IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2003-404-006359

BETWEEN	NTH DOUGLAS & ORS Applicant
AND	COMMISSIONER OF INLAND REVENUE Respondent

CIV-2003-404-006401

AND BETWEEN	WIRE SUPPLIES LIMITED Applicant
AND	COMMISSIONER OF INLAND REVENUE Respondent

Hearing: 22 October 2008

Appearances: G J Judd QC for Applicant
C K Wood for Respondent

Judgment: 16 February 2009 at 3:00 pm

RESERVED JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 16 February 2009 at 3:00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar
Date……

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Introduction

[1] In September 2005 I delivered a decision on a judicial review application[1] and interim decisions on appeals by way of cases stated from decisions of the Taxation Review Authority (TRA)[2]. All the proceedings concerned the validity of assessments made in respect of taxpayers who had participated in the so-called Russell template, which has been held by the Privy Council to be a tax avoidance scheme. With minor exceptions I upheld the TRA's decisions. The taxpayers appealed unsuccessfully against my decisions[3]. In delivering my interim decisions on the appeals by way of case stated, I confined myself to answering the questions posed in the cases stated rather than dealing with the effect of those answers on the various assessments. In doing so I was acceding to the suggestion made by Mr Judd QC, for the taxpayers, that I leave consideration of the effect of my decision on the assessments until after I had heard from counsel on that aspect at a later date.

[2] The Commissioner now seeks final decisions in relation to the assessments. When I came to hear further submissions, however, the taxpayers sought to have the matter remitted back to the TRA. I declined to do that and directed that the hearing proceed on the question what the effect the interim decisions had on the various assessments. Mr Russell (who acts as agent for the taxpayers) nevertheless filed an affidavit addressing the reasons that he considers the matter should be remitted to the TRA. Having considered the issues that he raised I am satisfied that remittance to the TRA is unnecessary and inappropriate.

[3] In this decision I deal with the following issues:

a) Will a final decision of this Court affirming the TRA's decisions effectively reinstate the reservation of leave granted in the TRA to raise further consequential issues?

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[1] *Wire Supplies Lit and Anor v Taxation Review Authority and Commissioner of Inland Revenue* HCAK CP526/SD99 1 September 2005

[2] *Wire Supplies Limited & Ors v Commissioner of Inland Revenue* (2005) 22 NZTC 19,357; *Douglas & Ors v Commissioner of Inland Revenue* (2005) 22 NZTC 19,407

[3] *Wire Supplies & Ors v Commissioner of Inland Revenue* (2007) 23 NZTC 21,404

b) What further issues require consideration in order to finalise the assessments that were the subject of the appeals and should they be determined by the TRA?

c) What should the form of my final decision be?

[4] Before I turn to the issues I briefly record the nature and outcome of the cases before the TRA that were the subject of the appeals by way of cases stated.

The TRA decisions

Cases T52 and U23

[5] In its interim decision T52 and final decision U23 the TRA considered assessments made in respect of Wire Supplies Limited (WSL), its directors J J McDougall, L L McDougall and J U McDougall and Slioc Enterprises Limited and its directors J J McDougall and L L McDougall. The taxpayers had submitted that the assessments were invalid because they were unintelligible, did not comply with the Commissioner's policy statement, ignored the law known to the Commissioner on the same business structure, represented an invalid exercise of the Commissioner's powers and discretion under s 99 Income Tax Act 1976 in changing from Track A to Track B and that some of the individual taxpayers had never been shareholders of the companies in question.

[6] The TRA rejected all of these arguments but reserved leave to the taxpayers to apply further:

> The hearing took so long, and this decision has been delayed by the evidence of this case being incorporated by consent into subsequent "Russell template" cases, that in case there has been confusion as to which Case is Stated or perceived issues remain for consideration, or as to the effect of this decision on any of them, I reserve leave to apply for 28 days from the date of this decision.

[7] The parties applied pursuant to the reservation of leave, resulting in the decision U23. In that decision the taxpayers submitted that the Commissioner could not treat different levels of a void template scheme separately for income tax, could not rely on Track C assessments in addition to Tracks A or B, that they were

prejudiced by not having previous knowledge of information presented by the Commissioner at the extended hearing, that the Commissioner was estopped from exercising his statutory duty of assessing tax by previous assessments and that Mr Russell had provided services to the trading companies that justified the 5% "consultancy fee". The TRA rejected all but one of these submissions, accepting that Mr Russell had provided genuine services by giving general business advice of, on average, at least fifteen hours per month to each company. The consultancy fee was therefore deductible to the two trading companies.

