D. P. RYAN

Income Tax - Bases of Assessment

Research Paper for Taxation LL.M (LAWS 531)

Law Faculty

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PART ONE - INTRODUCTION

This paper presents an examination of the various methods by which the Commissioner of Inland Revenue may make an assessment, or amend an assessment, of a taxpayer's liability to tax under the Income Tax Act 1976. It is not an analysis of the objection procedure, but is a commentary on (a) the legal and administrative bases upon which the Commissioner may make his assessment and (b) the position of a taxpayer who may wish to challenge the mechanics of that assessment.

The paper first of all examines the legislative framework which not only governs the assessment process itself, but also makes for the provision of the particulars, under threat of penalty, upon which the actual assessment is made: PART TWO.

PARTS THREE, FOUR and FIVE examine the methods of assessment and the considerable onus on the taxpayer wishing to test his liability to tax, as assessed by the Commissioner. Since special provisions apply where a business controlled by non-residents appears to produce insufficient taxable income, assessments in such circumstances are considered separately in PART SIX.

PART SEVEN concludes the examination by considering the evidential requirements pertaining to the Commissioner's assessment and the taxpayer's challenge of them in both objection

and criminal proceedings.

Conclusions reached in PART EIGHT relate to matters of evidence and the burden of proof, with a concluding suggestion for a less restrictive approach to the challenging of the Commissioner's discretion when assessing the amount upon which tax is liable.

The paper is presented on the basis of current legislative provisions. A comparative table of sections is inlcuded as Appendix A however, for ease of reference when reading cases decided under the former Land and Income Tax Act 1954. The paper is also presented as a consideration of the bases upon which the New Zealand Inland Revenue Commissioner may assess tax (the paucity of reference within the relevant cases to authorities in other jurisdictions aside), in light of New Zealand statutory provisions and decisions of the New Zealand Courts, the former Taxation Board of Review (established under the Inland Revenue Department Amendment Act 1960) and the Taxation Review Authority established under the Inland Revenue Department Act 1974.

References to 'The Act' and Section references are references to the Income Tax Act 1976 unless otherwise indicated.

PART TWO - THE LEGISLATIVE FRAMEWORK

1. Returns, Particulars and Penalties

Every taxpayer is required to furnish to the Commissioner, in each year, a return of all the assessable income derived by him during the preceding year, together with such other particulars as may be prescribed.[1] This requirement extends to partners, co-trustees and joint adventurers[2], and to executors or administrators of deceased taxpayers in respect of income derived by a deceased taxpayer in his lifetime.[3]

The requirement to furnish such a return therefore falls on every person "chargeable with income tax", whether on his own account or as the agent of any other person or in the capacity of trustee, executor or administrator.[4] Pay-period taxpayers (with the exception of shearers) whose annual income does not exceed $11,500 and comprises only salary and wages, pensions for past services, National Superannuation or any combination of those types of income, are not required to furnish a return of income. For pay-period taxpayers , tax liability is determined by the PAYE deductions in the particular income year, unless a special or incorrect tax code has been used, or wrong tax deductions have been

1. Section 9.
2. Section 10.
3. Section 11, of s 232 which deals with income of a deceased taxpayer which is not derived during his life but subsequently accrues in the hands of the trustee of the deceased taxpayer.
4. See "Taxpayer", s 2.

made, thereby necessitating a return. Such taxpayers may, however, submit a return in order to claim a tax refund as a result of claiming special exemptions and rebates.[5]

A trustee, however, must file a return whether or not any profit has arisen out of the trust fund,[6] and where income is derived by two or more persons jointly, as trustees, such persons are jointly assessable on returns required under Section 10 and jointly and severally liable for the tax so assessed.[7]

Partners are required to make a joint return of the income of their partnership, detailing their shareholding in the firm and are further required to make separate returns of all income personally derived but not included in the joint return.[8] Similarly, a joint adventurer is assessed on the amount of his share in any joint income.[9] Where, however, a relative is employed by or in partnership with the taxpayer, the Commissioner has a discretionary power to allocate the profits or income, for tax purposes, between the parties to the contract or between the partners, as he considers reasonable.[10]

In cases of agency, a return purporting to be made

5. See ss 356-359 and Income Tax Act 1976, Part IV, relating to Income Tax under which a pay-period taxpayer filing a return is assessed.
6. Sections 227-230.
7. Section 10 (1)(a).
8. Section 10 (1)(b). In the case of partners there is no joint assessment.
9. Section 10 (1)(c).
10. Section 97.

by or on behalf of any person is deemed to have been made by that person or by his authority, unless the contrary is proved.[11] This presumption is obviously intended to avoid the difficulties the Department of Inland Revenue may face in proving agency in particular cases.[12] Furthermore, both principal and agent may be liable if a false return is made.[13] Special cases of agency are provided for in Part VII of the Act which sets out the provisions for the taxation of agents and non-residents (including absentees).[14] Under Section 12 however, the Commissioner may require special returns from agents, as well as from non-resident traders and other persons appearing to cease trading, or whom, in a representative capacity otherwise appear unlikely to furnish returns in the usual way. In such cases the Commissioner, in default of returns requested, or where he is disatisfied with returns made, may assess the taxpayer on such a sum as he thinks reasonable.[15]

