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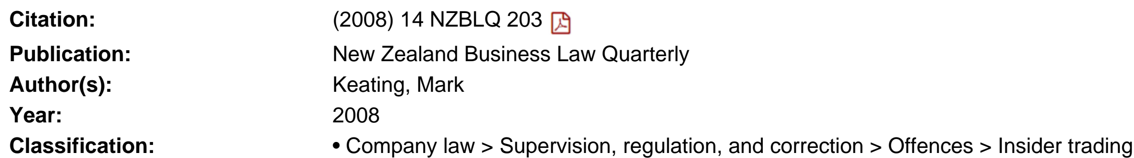

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Tax Consequences of Tranz Rail Insider Trading Settlement

(2008) 14 NZBLQ 203

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New Zealand's largest ever insider-trading case will finally be resolved later this year with the distribution of $29.5 million to former investors in Tranz Rail. Over 3,000 investors will share in funds recovered by the Securities Commission from former shareholders, directors and executives who eventually settled with the Commissioner and paid substantial compensation but without admitting any liability.

The Tranz Rail investigation, litigation, settlement and finally distribution was the largest (in monetary terms) and longest running insider-trading case undertaken by the Securities Commission. The Commission filed its case against the six defendants in the High Court in October 2004. Separate settlements with the defendants were entered into over a period of years until 2007. The High Court finally authorised distribution of the funds by stages in April and September 2008.

But while the securities law aspects of the case are now resolved, the impending distribution of compensation has raised a number of questions, particularly over how the proceeds should be treated for tax. Is payment of the compensation by the defendants deductible? How should any interest earned on the funds during the period it was held by the Securities Commission pending distribution be treated? Are the final distributions income or capital? Will any profit be taxable or any losses deductible?

This paper examines the potential tax issues that arise from the insider trading compensation. It identifies the general rules regarding whether compensation paid by the defendants is deductible to them. It then addresses how the Securities Commission should treat the funds before distribution. **[(2008) 14 NZBLQ 203, 204]** Finally it discusses the correct tax treatment by investors of any profit or loss resulting from the distribution.

1 Background

Tranz Rail NZ Limited was a public issuer. In early 2002 the company's shares were trading on the New Zealand Stock Exchange for approximately $4. By 16 April 2002 the share price had fallen to just 30c. While investors watched the price drop over that period, a number of directors, executives and institutional shareholders sold substantial parcels of shares valued at $83 million, representing almost 20 percent of total shares.

The Securities Commission alleged those insiders who sold their Tranz Rail shares had information about the company that was not publicly available but which would, if known to the public, have materially affected the price at which the shares were traded. The Commission claimed the insiders had a range of non-public information about the company, including:

- Its forecast financial performance;
- Its forecast capital expenditure;
- A possible bid by a potential new shareholder;
- The extent of asset and investment write-downs required; and
- Its financial obligations and general credit-worthiness.

On 13 October 2004 the Commission filed proceedings against the defendants under s 18A of the Securities Markets Act 1988.

This provision permits the Commission to exercise a public issuer's rights of action against an insider if it considers it is in the public interest to do so.

Over the following months and years, the Commission entered into settlements with each of the defendants, whereby they paid various sums in compensation, penalties and costs, without admitting any liability for insider-trading. According to the Securities Commission:

> "This settlement brings the total amount paid by the six defendants to over NZ$27.5 million. The money will be paid to Toll Holdings to be held in Trust pending reimbursement to the Commission of the costs it has incurred in bringing the proceedings, and distribution to shareholders who suffered **[(2008) 14 NZBLQ 203, 205]** losses as a result of the trading in Tranz Rail shares in the first half of 2002. That process also has to be approved by the High Court."

Following the settlements, the Commission made extensive submissions to the High Court determining which shareholders were entitled to benefit and how the compensation should be shared among them. In the interim, the funds remained with Tranz Rail. In accordance with s 19(1) of the Securities Market Act 1988 Tranz Rail held the funds "on trust for distribution in accordance with the directions of the Court".