[8] At the conclusion of U23 leave was reserved to the following limited extent:

> Except to the relatively minor extent referred to herein, all the assessments are hereby confirmed. I reserve leave to apply with regard to any issues not covered or consequential (due to the detail and complexity of the evidence in submissions) but I now indicate that I would only allow very limited further submissions pursuant to this "leave reserved" provision.

[9] The taxpayers did not seek to raise further matters pursuant to this leave and instead required a case to be stated to the High Court.

Cases T59 and V2

[10] In its interim decision T59 and final decision V2 the TRA considered assessments made in respect of the group of taxpayers comprising Melbar Engineering Ltd and Mr and Mrs Hayes, Straits Fishing and Messrs Pont and Linton, T C Large Limited and Mr and Mrs Large, Mr and Mrs Douglas, Mr and Mrs Henwood, Waikato Broking Limited (WBL) and Messrs Tourelle and Sherlock.

[11] In case T59 the taxpayers submitted that the assessments were invalid because the Commissioner had failed to meet the threshold onus, that s 99 was not applicable because no tax had been avoided, s 99(3) must lead to the same person being assessed in identical cases, it was unlawful for the Commissioner to issue assessments on Track B while Track A was in force, the Commissioner had failed to follow his own policy statement, the assessment process was invalid because the Commissioner essentially "went where the money was", the administration charge was a deductible expense, the consulting fee was a deductible expense, s 25(2) was not applicable (the time limit point), legal professional privilege affected the

taxpayers' onus of proof, the objection by the estate of Mr Tourelle had to be determined by the TRA, failure of the Commissioner to provide evidence before the hearing might have resulted in the recall of witnesses and the assessments did not recognise any material differences in any of the cases. Save for the deductibility of the consultancy fee, these submissions were rejected and the Commissioner's assessments confirmed except for those identified as being ineffective and except where further matters required attention. The TRA also allowed the following reservation:

> Also, in view of the complexity of these cases, I reserve leave to apply with regard to any consequential matters.

[12] Further matters were raised which resulted in the final decision V2, in which the TRA confirmed all of the Commissioner's assessments "except to the relatively minor extent allowed by me above regarding a portion of consultancy fees". There was a reservation of leave:

> The evidence in submissions were detailed. They were made quite complex by the ongoing agreement to roll over all previous Russell template decisions and incorporate them and their evidence and exhibits into subsequent Russell template decisions, including this one. Accordingly, I reserve leave to apply with regard to any issues not covered or consequential; but I indicate now that I would allow a very limited further submissions pursuant to this particular "leave reserved" position.

[13] There were no matters raised by the taxpayers pursuant to this reservation of leave. Instead, the taxpayers commenced the appeal by way of case stated to this Court.

Should the final decision on the individual assessments be made by the TRA?

[14] Mr Judd argued that if I were to give a final decision dismissing the appeals, as the Commissioner seeks to have me do, the effect would be to restore the TRA's decisions, including the leave reserved to raise consequential issues. Therefore the various issues that Mr Russell says should be considered could properly be raised in the TRA pursuant to the reservation of leave in the final decisions U23 and V2.

[15] I do not accept this submission. Once the taxpayers had required the TRA to state a case for this Court the reservation of leave was superseded by the appeal. It is

not a matter of simply picking up where the parties left off at the end of the TRA hearings. Under R 21.14 High Court Rules, once this Court has determined the questions raised in a case stated it must do one or more of:

a) "reverse, confirm, or amend the decision in respect of which the case was stated" (R 21.14(a));

b) "remit that matter to the tribunal for reconsideration and decision in accordance with the opinion of the court on the question of law or fact (or both)" (R 21.14(b));

c) "in every other case remit the matter to the tribunal with the opinion of the Court" (R 21.14(c));

d) "in any case, make any other order that is just" (R 21.14(d)).

[16] Clearly, the High Court Rules require me to actually do more than merely dismiss the appeals. The answers that I gave to the questions posed in the case stated lead naturally to an affirmation of the TRA's decisions in respect of the various taxpayers, except for those in which the consulting fee is an issue, which would require me to amend the TRA's decision accordingly. Even if I were to remit the matter back to the TRA, it would be dealt with in accordance with the answers that I gave on the case stated, not in accordance with the state of affairs that existed when the TRA's final decision was delivered.

