

# Tax-e-mail



**DON'T LET THE IRD NAIL YOU**

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## **Motels and boarding houses**

On 14 July 2021 Inland Revenue has put out [PUB00391](#) for comment. It sets out the IRD opinion on the claim which can be made for business use of private accommodation within a hotel, motel or boarding house. This opinion only applies to the self-employed. While it applies to any business that provides accommodation through business premises, it does not apply to the provision of short-term accommodation through your home or a private dwelling such as air B&B. Refer to QB 19/05 to QB 19/09 for this type of accommodation.

The rules for apportionment of mixed expenses are very detailed. For example, if you have an itemised bill, such as a multiple phone plan through the same provider, you may be able to dissect out the private phone bill.

Apportionment needs to be done on a fair and reasonable basis but have a look at paragraph 12 to see the detail this should involve. Having determined the mixed use areas you should then apportion on the basis of the amount of time they are used for business and for private purposes.

The publication has a number of worked examples.

What if the owner is a company? The publication does not discuss this. Therefore, fringe benefit tax or deemed dividend is going to apply unless a market rent is charged.

## **Questions and answers on property investment proposals**

Inland Revenue has compiled a set of [questions and answers](#) to support the Government's policy proposals on interest limitation for residential property investors.

New rules will be put in place to prevent interposed entities being used for getting round the rules.

## **RWT on negative interest**

Inland Revenue has produced [QB 21/02](#). The department has concluded there is no RWT on negative interest payments!

## **Deduction notices**

Inland Revenue has published [SPS 21/01](#). It explains when a deduction notice can be issued and also when it will not be issued. It is an update of SPS 11/04.

## **Depreciation of break test rollers**

The proposed [depreciation rates](#) for break test rollers are DV 16% and SL 10.5%.

## **Excusing estates from filing income tax returns**

Inland Revenue has produced [ED0231](#). It discusses the Commissioner's changed view on allowing the exemption from filing tax returns under section 43B of the Tax Administration Act 1994 to non-active trusts.

## **Financial statements for trusts**

Starting from the 2022 financial year, financial statements will be required for trusts and they will need to include a Profit and Loss statement and a Balance Sheet. This is contained in the [Taxation \(Income Tax Rate and Other Amendments\) Bill](#).

Trusts will also be required to provide other information specified by Inland Revenue including:

- Transfers by associated people to the trust
- Loans to or by related parties
- Distributions to beneficiaries showing name, IRD number and date of birth and possibly the source of the distribution
- IRD number, date of birth and the amount and nature of each settlement on the trust
- Names and details of settlors from prior years
- Information on those with the power to appoint or dismiss a trustee, to add or remove a beneficiary or to amend the trust deed
- Back years information up to 7 years at the discretion of the Commissioner

Some trusts are exempt from having to put in tax returns, such as non-active trusts. The exemption will continue.

## **Telecommunications usage plans**

In December 2019 Inland Revenue published [Determination EE001](#). It set out rules for reimbursing employees for telecommunications equipment and for usage plans.

An employer can reimburse an employee, including a shareholder employee, for 25% of their telecommunications usage plan. However, if the business use of the plan is greater than 50% then the claim becomes 75% of the costs.

Usage plans include internet connection and service plans.

If the amount paid is materially more than the actual plan costs, the rules do not apply.

A telephone allowance cannot result from a salary sacrifice.

If the purchase of an asset is involved, the reimbursement by the employer has to be related to the depreciation rate each year.

The rules for the self-employed have remained unchanged. The maximum of 50% claim of costs, unless actual records show a higher usage, for use of telephone and internet by the self-employed continues.

## **Government Service Rule**

In case you need it, this is [the link](#) which explains the rule. In a nutshell, the rule applies to a New Zealand tax resident working for the New Zealand Government overseas. The person remains a New Zealand tax resident.

## Business Continuity Test - more information

The Taxation (Annual Rates for 2020 – 21, feasibility expenditure, and remedial matters) Act was enacted on 31 March 2021. Subpart IB of the Income Tax Act 2007 sets out the new rules for carrying forward company losses. It is effective from the 2021 income year and applies to losses incurred from 2014 onwards.

The loss carry forward provisions have been changed but the ICA rules remain unchanged.

The legislation is designed to:

- prevent the carry forward losses, if lost trading could be a reason for the change of ownership
- exclude dormant companies
- create anti-injection rules to stop the purchaser of a company using up losses by diverging income or by reducing expenditure of the company
- Prevent the company changing its business just before a change of ownership
- Maintaining the current approach to loss grouping

Companies may generally change their business activities without any adverse tax consequences. However, if there is a change of shareholders, which exceeds the 49% continuity threshold, and the new shareholders decide to change business activities and at the same time preserve losses brought forward, they need to be particularly careful. There needs to be no major change in business activity. The business continuity test permits a change in business activities as long as the starting of the new business is something that could reasonably be expected to have happened without a shareholding change. Overall elements to evaluate include:

- The business processes
- The scale of business activities
- Use of suppliers or other inputs
- The markets supplied to
- The type of products or services supplied
- The assets used – this is intended to take in an ordinary meaning and includes tangible and intangible (for example, goodwill) assets

A gradual change, may amount to a major change over time. Once five years has passed since the ownership changed, the new shareholders are free to do what they like and still maintain carried forward losses.

Losses in dormant companies cannot be carried forward if the 49% threshold is breached. The test for dormancy is whether the company is viable. If the main value of the company is its tax losses, it is dormant.

For more detailed information about the intention of the changes go to the [commentary on the bill](#).

## GST and leased apartment sales

Inland Revenue has warned you should be very careful when applying GST zero rating to the change of ownership of an apartment which comes with a lease to a management company. This type of apartment comes with conditions and these need to be studied to avoid an unexpected GST bill.

Zero rating may not apply if

- the original lease agreement, with the management company, had expired
- the way the apartment is being used has been changed
- it is being rented by you and not by the management company

For full details of the departments warning, [click here](#).

The information supplied in this publication has been researched with care. However, the author and the company accept no responsibility to anyone for any error which may occur in the information provided. Readers are advised to consult their normal source of expert advice before acting on anything they read in Tax-e-mail. 127 Queens Drive, Lower Hutt, Phone 04-9394156, e-mail: [mail@smallbusinessinst.co.nz](mailto:mail@smallbusinessinst.co.nz)

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