Approval by the High Court for distribution of the funds in the manner proposed by the Commissioner finally came in April and September 2008. Section 19(3) requires the funds be distributed in the following order:

- First, towards the Commission's costs;
- Then to any of the former shareholders who had lost money as a result of the insiders' actions; and
- Finally, an amount may be distributed for charitable purposes.

In the Commission's 2008 Annual Statement it records:

> "Following the successful settlement of this [Tranz Rail] case in June 2007 the Commission sought orders from the High Court for distribution of the $29 million recovered. The Court gave orders in March 2008 for distribution of around two-thirds of the settlement money. The Commission is seeking further directions for payment of the remainder. The Court has also ordered payment of the Commission's costs, amounting to around $2 million. This money will go to the Commission's litigation fund and will be available for future enforcement work."

Distribution of the funds to investors takes place in two tranches. First were 30 former shareholders who received compensation of approximately $1.20 per share. Second were the remaining group of 3,100 former shareholders who would receive only 10c per share. But after the Commission has written all the cheques, what is the resulting tax liability of each investor for the compensation received?

2 Tax Treatment

The tax treatment must be considered from a number of perspectives. First the position of Tranz Rail itself must be considered. Secondly, the possible tax consequences for the defendants who paid over the compensation will be discussed. Finally, the tax treatment of the recipients of the funds will be examined. **[(2008) 14 NZBLQ 203, 206]**

2.1 Tranz Rail's tax liability for income earned on funds held on trust

The funds were paid over to Tranz Rail as trustee for the eventual recipients pursuant to s 19(1) of the Securities Markets Act 1988. Those funds were received over a lengthy period, from December 2004 until June 2007. Over that time Tranz Rail has presumably invested those funds to derive some return, probably in the form of interest.

Interest is gross income under s CC4 of the Income Tax Act 2007. As trustee of those funds, Tranz Rail has a tax liability on that interest income on behalf of its beneficiaries. The difficulty for Tranz Rail must have been that, during the period in which it held the funds (or at least during substantial parts of it), it did not know and could not have known the identities of the persons who would be the ultimate recipients of the settlement funds under s 19(2) of the Securities Markets Act 1988. Indeed, it was at least a theoretical possibility that some of this amount would eventually vest with Toll under s 19(2)(b). Accordingly, it may have been difficult for Tranz Rail to determine for whom it held the funds, and therefore on whose behalf it was deriving the interest income.

The tax treatment of trusts is determined by Part HC of the Income Tax Act 2007. Each trust must calculate its tax liability and file the necessary tax return to Inland Revenue Department each year.

Each trust must account for income derived by the trustee in each income year. That income may be dealt with in two mutually exclusive ways. It may either:

- Be retained by the trust as "trustee income" and added to the trust's capital. In that instance the trust itself must pay tax on the income at the standard rate of 33 percent; or
- Be paid out as "beneficiary income", which must "vest absolutely" in a beneficiary either during that income year or within six months thereafter. In that instance the beneficiary who receives the distribution must pay tax on the income at their relevant tax rate.

In terms of s 19 of the Securities Markets Act 1988, no distribution of the fund or any income derived from that fund could be distributed without approval of the High Court. Accordingly, it can be presumed that for the period the funds were invested, Tranz Rail was responsible as trustee for tax on any income earned.

Significantly, Tranz Rails' tax liability as trustee is separate from its other tax responsibilities. The Income Tax Act 2007 is explicit that a trustee's personal and trustee capacity are entirely separate. Section 59(3) of the Tax Administration Act 1994 stipulates that:

> "The trustee … must in every case make a return of all income derived by the trustee as trustee of the trust, and each return is treated as being separate and distinct from any return made by the trustee in … the trustee's own right. **[(2008) 14 NZBLQ 203, 207]**

Accordingly, Tranz Rail would have filed trust returns and paid tax on all its trustee income each year in a manner unrelated to its own business operations. This separate treatment was confirmed in TRA *Case L72*.