In addition to the foregoing returns, every person, whether a taxpayer or not, shall make to the Commissioner such annual returns as may be "prescribed" for the purposes of the Act.[16] Examples of such prescribed returns may be seen in Sections 239 and 429-432. However, under the broader provisions of Section 14 the Commissioner may require any

11. Section 18.
12. See Maxwell v Inland Revenue Commissioner [1959] NZLR 708.
13. Section 416 (1)(e).
14. See Income Tax Act 1976 Part VII generally, ss 274-279 for special cases.
15. See s 12 (1), (2).
16. Section 13.

further or other returns for the purposes of the Act, again from any person whether a taxpayer or not. Under the latter section the Commissioner must "require" such further returns, presumably by express notice, from the person or persons concerned, while under Section 13 the Commissioner must "prescribe" any other required annual return pursuant to the provisions of that section.

Balance dates and dates for returns are set out at Sections 15-17 of the Act. Further, Section 17A of the Inland Revenue Department Act 1974 specifies that annual returns of taxpayers shall be deemed not to have been furnished until they have been received at any office of the Department.

Under Section 16 of the Inland Revenue Department Act 1974, the Commissioner or any officer of the Department he so authorises, has at all times full and free access to all lands, buildings and places, in order to inspect all books and documents relevant to the purpose of collecting tax or duty.[17] The owner, manager or any employee (past or present) of any enterprise is required to give all reasonable assistance and to answer all proper questions relating to the investigation The Commissioner or officer may require oral or written compliance, and may also require a statutory declaration relating to matters arising out of the investigation.[18]

17. Section 16 (1).
18. Section 16 (2).

Section 17 of the Inland Revenue Department Act 1974 provides the Commissioner with the further power to require written information, and to require inspection of any books or documents "for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts[19] or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner."[20] The power includes inspection of lists of shareholders of companies, capital contributions, dividend payments, balance sheets, profit and loss and other accounts, and statements of assets and liabilities.[21] As under Section 16, the Commissioner may require particulars to be verified by statutory declaration or otherwise.[22]

To add weight to the powers the Commissioner has in respect of particulars and returns under the Inland Revenue Department Act 1974 and the Income Tax Act 1976, any failure to comply with the Commissioner's request under Section 17 of the former Act shall render a defaulting taxpayer, or such person of whom the request has been made, liable on summary conviction to a fine not exceeding $25 for each day of default. Should the Commissioner or, upon his application, a District Court Judge, hold an inquiry "for the purpose of obtaining any information with respect to the liability of

19. See Inland Revenue Department Act 1974, First Schedule, reproduced as Appendix B to this paper.
20. Sections 17(1). See also the similar wording in s 16(1), n. 17 supra. The Commissioner's discretion under s 17 is broader in that it includes consideration of both administration and enforcement of matters in connection with the Commissioner's lawful functions.
21. Section 17 (2).
22. Section 17 (5).

any person for any tax or duty under any of the Inland Revenue Acts or any information required for the purposes of the administration or enforcement of any of those Acts or for the purposes of carrying out any other function lawfully conferred on the Commissioner"[23], then any person refusing or wilfully neglecting to appear, so refusing to take an oath as witness, or so refusing to answer questions relating to the subject-matter of the inquiry, is liable on summary conviction to a fine not exceeding $1,000.[24] Section 20 of the Inland Revenue Department Act 1974 however, provides a limited degree of privilege for confidential communications (whether information, book or document) between legal practitioners and between legal practitioners and their clients.

Under Section 416(1)(a) of the Income Tax Act 1976 every person who refuses or fails to furnish any return or information as and when required by the Act or by regulations made thereunder or by the Commissioner, shall be liable to a fine not exceeding $500.[25] Every person committing an offence against the Act for which no other penalty is prescribed shall be liable to a fine not exceeding $2,000. Such offences include those under paragraphs (b) to (e) of section 416 (1), i.e. wilfully or negligently making a false return or so providing false information relating to one's own personal tax

23. Sections 18(1) and 19(1). See also the similar wording in ss 16(1) and 17(1), supra nn. 17 and 20. Note the wider powers and jurisdiction upon a District Court inquiry.
24. Sections 18(9) and 19(3).
25. Sections 416(2) and 417.

liability, or to the liability to taxation of any other person; acting in contravention of or without lawful justification or excuse, or failing to comply with the Act or regulations made thereunder; and aiding, abetting or inciting the commission of an offence.