[17] For the reasons I discuss next, I do not consider that justice requires remittance back to the TRA for consideration of the points Mr Russell has raised in his affidavit 21 October 2008. Mr Russell submitted that the matter should be remitted to the TRA because there is new evidence available that should be taken into account in relation to the issue of inconsistent track assessments, the validity of the IR150 certificates and quantification of the funding charge.

Inconsistent track assessments

[18] There has been a long-standing arrangement between the TRA, the Commissioner and Mr Russell that evidence from any Russell template case may be taken into account in determining any other Russell template case. Mr Russell asserts that since the present cases were heard by the TRA there has been evidence given in other cases that is relevant to the issues arising in these cases and the TRA should reconsider those issues with the benefit of the new evidence. However, this would inevitably lead to the re-litigation of issues that have already been determined on appeal. The arrangement that exists in the TRA for the determination of cases at first instance cannot be used to go behind determinations made on appeal. If it were otherwise there would be no certainty in the appeal process and no end to the litigation for as long as Russell template cases continue to be heard by the TRA.

[19] In any event the evidence that Mr Russell relies on does not justify remitting the matter to the TRA. He says that evidence given in the Track E case (against him personally) as to the nature of the income assessed on that track shows that it is the same income as has been assessed to company objectors, and therefore affects the findings in relation to the effect of s 99(4) on inconsistent track assessments.

> …the evidence of the Commissioner's witness Mr Blakeley in Websters, Fosters, Consultants and now the Track E case is new and particular evidence crucial to a correct determination of the assessments in this case.
>
> The evidence given by Mr Blakeley in Websters, Fosters and Consultants was that the particular nature of the income assessed to the managers was "shareholders remuneration". Until then nobody employed by the Commissioner was able to categorise the income or check the returns to see whether the objector had omitted all mention of it. That evidence in those cases is also evidence in this case by virtue of the arrangement regarding evidence.[4]

[20] Mr Russell proposes that as from January 2003 when the Track E assessment was made, the Track B assessments, by virtue of s 99(4), deemed the income to be that of Mr Russell himself, not any other person. Therefore, he says, the TRA should amend the Track B assessment downwards and the BASF principle, which precludes an assessment being made that is inconsistent with an earlier assessment

[4] Russell affidavit 21 October 2008 paragraph 62 - 63

once the TRA or High Court is seised of a case stated in respect of the earlier assessment, does not apply.

[21] However, the effect of subsequent, inconsistent assessments, the application of the BASF principle and the relevance of evidence about later tracks to earlier tracks were considered by both me and by the Court of Appeal. The argument as it was advanced in the Court of Appeal was recorded in the judgment at [113]:

> [113] The essence of the argument for the appellants is that the operation of s 99(4) means that (assuming assessments under Track C deals with the same income assessment at Track B) Track C assessments must make the earlier Track B assessments incorrect or invalid. Accordingly, the Commissioner became bound when he issued assessments under Track C to cancel or amend downwards the Track B assessments to avoid any double taxation in breach of s 99(4). If the Commissioner did not do this, then it was incumbent on the TRA to do so. That meant that the TRA needed to hear Mr McDermott's evidence in order to understand the extent to which the Track B assessments needed to be amended downwards.

[22] The Court went on to consider and reject the argument that the BASF principle did not apply where the Commissioner sought to amend an assessment (or issue an inconsistent assessment to another taxpayer) after a case had been stated for the TRA if the result of the new assessment was favourable to the later assessee:

> [127] The essence of Mr Judd's argument was that the BASF principle is designed to protect the interests of taxpayers, but its application in the present case could work against the interests of the Track B assessees in favour of the interests of the Track C, D and E assessees. We accept that the foundation of the BASF principle was the protection of taxpayers……But where there are two taxpayers with competing interests, the inevitable consequence of protecting one (here the Track C assessee) is a potentially disadvantageous outcome for the other taxpayer (the Track B assessee).
>
> [128] We believe it is appropriate to apply the BASF principle by analogy in cases involving the potential application of s 99(4) to provide a proper basis for consideration of potentially inconsistent assessments……In our view, the application of the BASF principle on the basis that it was applied in the Miller litigation as between Track A and Track B assessees provides a workable solution which ensures that once objection proceedings have been started they can proceed to finality without being left in a perpetual state of uncertainty, and at the same time giving effect to s 99(4).
>
> [129] This means that where a Track C assessment is made in circumstances where a Track B assessment is already before the TRA, the party who may seek to invoke an inconsistency argument based on s 99(4) is the Track C assessee, but not the Track B assessee. This is consistent with the decisions of all courts in Miller, as well as referencing the reality that the Track B assessee is limited in the grounds of its objection to those which