One issue that should be considered is whether Tranz Rail could have been holding the funds as a bare trustee on behalf of the eventual recipients. Section YB21 of the Income Tax Act 2007 treats any "nominee" as transparent for tax purposes, meaning "if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored". Uncertainty arises because, while trustees are normally excluded from that definition, the section stipulates that "a trustee is a nominee only if the trustee is a bare trustee".

The effect of this provision, if applicable, is that Tranz Rail's position as trustee would be ignored and it would become transparent for tax purposes. In that situation, the liability for tax on any income derived on the fund over the past 3 years would pass directly to the ultimate recipients of those funds.

The term "bare trust" is not defined in the Income Tax Act. However, the concept was examined by Gummow J in the Australian Federal Court decision *Herdegen v FCT*. In that case the Court found:

> "Today the usually accepted meaning of 'bare' trust is a trust under which the trustee or trustees hold property without any interest therein, other than that existing by reason of the office and the legal title as trustee, and without any duty or further duty to perform, except to convey it upon demand to the beneficiary or beneficiaries or as directed by them, for example, on sale to a third party."

Such a definition may potentially apply to Tranz Rail's rather passive role in holding and investing the funds, pending direction from

the Court. However, two factors must be considered. First, there was a potential for Tranz Rail itself to benefit from the funds, under s 19(5) of the Securities Markets Act 1988. Secondly, and more importantly for tax, for most of that period Tranz Rail did not know the identity of the ultimate recipients on whose behalf the funds were held.

The New Zealand case of *Burns v Steel* concluded that whether the beneficiary had a vested interest in the trust property was an important consideration in determining whether the trustee was a bare trustee. Randerson J stated:

> "The absence of any absolutely vested right by the plaintiff to receive the shares in specie is an important consideration when considering the scope of the trustees' duties pending completion of the preemption process. In particular, it is relevant to the question whether the trustees are bare trustees. 48 Halsbury's Laws of England (4th ed) has the following definition of a bare trustee at para 650:
>
> > '650. Meaning of "bare trustee". A bare trustee is a person who holds property in trust for the absolute benefit and at the absolute disposal of other persons who are of full age and sui juris in respect of it, and who has himself no present beneficial interest in it and no duties to perform in respect of it except to convey or transfer it to persons entitled to hold it, and he is bound to convey or transfer the property accordingly when required to do so. **[(2008) 14 NZBLQ 203, 208]**
>
> "The same definition is adopted in the Laws of New Zealand (vol 29, at para 120). Similarly in Lewin on Trusts (17th ed, 2000), para 1-21. *It is immediately apparent that if the Halsbury definition is applied, the absence of any absolutely vested interest in the shares means that the trustees could not be treated as bare trustees.*"

Likewise, in *Walsh Bay Developments Pty Ltd v FCT* the Australian Full Federal Court held, in the context of beneficiary entitlements to a trust fund:

> "For these reasons it is said that before a beneficiary is entitled to a vested interest two things must occur:
>
> "(a) his identity must be established;
>
> "(b) his right to the interest (as distinguished from his right to possession) must not depend upon the occurrence of some event."

On that basis, it seems apparent that Tranz Rail was not a bare trustee. Rather it was trustee of a fixed or discretionary trust, whose beneficiaries were to be determined by the Securities Commission and approved by the High Court. Until that process was complete, Tranz Rail as trustee had responsibility to return tax upon any income it derived from investment of the funds.

