binding ruling could be given. In recognition of this we will consider, as part of Corporates' service delivery role to provide a view, whether to assist taxpayers where the request relates to issues that are, for example:

- relatively straightforward (eg capital reduction queries)
- administrative (eg meeting tax return obligations) or discretionary, or
- where Inland Revenue approval is required under the legislation (eg approval for an employee share scheme to be treated as a section DF 7 scheme).

The level of detail in our response in these primarily factual circumstances is likely to be more limited than some of the lengthy responses that have been provided to date.

Requests for a view from Corporates on the interpretation of unclear legislation will continue to be very carefully considered taking into account whether the question is more appropriately dealt with by another area within Inland Revenue or through the disputes process.

Capacity to conduct binding rulings

In relation to taxpayers seeking certainty prior to taking a tax position, Corporates works in conjunction with the Adjudication & Rulings Unit in managing binding rulings requests. In general, Corporates will continue to deal with the more straightforward transactional arrangements whereas Adjudication & Rulings will continue to complete the highly complex or contentious applications. Corporates will continue to provide comments to Adjudication & Rulings on these rulings applications from Corporates taxpayers. Provided the request is relatively straightforward, Corporates will be able to allocate a ruling in a relatively short time and complete the ruling to a draft ruling stage within two months from the acceptance of the quote and receipt of all relevant information.

Details of the binding rulings regime are found at www.ird.govt.nz

Our risk review process for large enterprises

Can you answer the following questions for your large enterprise group?

- Does the group have a documented tax risk management policy?
- What processes are in place to ensure tax risk management controls are operating effectively?
- Is there regular reporting on tax issues to the main board or a board committee?
- Have there been any material structural changes in the last two years which have resulted in a reduction of business functions, assets held and risks borne by the New Zealand operations?
- What tax issues have arisen for the group, or are expected to arise, on the implementation of International Financial Reporting Standards?

These are examples of questions which may be asked as part of the risk review process for some of our largest customers.

The large enterprise risk review process takes place soon after income tax returns are filed. It is part of our increasing focus on identifying and addressing tax risks on a timely basis.

Not all large enterprises are subject to a detailed risk review each year. However those enterprises which are selected are asked questions on a number of topics, which may include:

- causes of tax losses and low effective tax rates
- mergers and acquisition activity
- the group's approach to managing tax risk (including corporate governance in the tax area)
- impacts of recent tax legislation changes
- dividend and imputation policies
- confirmation of specific matters, for example, if a binding ruling has been issued, whether it is being applied and whether the conditions and assumptions have been met.

Risk reviews provide a number of benefits for both large enterprises and Inland Revenue. They help ensure our audits are shorter and targeted, which will reduce costs to both parties. They also provide greater transparency. For example, we discuss significant risks we have identified at the end of the risk review, rather than waiting to disclose them during the audit process.

If you would like more information about our large enterprise risk review process, or if you have been subject to a risk review and have comments on how to improve the process in the future, we would welcome hearing from you. Please send an email to Risk&Intelligence@ird.govt.nz

Records for controlled foreign companies or foreign investment funds to be available in English

We thought it might be helpful to set out our position on whether financial accounts and other related records must be provided in English to support branch equivalent tax calculations.

There have been a number of instances where the verification of these calculations has been affected by taxpayers not being able to provide the underlying financial accounts or other related records in English. This issue has highlighted that some taxpayers may not be aware of their obligation to keep in New Zealand sufficient records in the English language, so we can readily ascertain their attributed income.

Our position is that any taxpayer who holds interests in any CFC or FIF, where the branch equivalent tax calculation method is adopted, has an obligation to provide on request financial accounts and other underlying records for that entity in English.

Where the financial accounts and other underlying records, including evidence of foreign tax paid, are not maintained in English, our view is that on request there is a requirement for taxpayers to provide such information in English in a timely manner.

Exceptions to this requirement may be made on application in writing. Such applications will be considered on a case-by-case basis, taking into account the degree of difficulty that maintaining records in a language other than English would cause for Inland Revenue, the compliance history of the taxpayer, whether alternative sources of relevant information are available and the relative cost to the taxpayer in meeting their obligations.

A full discussion of this issue can be found in *Tax Information Bulletin*, Vol 18, No 2 (March 2006)

Common themes found in voluntary disclosures

This is a regular feature outlining the common themes identified from voluntary disclosures over the past quarter. By highlighting these themes we hope to give you an insight into common issues and help you build on your good compliance. Each description has resulted in at least one tax shortfall of no less than \$1 million in tax.