> appeared in the objection itself, which cannot have included the possibility of an inconsistent Track C assessment that did not exist at the time of the objection. If, on the other hand, the Commissioner makes a Track C assessment which is inconsistent with a Track B assessment that has not become the subject of a case stated, then the Commissioner will be required to amend the Track B assessment to remove any inconsistency with the Track C assessment.

[23] The submissions that Mr Russell makes now are directly contrary to the Court of Appeal's statements regarding the application of s 99(4) and the BASF principle to inconsistent track assessments. New evidence relating to the Track E assessments has no relevance to the earlier assessments, which must be determined on the grounds of objection raised at the time those cases stated were brought. There is, therefore, nothing to justify remitting the matter to the TRA or, indeed, considering the new evidence myself.

Section 25(2) time bar

[24] In a number of instances, IRD staff gave certificates that taxpayers had fraudulently or wilfully omitted to mention income in respect of which a return was required to be made. Where such certificates were given the Commissioner was entitled to increase his assessments notwithstanding the time bar in s 25(2). In the TRA, the High Court and the Court of Appeal, the validity of the certificates was in issue. The basis for the challenge was that the IRD officers who gave the certificates did not, in fact, hold the opinion that the taxpayers had omitted to mention income of the relevant kind and in respect of which a return is required to be made.

[25] There is no merit in this argument. Although expressed in subtly different terms, it is the same argument that was advanced before me and in the Court of Appeal and rejected. At [82] of its decision the Court of Appeal recorded Mr Judd's submission that the IRD officer exercising the Commissioner's power under s 25(2) did not hold the opinion that the returns of the shareholders omitted to mention income of the relevant kind (namely the trading companies' nett profit routed to the

shareholders through Mr Russell's company) because as a matter of evidence, it had not been established that the officers who made the decisions under s 25(2) held that opinion. That submission was rejected, first, because the certificates themselves

were adequate evidential foundation of the fact that the officer concerned did hold the opinion stated in the certificate. Secondly, the income which would need to have been mentioned in returns was income deemed to have been received by virtue of the re-construction under s 99(3) which, of course, could only occur after the return had been filed.

[26] Mr Russell now complains that the taxpayers were prevented from calling the witnesses needed to challenge the IR150 certificates by showing that the opinions were not honestly formed in accordance with the statutory criteria and that the issue should be reconsidered in light of Mr Blakeley's evidence, now available from the Foster's case, because:

> What is plainly apparent is that none of the opinion formers in these cases knew at the time they signed the IR150 notices that the particular nature of the income was "shareholders remuneration" received from the trading company.[5]

[27] Mr Russell argues that since none of those who formed opinions and gave certificates at the time knew that the particular nature of the income was "shareholders' remuneration" their opinions could not have been honestly formed. He wishes to explore this possibility with the makers of the certificates, in light of the new evidence from Mr Blakeley.

[28] Mr Russell's argument cannot be right. The effect of my decision was to uphold the TRA's acceptance of the IR150 certificates as valid and the Court of Appeal affirmed my decision. Whichever way one approaches this issue the TRA was entitled to accept the certificates as showing that the opinions supporting the IR150 notices were honestly held. In any event, the fact that the income was characterised in a certain way as a result of s 99(3) reconstruction after the certificates were given or that subsequent events prove earlier opinions to be incorrect does not mean that the opinions were not honestly held at the time. Whether the effect of my decision on the individual assessments is determined by me or remitted to the TRA, there is nothing to justify reconsideration of the validity of the IR150 certificates.

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[5] Russell affidavit 21 October 2008 paragraph 68

[29] Mr Russell also raises an argument in relation to the certificates that he says has never been considered by the Commissioner or appellate courts and now should be. The argument is that, even if the opinion former did not know the particular nature of the income or its source, he must have known that it was not the income of the proposed assessee because that is the effect of s 99(4) as at the date of the Track A assessment. Therefore, the criteria "and in respect of which a return is required to be made" in s 99(4) could not have been satisfied because the taxpayer is not required to make a return of income which the statute law says is not his income.