Provided Tranz Rail met all its tax liability as trustee in respect of any income earned on the funds under its control, that trust would be a "complying trust". Distributions from this type of trust are normally tax free to the beneficiary, on the grounds tax was already paid by the trustee at the time that income was first derived. However, if for any reason Tranz Rail fell behind in its obligations, the trust would be a "non-complying trust". Distributions of the income (but not the original compensation contributed by the six defendants) from this type of trust are subject to what amounts to a penal rate of tax at 45 percent. This punitive rate is imposed on the basis that, because the trust itself failed to pay its proper tax liability, that tax has been avoided or deferred. The higher rate of tax both punishes the beneficiary for the trust's non-compliance and compensates Inland Revenue for the delay in receiving the correct tax.

It is important to note that the relevant time when the status of the trust is determined is when the distribution is actually made. Accordingly, even a non-complying trust can take steps to get its tax position in order and thereby obtain/regain its status as a complying trust prior to any distribution. This process will ensure the punitive 45 percent rate does not apply to beneficiaries who receive distribution of the compensation.

2.2 Defendants ability to deduct compensation paid upon settlement

Whether a payment of compensation to settle a civil law suit is deductible is determined under the general law. No special provision

applies to compensation payments. Instead, the defendants would be required to establish that the compensation was paid either: **[(2008) 14 NZBLQ 203, 209]**

- To derive gross income; or
- In carrying on a business.

The defendants must then establish that the payment was not of a capital nature, which would preclude its deductibility. In each instance, the circumstances of the individual taxpayer are determinative.

Generally compensation that arises to be paid out of the normal or reasonable incidence of the taxpayer's business activity is deductible. Examples include payments to the victims of car accidents caused by taxi drivers or libel damages awarded against publishers. This later example was considered in *Herald & Weekly Times Ltd v FCT*, where the newspaper was obliged to pay damages to a person libelled in its publication. In permitting deduction of the payment the Court ruled that it: "flows as a necessary or natural consequence from … its publication" and "is a regular and almost unavoidable incident of publishing".

By contrast, in *C of T (NSW) v Ash* a solicitor who was obliged to compensate former clients who suffered loss as a result of fraud by his former partner was denied a deduction. The Court concluded that this type of dishonest loss is, sadly, a natural incidence of trade or business. However, because the theft had been by a proprietor of the business, and not by an employee or outsider, it was therefore a capital expense and thus non-deductible.

Another criteria that must be considered is whether the payment of compensation was made to protect the business reputation of the payer. While a person's reputation is normally a capital item, expenditure to protect their good standing may be deductible if it was a prerequisite to them earning their income.

As with deductions for legal expenses, the payment of damages or an out-of-court settlement may be deductible if made to protect the reputation (and consequent income-earning potential) of the defendant. For example, in *Cox v CIR* a professional director was entitled to deduct a payment made to the liquidator of Securitibank Ltd as part of a court-sanctioned compromise. Even though the settlement was reached partly to minimise the director's legal costs, his main purpose was to protect his existing and future earnings as a director of other companies by ensuring his reputation was not tarnished. Regardless of whether he would have been found liable, any hearing could have seriously **[(2008) 14 NZBLQ 203, 210]** damaged his reputation, which would have had an adverse impact on his other remaining directorships. Relying on the House of Lords' decision in *C of IR v Carron Co* the High Court ruled that the settlement did not create any new asset but simply enabled the director to continue earning his directors fees from other companies.

Likewise, fines and penalties imposed for wrong-doing are generally not deductible, while payments of damages to victims generally are deductible. Public policy dictates that fines and penalties imposed by a court or disciplinary body are intended to punish the miscreant and therefore ought not to be mitigated by the ability to claim a deduction. By contrast, payments to compensate a third party for losses suffered are normally deductible as an ordinary incidence of business.

In *A v CIR* a doctor was both fined by his professional body and ordered to pay compensation to the patient who suffered as a result of his negligence. When the doctor attempted to deduct both payments, the High Court distinguished between fines that are imposed to punish the miscreant (which were not deductible) and damages that are intended to compensate the injured party (which were).