1. GST

What's the issue?

GST continues to be an area where a number of voluntary disclosures are made. In addition to the areas highlighted in the March 2006 issue of *Corporates Contact* we have noticed a number of voluntary disclosures relating to the same invoice or credit note being included in the wrong month's GST return, or being included in two different months' GST returns.

What to do

Ensure you have adequate systems in place so that invoices and credit notes are recorded in the correct GST periods.

2. Approved issuer levy (AIL)/non resident withholding tax (NRWT)

What's the issue?

A number of voluntary disclosures have been received in recent months relating to the underpayment of AIL or NRWT. The underpayment has arisen due to payments made to non-residents being excluded from a company's AIL/NRWT calculations.

What to do

If you make any payments of interest to non-residents, make sure that these are included in the calculation of AIL or NRWT (as relevant).

3. Bad debts

What's the issue?

We have received a number of voluntary disclosures adding back debts that had been written off or provided for as bad for accounting purposes, but did not meet the requirements for deductibility in the Income Tax Act 2004.

What to do

For a bad debt to be allowed as a deduction for income tax purposes, it must have been written off as bad during the income year. A debt is considered to be bad when a reasonably prudent commercial person would conclude there is no reasonable likelihood that the debt will be paid. Further guidance can be found in *Public Ruling BR Pub 05/01* "Bad debts – writing off debts as bad for GST and income tax purposes".

Improving our understanding of large businesses

During June 2006 we undertook a survey of large businesses to:

- better understand the needs of large businesses as taxpayers
- provide clarity about the things we do well and identify the areas in which we can improve
- identify the most important things to large businesses when dealing with Inland Revenue.

A cross-section of New Zealand businesses were interviewed, for example New Zealand-owned versus overseas-owned companies, as were different industry sectors. A range of issues were covered.

We'd like to take this opportunity to thank those businesses who participated in the survey, as we value customer input and feedback. If you have any questions about the survey please get in touch with your account manager.

Corporate migration: Operational implications of new legislation

For a company to migrate, an application by the company for removal from the New Zealand register of companies must be accompanied by written notice from the Commissioner of Inland Revenue that the Commissioner has no objection to the company being removed from the New Zealand register. This is as per section 351(c) of the Companies Act 1993.

Inland Revenue's current practice is that a company wanting to migrate will not receive such a notice if the Commissioner cannot be sure that tax debts, that may arise or need to be collected once the company has migrated, will be met.

To mitigate this concern, taxpayers have in the past offered Inland Revenue a letter of guarantee from, for example, a related New Zealand company that has the means to satisfy the migrated company's tax liability, or a bank in other circumstances. With the letter of guarantee in place, Inland Revenue is then able to provide written notice to the Registrar of Companies that the Commissioner has no objection to the migration.

While Inland Revenue's practice will not change with the new legislation there is now a greater likelihood of a tax debt, due to the additional income tax and withholding liabilities arising from this legislation, than was previously the case. Thus, companies should be aware that, on a case-by-case basis, some form of guarantee may need to be offered to ensure that the Commissioner has no objection to the migration.

Previously, when a notice was given that the Commissioner had no objection to the migration of a company, it had been implicit that such a notice applied only to the company at the date of the notice. The notice did not apply should any other company or companies be subsequently amalgamated into the company.

For clarity in future, Inland Revenue practice will be that, when written notice is given that the Commissioner has no objection to a company being removed from the New Zealand register, the notice will explicitly state that it applies only to the company on the date of the notice and not in the event other companies are amalgamated into it.

Reproduced from *Tax Information Bulletin*, Vol 18, No 5 (June 2006)

Errors with PAYE electronic payments

We have noticed an increase in errors when employers are making their PAYE payments electronically.

Please remember to follow the required format on pages 10 – 12 of our guide *Making payments (IR 584)*

Example: A mid month payment of \$1,000 for combined PAY/CSE/SSC/SLE (DED) being made on 20 February 2006 for the period 1 February 2006 – 15 February 2006.

Payee name										Amount									
I N L A N D R E V E N U E										1 0 0 0 . 0 0									
Bank		Branch		Customer number				Suffix											
0 3		0 0 4 9		0 0 0 1 1 0 0				- 2 7											
Particulars								Payee code				Reference							
1 2 3 4 5 6 7 8								D E D 2 8 0 2 2 0 0 6											
Employers IRD number								Tax type				Period end date							

Note: If you are only paying one type of deduction, please use the separate tax type from the list on page 12 of our Making payments guide.