[30] Not only has Mr Russell had the opportunity in the TRA, the High Court and the Court of Appeal to raise this argument and failed to do so, the argument ignores the rationale given by the Privy Council for accepting the certificates, namely that although the reconstruction of income is hypothetical, the income nevertheless remains what it is. That same approach must apply equally to the criteria "in respect of which a return is required to be made". Whilst the Court of Appeal observed that it would be impossible for the return to mention such income, the requirement for it to do so follows inevitably from the true nature of the income, even if unknown to the taxpayer at the time; it follows that the income, although unknown by the taxpayer at the time of the return, is nevertheless income in respect of which a return is required. This is not an argument that requires consideration by either this Court or the TRA in determining the effect of my decision on the individual assessments.

The final assessments should take into account the funding charge, evidence of which was before the TRA

[31] Mr Russell seeks to have the funding charge allowed and calculated by reference to exhibit 16 produced in the High Court on the basis that this document was produced by him by reference to the balance sheets of the companies which were before the TRA and the Court could therefore be satisfied as to the evidential basis for the funding charge. However this completely ignores the very specific finding to the contrary by the Court of Appeal which held that exhibit 16 did not provide an adequate evidential basis for the funding charge and that the matter should not be sent back to the TRA for determination of that fact, the parties having had the opportunity to put whatever evidence they required before the High Court on the appeal.

The form of my final decision

[32] As I have indicated, the appropriate course for me at this stage is to take into account any other relevant matters that would affect the individual assessments and then give a final decision confirming the assessments that were the subject of the TRA's decision or modifying them if necessary.

[33] There are two issues that have been raised which might affect my decision. They are the possible imposition of additional tax (now referred to as penalties) and the fact that most of the corporate taxpayers concerned have now been struck off the Register.

Additional tax/penalties

[34] The Commissioner anticipates that additional tax will be payable on some or all of the assessments that are confirmed. Mr Wood submitted that there is no right to object to or challenge the imposition of additional tax and neither Mr Judd nor Mr Russell resisted this. The Commissioner proposes that I give a final decision confirming or modifying the assessments that were the subject of the TRA's decision and he will use those assessments to calculate any additional tax payable.

[35] Mr Russell has, however, raised an issue as to the date from which any such penalties are payable. Section 398 Income Act 1976 (5) provides that where an assessment is increased after the due date of the tax and the Commissioner is satisfied that the taxpayer has not been guilty of neglect or default in making returns, he shall fix a new due date for payment of the increased amount:

> In any case in which an assessment is not made until after the due date of the tax, or is increased after the due date of the tax, and the Commissioner is satisfied that the taxpayer has not been guilty of neglect or default in making due and complete returns for the purposes of that tax, the Commissioner shall in his notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new due date for the payment of the tax or of the increase, as the case may be, and the date so fixed shall be deemed to be the due date of that tax or increase for the purposes of subsection (2) or subsection (4) of this section.[6]

[6] Section 398(5) has been repealed but s 142A(1)(b) Tax Administration Act 1994 contains a similar provision.

[36] Mr Russell relies on the decision in *Withey & Ors v Commissioner of Inland Revenue (No. 2)*[7] in which Baragwanath J held that if an assessment is made on the basis that the taxpayer has not been guilty of neglect or default in making the returns the Commissioner is required to set a new, prospective, due date for payment of the increase so that the increase does not attract additional tax until the new due date. Mr Russell asserts that the Commissioner has acknowledged that *Withey (No. 2)* applies to all template taxpayers but says that in other cases he has failed to set prospective new dates and therefore the Court (or, preferably, the TRA) should itself cancel any additional taxes imposed retrospectively.

[37] I start by observing that, in his submissions dated 1 October 2008, Mr Ruffin recorded that:

> …if in any one year in respect of any particular appellant a prospective due date was not set for the purpose of calculating additional tax, then that will have to be done to set the starting date for additional tax.