Based on that reasoning, the damages paid to the Securities Commission by the six Tranz Rail defendants would presumably be deductible. Each defendant denied liability and therefore preserved their reputation. Furthermore, the payments were not strictly fines or penalties imposed but were made to compensate third parties who had suffered as a result of the alleged insider trading. As a result, the payments would meet the normal deductibility criteria under s DA1Income Tax Act 2007, referred to as the "general permission".

2.3 Investor's tax liability on compensation received

The funds distributed by Tranz Rail will be considered part of the "corpus" of the trust and therefore normally not taxable to the beneficiary. However, that normal position may not apply in instances such as this, where those funds have been made to compensate investors for losses they have suffered in the value of their Tranz Rail shares as a result of the insider trading.

This issue was raised directly by the press in relation to Prime Minister John Key's Family Trust. It was stated that:

> "Mr Key's family trust … bought 30,000 Tranz Rail shares at $3.60 each from a company owned by Sir Michael [Fay] and Mr Richwhite on February 8, 2002. He sold the shares in June 2002, by which time they were trading at just $1.02 each. Compensation of $1.20 a share will result in him receiving $36,000, meaning Mr Key … still loses about $43,000 on the investment."

Taking Mr Key's Family Trust as an example, whether the $36,000 compensation it receives is taxable, and whether the remaining $43,000 loss is tax deductible, depends upon a taxable concept **[(2008) 14 NZBLQ 203, 211]** known as "the hole in the profit principle". This principle dictates that payments received to compensate for damage to a capital item are generally treated as capital while payments received to compensate for a loss of income are generally treated as income.

Perhaps the leading case on the treatment of compensation payments is the Court of Appeal decision in *Duff v CIR*. That case involved a group of taxpayers who acquired land for the purpose of development and sale. Such a scheme was clearly taxable under the land tax provisions. However, before the development could be completed, the land was compulsorily acquired by the Crown for public use. Compensation was paid based on the market value of the now partially developed land. The taxpayers contended that the compensation was not taxable but the Court of Appeal disagreed. Relying upon general principles, the court unanimously held:

> "The profit must be regarded not as capital but rather as income according to general concepts. Compensation for the loss of a profit-making scheme, the profits of which would have been assessable income, is naturally to be regarded as itself assessable income. The one replaces the other: that which is received as compensation for the loss of income should itself be regarded as income."

Any shareholder who held Tranz Rail shares on revenue account would have been liable for tax on any profit generated, and correspondingly would have been entitled to a deduction for the resulting loss. A shareholder who held the shares on capital account would not be entitled to claim a loss. Accordingly, it depends upon how the shares were treated by the taxpayer as to whether the compensation distributed by the Securities Commission would be taxed.

This common law principle has been incorporated into statute. Section CG4Income Tax Act 2007 is a general provision that requires any taxpayer who has formerly claimed a deduction for an item to return as income any amounts where "the person recovers some or all of the expenditure or loss, where through insurance, indemnity, or otherwise". The recovered funds (up to the amount of the original deduction) are treated as income in the year it is received. This provision ensures taxpayers treat funds consistently; if a deduction for expenditure was claimed, any compensation received be likewise returned for tax.

More specifically, s CG 6 deems compensation received for the loss of "trading stock" to be gross income. That section stipulates that "an amount of insurance, indemnity, or compensation for the loss or destruction of, or damages to … anything acquired … for sale or exchange" will be taxable.

These provisions were applied in *MacLean v CIR* where a farmer received compensation for the market value of stock lost in a flood. The High Court held that payment so clearly replaced the loss of trading stock and compensated for the farmer's loss of profit that it had to be treated as income. **[(2008) 14 NZBLQ 203, 212]** Likewise, in *Egmont Co-operative Dairies Ltd (in Liq) v CIR* compensation payments for loss of revenue resulting from the shutdown of a diary company were treated as taxable.