Please also remember to post us your *Employer deductions (IR 345)* or *Employer deductions SCWT (IR 346)* payment slip. These forms allow us to allocate your electronic payment correctly. For full details see our *Employers' guide (IR 335)*.

Fringe benefit tax changes

Legislative changes relating to fringe benefit tax (FBT) in the Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Act 2006 are designed to reduce compliance costs and remove anomalies in the rules.

A review of FBT began in October 2002, when the Government asked taxpayers to identify areas they wished to be addressed. A discussion document, *Streamlining the taxation of fringe benefits*, was released in December 2003 and ultimately resulted in the legislative changes which came into effect on 1 April 2006.

Key changes for employers

1. Taxable value options

Employers now have the choice of calculating the FBT payable based either on a vehicle's tax book value, or its cost price. Employers who choose the tax book value option will be required to apply the calculation method to all vehicles owned or leased. The tax book value option is most beneficial where an employer will retain their vehicle in excess of five years.

2. Election of a start time for the 24-hour period commencement time

Employers are able to elect the commencement of an FBT day to be any time in a 24-hour period. Once an election has been made it applies to all vehicles owned or leased for a minimum period of two years.

3. Unclassified benefits

The minimum value thresholds which have to be exceeded before unclassified benefits are subject to FBT have increased significantly.

4. Other legislative changes

- Employers undertaking their health and safety obligations will not incur an FBT liability regardless of where the checks are completed. The exemption must be aimed at eliminating workplace hazards identified under the Health and Safety in Employment Act 1992. It does not extend to such items as gym memberships or employer-paid health insurance premiums.
- The exemption for "on premises" has been extended to include premises of other companies in the same group who have a 66% or greater common ownership with the employer company.
- In certain circumstances an employer can now pay the travel costs of an employee's spouse, partner or relative to enable them to visit an employee who is required to temporarily work out of town or offshore. FBT will not apply up to the amount that would have been incurred if the employee had to travel home.

For examples and further explanation and clarification see the March – April 2006 issue of *FBTnews*

International recruitment – temporary tax exemption for foreign income

Under the Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Act 2006, new migrants and returning New Zealanders, who have not been resident in New Zealand for tax purposes for at least 10 years, arriving in New Zealand on or after 1 April 2006 may qualify to receive a four-year automatic temporary tax exemption on most of their foreign income.

The exemption may minimise the cost to New Zealand employers who recruit highly skilled staff from overseas. Previously, people coming to New Zealand from overseas may have faced extra tax costs. If they negotiated a higher remuneration to compensate for the extra taxes these costs were often passed on to New Zealand businesses that recruited them or used their services.

New phone numbers take effect

In the September 2005 issue of *Corporates Contact* we advised that Inland Revenue phone, mobile and fax numbers were changing due to a change of provider.

This has now happened and the new phone numbers have taken effect. Account managers and Corporates Segment staff will advise you of their new phone numbers, however calls to old phone numbers will be automatically transferred until September 2006.

Service	New phone number	New facsimile number
For all Corporates enquiries 8 am – 4.30 pm Monday – Friday	0800 443 773 +64 4 978 0644 (for overseas calls or calls from a mobile)	
Non-resident contractors	+64 4 890 3056	+64 4 890 4510
Non-resident entertainers	+64 9 984 4329	+64 9 984 3082
High Wealth Individuals Unit	0800 080 330 +64 7 959 0478 (for overseas calls or calls from a mobile)	+64 7 959 7604
International Audit	See the website for contact details	+64 4 890 4503
Crown Sector	See the website for contact details	+64 4 890 4504
Financial Sector	See the website for contact details	+64 4 890 4502
Manufacturing Sector	See the website for contact details	+64 9 984 3082
Resources Sector	See the website for contact details	+64 4 890 4510
Services Sector	See the website for contact details	+64 9 984 3081

From the editor

If you have any suggestions for future topics in *Corporates Contact*, please send an email to Corps.Contact@ird.govt.nz

If you would like to register to receive, or stop receiving, *Corporates Contact*, please either subscribe or unsubscribe through [Newsletters and bulletins](#)

Disclaimer

Corporates Contact seeks to comment generally on topical tax issues relevant to large corporates. While every attempt is made to ensure that the law is correctly interpreted, articles are intended to be a brief overview only and are not a full commentary or analysis of the law. The examples provided are not intended to cover every possible factual situation.