[38] In later submissions Mr Wood qualified that by saying that before the Commissioner could fix a new date he has to be satisfied that the taxpayer has not been guilty of neglect or default in making due and complete returns for the purposes of that tax. Such a qualification does no more than state the effect of s 398(5); the Commissioner, although bound by *Withey (No. 2)* can only be required to set a new, prospective due date where the criteria under s 398(5) is met i.e. that he is satisfied that there was no neglect or default by the taxpayer in making returns. The terms of Mr Ruffin's acknowledgement cannot change that. So the Commissioner is bound by *Withey (No. 2)* in relation to those assessments to which *Withey* applies i.e. those in respect of which the Commissioner is satisfied that the taxpayer has not been guilty of neglect or default in making due and complete returns. However, *Withey (No. 2)* will not apply if the Commissioner is not so satisfied.

[39] Therefore I can only either confirm or modify the assessments that were confirmed in the TRA. It is then for the Commissioner to fix any additional taxes payable, applying, where appropriate, s 398(5) and *Withey (No. 2).*

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[7] (1998) 18 NZTC 13,732

Corporate taxpayers

[40] I come now to the position of the various corporate taxpayers affected by the TRA's decision and, subsequently, the decisions of this Court and the Court of Appeal. The TRA confirmed in U23 and V2 that a consultancy fee totalling $22,500 was deductible by the trading companies in each relevant year. However, Mr Wood advises that all the companies except Slioc have been struck off the Register. The Commissioner seeks an order in respect of Slioc directing him to make amended assessments for Slioc reducing the assessable income for each relevant year by $22,500. In respect of the other companies he seeks an order directing assessments to be amended in the same way if and when they are restored to the Register. There was no objection to this suggestion from Mr Judd and it is clearly the only sensible course to take.

Reginald Tourelle

[41] Mr Tourelle's original objection to the Commissioner's assessment was withdrawn by his widow prior to the TRA hearing. The TRA accordingly declined to consider any argument in relation to that assessment. I held that the objection had been validly withdrawn and that the TRA was right to decline to deal with argument about it. The Court of Appeal affirmed that position.

[42] The Commissioner therefore seeks to have the amended assessments referred to in the case stated for Mr Tourelle confirmed, which is clearly the correct course.

The remaining individual taxpayers

[43] This leaves the following individual taxpayers; Neil Thomas Hugh Douglas, Ngaire Louise Douglas, William Joseph Henwood, June Beverly Henwood, John Upton McDougall, Lyndon Lee McDougall, John James McDougall, James Terrence Sherlock, T C Large, V H Large, P G Linton and G J Haynes. The amended assessments for these taxpayers which were upheld by the TRA have been affirmed in this Court and the Court of Appeal.

[44] Rather than reproduce the amended assessments in this judgment I accept Mr Wood's suggestion that I make an order confirming the amended assessments for each of these taxpayers as they are shown in the original cases stated to the TRA. Each case stated is to be produced to the Court by annexure to an affidavit by the Commissioner. The amount of the amended assessment shown in each case stated will be the amount for which judgment may be sealed.

Summary

[45] I decline, for the reasons set out above, to remit this matter to the TRA for further consideration of either evidence or issues.

[46] With the exception of deductions permitted to corporate taxpayers for the consultancy fee, the effect of my determination of the questions raised in the cases stated is to confirm the amended assessments that were the subject of the original cases stated to the TRA. I accordingly make the following orders:

a) In respect of Slioc I direct that the Commissioner make an amended assessment reducing the assessable income for each relevant year by $22,500 to reflect the consultancy fee;

b) In respect of Melbar Engineering Limited, Straits Fishing Company Limited, Douglas & Henwood Limited, Waikato Brokers Limited, and T C Large Limited I direct that if these companies are restored to the Register the Commissioner is, within three months of the date of restoration, to make an amended assessment reducing the assessable income for each relevant year by $22,500 to reflect the consultancy fee;

c) In relation to the individual taxpayers, namely Reginald Tourelle, Neil Thomas Hugh Douglas, Ngaire Louise Douglas, William Joseph Henwood, June Beverly Henwood, John Upton McDougall, Lyndon Lee McDougall, John James McDougall, James Terrence Sherlock, T C Large, V H Large, P G Linton and G J Haynes I confirm the amended assessments shown in the cases stated to the TRA for each;

d) Judgment made against any of the individual taxpayers may only be sealed upon the filing and service of an affidavit annexing the case stated to the TRA for that taxpayer.

[47] Costs are reserved. Counsel may file memoranda by 5 pm 13 March 2009 in support of any application for costs, with any response to be filed by 5 pm 27 March 2009.

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P Courtney J