Given the wide wording of both sections, they would obviously catch compensation paid for diminution in value of Tranz Rail shares. The compensation paid by the Securities Commission may therefore give rise to a tax liability — although this will simply be a recovery of the tax loss they have already taken in 2002. Accordingly, the thousands of investors who lost funds as a result of the alleged insider trading and who have finally recovered some of their losses may therefore have to pay tax on part of those funds.

3 Conclusion

The distribution by Tranz Rail of funds recovered by the Securities Commission will finally resolve New Zealand's largest insider trading case. However, the treatment of the $27 million recovered by the Commission gives rise to tax issues for all parties involved. It appears that the defendants will be entitled to a deduction for the settlement payments. Tranz Rail will be responsible for tax on any income derived on those funds while held by it under the statutory trust. Finally, the compensation payments will give

rise to a tax liability for investors who held their original Tranz Rail shares on revenue account.

This note was accepted for publication on 8 November 2008

FOOTNOTES

1 This sum represents the original $27.7 million paid by defendants to settle the dispute plus accumulated interest: see Securities Commission Quarterly Bulletin, April 2008, at <www.seccom.govt.nz/publications/bulletin/0408/#3> (last accessed 12 November 2008).

2 Including the JP and BI Family Trust, the family trust of Prime Minister John Key. Mr Key's dealings in Tranz Rail shares while the opposition Transport Spokesman became a political issue: see "Key accused of lying over Tranz Rail shares", *NZ Herald*, 22 September 2008, at <www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10533576> (last accessed 12 November 2008).

3 The six defendants were: Midavia Rail Investments BVA, Birkshire Fund III A Limited Partnership, Michael Beard (former Managing Director), Mark Bloome (former CEO), Carl Ferenback and David Richwhite (former Directors).

4 "Securities Commission Files Insider Trading Proceedings in Tranz Rail Case", Securities Commission news release, 13 October 2004, at <www.seccom.govt.nz/new/releases/2004/131004.shtml> (last accessed 12 November 2008).

5 This paper examines only the income tax treatment. There would appear to be no tax consequences under the Goods & Services Tax Act 1985 as dealings in shares are a "financial service", under s 3(1), and therefore exempt from GST by virtue of s 14.

6 Under the current "self-assessment regime" operating in the Tax Administration Act 1994, s 92 taxpayers are obliged to first determine their own view of the correct tax treatment of the compensation. However, should they be found to be wrong in that treatment, they are subject to reassessment by the Commissioner of Inland Revenue. This can include not only the core tax in dispute but may also result in the assessment of a shortfall penalty determined under Part IX of the Tax Administration Act.

7 Now re-named Toll (NZ) Ltd.

8 Toll was re-purchased by the Government in June 2008.

9 Who all came within the wide definition of "insider" in the Securities Markets Act 1988, s 2.

10 See the article by Gareth Vaughan, "Key among Tranz Rail compo recipients", *The Dominion Post*, 2 September 2008, at <www.stuff.co.nz/4677018a23917.html> (last accessed 12 November 2008).

11 In accordance with s 18B.

12 The first settlement with Mr Beard was reached on 23 December 2004, while the final settlement with Midavia Rail Investments Ltd and Mr Richwhite was reached on 18 June 2007.

13 "Securities Commission settles insider trading case with Midavia and Richwhite", Securities Commission news release, 18 June 2007, at <www.seccom.govt.nz/new/releases/2007/180607.shtml> (last accessed 12 November 2008).

14 As relevantly in force for the period 1 December 2002 to 28 February 2008.

15 Securities Markets Act 1988, s 19 (1).

16 For instance, each investor who stood to be awarded compensation had to confirm that no part of the money would be received for the benefit of the insiders, in satisfaction of the Securities Markets Act 1988, s 19(5).

17
Presumably this option is available in instances where funds recovered exceed the actual loss suffered by identifiable investors. No distribution for charitable purposes was approved in this instance with all funds either contributed towards the Commission's costs or distributed to the former shareholders.

18 New Zealand Securities Commission, *Annual Report 2008*, at <www.seccom.govt.nz/downloads/ann-rep-08.pdf> (last accessed 12 November 2008), at p 6.

19 All alpha-numeric statutory references in this paper are to the Income Tax Act 2007.

20 A trust must file an IR7 Estate and Trust tax return, in accordance with Tax Administration Act 1994, s 42.

21
As defined in s YA1.

22
In accordance with s HC5.

23
As defined in s YA1.

24
In accordance with s HC6.

25 See the definition of "trustee" in s YA1.

26 (1989) 11 NZTC 1,419.

27 Section YB21(2).

28 (1988) 88 ATC 4995.

29 Ibid, at p 5003.

30 [2006] 1 NZLR 559.

31 Ibid, at pp 567-568.

32 95 ATC 4378, at p 4389.

33 As determined under s HC10.

34 As determined under s HC12.

35 See the ordering rules in s HC16. Those original amounts constitute the "corpus" of the trust and may generally be distributed to beneficiaries tax free.

36 In accordance with s HC15.

37 See IRD, *Tax Information Bulletin* 16(1), February 2004.

38
This is known as the General Permission under s DA1.

39 Under what is known as the General Limitation, under s DA2(1).

40 (1932) 48 CLR 113.

41 Ibid, at pp 118-119.

42 (1938) 61 CLR 263.

43 For example, compensation paid to make good thefts by employees are deductible: see *C of T v Webber*[1956] NZLR 522. That principle is now enshrined in s DB42.

44 This result has been reversed by s DB43.

45 For example see *Case N4*(1991) 13 NZTC 3,030.

46 See *Fullers Bay of Islands Ltd v CIR*(2006) NZTC 19,716. See also *McKnight v Sheppard*[1999] BTC 236 where legal fees incurred by a stockbroker to defend an action against him before the Stock Exchange Disciplinary Committee were deductible. The English Court of Appeal found that, while legal fees were incurred both to preserve his business and his personal reputation, they had sufficient nexus to the earning of income to be deductible.

47 (1992) 14 NZTC 9,164.

48 (1968) 45 TC 18. This case permitted the deduction by a company of a payment to settle a shareholder action to prevent it changing its constitution in order to better attract and retain senior managers. See also *McKnight v Sheppard* [1999] BTC 236.

49 See Commissioner's policy statement: IRD, *Tax Information Bulletin* 6(13), May 1995.

50 (1985) 7 NZTC 5,074. See also *Robinson v CIR* [1965] NZLR 246 where a lawyer was denied a deduction for the penalty imposed for a breach of professional standards.

51 In accordance with s HC20. This section treats such distributions from a qualifying trust as "excluded income" and therefore "all or part non-taxed" under s BD1(3).

52 See Garth Vaughan, "Key among Tranz Rail compo recipients", *The Dominion Post*, 2 September 2008, at <www.stuff.co.nz/4677018a23917.html> (last accessed 12 November 2008).

53 (1982) 5 NZTC 61,131.

54 What is now s CB10.

55 (1982) 5 NZTC 61,131, at p 61,135.

56 See *Inglis v CIR* (1992) 14 NZTC 9,180 and *Stockwell v CIR* (1992) 14 NZTC 9,190. For the question of whether a taxpayer is engaged in share trading or has purchased shares for the purposes of resale see *Rangatira Ltd v CIR* (1996) 17 NZTC 12,727 and *Estate of King v CIR* (2008) 23 NZTC 21,729.

57 (1985) 7 NZTC 5,035.

58 See also the UK cases of *London Investment & Mortgage Co Ltd v IRC* [1958] 2 All ER 230 and *Gliksten & Sons Ltd v Green* [1929] AC 381.

59 [1996] 2 NZLR 419 (CA).