In cases of evasion, attempted evasion or default in performance of any duty imposed on a taxpayer by the Act, an assessment of penal tax may be made, by way of penalty for the offence, to such an amount not exceeding treble the amount of deficient tax.[26]

In light of the above provisions, the Commissioner not only has the power to establish the administrative framework enabling him to assess comprehensively the circumstances of taxpayers and to collate such information that may in turn provide for a particular basis of assessment, but he also has the penal provisions to assist him in that task. In relation to wage and salary earners a perusal of return forms over the years indicates a gradual refinement process (no doubt in the light of experience in assessing returns)[27] and reveals also an adaptability to legislative changes made as a result of political decisions.[28] In the case of company returns the range of annual returns and accounts

26. Section 420.

27. E.g. Particulars relating to marriage and to spouse tax codes, effectively clarifying the questions of de jure marriage and de facto dependency, and the double-claiming of deductions, exemptions and rebates by both spouses.

28. E.g. The young family and low income family rebates introduced by the Income Tax Amendment Act 1980.

required indicate the extensive assessment process. An example of the Commissioner requiring returns which may in turn be used to adjust the assessment framework is the Commissioner's current requesting of employers to provide details of non taxable payments to employees made in the form of a reimbursement or allowance for employment related expenses. The collation of the incidence and extent of such payments (the investigation arising out of and following on from the payment of a tax free travel allowance to Air New Zealand employees) may lead to future legislative amendment, making such payments taxable either in the hands of employees or by the employer at source, and may lead to a requirement for both employers and employees to specify such payments and receipts in annual, or other returns, as required by the Commissioner.

In all circumstances, the onus of making and delivering returns of income and furnishing such other particulars as the Commissioner may require, rests firmly on the taxpayer, i.e. the person chargeable with tax. The providing of returns and other information is however, a natural pre-condition to the act of assessment. It is also, as will become apparent in considering the Commissioner's powers in relation to assessments, the first step in a process throughout which the taxpayer may find he has an increasingly heavy onus to bear.

2. Assessments and Determinations

Pursuant to Section 19(1) of the Act, the Commissioner is required (mandatory) to make an assessment for every year, and from time to time and at any time as may be necessary, of the amount on which tax is payable by each taxpayer, and the amount of that tax. Such an assessment is made on the basis of returns and from any other information in the possession of the Commissioner.

Subject to Section 19(1), where a return shows or purports to show a loss incurred by the taxpayer in an income year, the Commissioner is required to determine the loss, either in accordance with the provisions of the Act for the calculation of assessable income, or, where the provisions of Section 22(4), apply in accordance with that subsection.[29] Where a taxpayer claims to carry forward the whole or part of a loss the Commissioner is required to determine whether the loss may be carried forward and if so, to what extent. In such circumstances losses incurred and carried forward are to be calculated pursuant to the provisions of Section 188 (providing for the setting off of losses against future profits).[30]

Where a taxpayer claims a credit of tax[31] or elects

29. Section 19(2). Section 22 (4) is discussed in Part Six of this paper, post.

30. Section 19(3).

31. Pursuant to any of ss 156A, 156B, 156D-156G.

to convert a prescribed loss into a credit of tax,[32] the Commissioner is required to determine whether the loss may be converted, and if so, to what extent a credit of tax is allowable in the income year.[33]

As indicated above, it is the statutory duty of the Commissioner to make such assessments and determinations.[34] That duty is emphasised by ~~the provisions of~~ Section 21, which provides that where any person makes default in furnishing any return or if the Commissioner is not satisfied with the return made by any person, the Commissioner may make an assessment of the amount on which in his judgment tax ought to be levied, and of the amount of that tax. The section also empowers the Commissioner, if he has reason to suppose that any person, although he has not made a return, is a taxpayer, to make a default assessment. In cases of a default assessment the person subject to assessment is liable to pay the tax so assessed "save in so far as he establishes on objection that the assessment is excessive or that he is not chargeable with tax".

Under Section 23 the Commissioner has the added discretion to make such alterations or additions, from time to time and at any time, to any assessment he has previously made notwithstanding that tax may already have been assessed

32. Pursuant to s 74A or s 157A.

33. Section 19(4).

34. See also TRA Case 4 (1980) 4 TRNZ 56, 58.

and paid. In cases of tax evasion however, it appears that assessment would be made under Section 21 as a default assessment.

The amendment of an assessment under Section 23 can only be made at the discretion of the Commissioner. The taxpayer cannot compel the Commissioner to reopen a file, nor use the section to recover tax already overpaid, or to bring about an objection out of time. Furthermore, the Commissioner is not estopped from any further exercise of his discretion under the section in relation to assessments previously amended.[35] On the other hand the Commissioner cannot use the section to extend the grounds upon which liability has been imposed by means of an earlier amended assessment.[36]

In the case of an objection to a reassessment under Section 23 however, the burden of proof, as in Section 21, lies on the taxpayer.[37]

An assessment may not be altered so as to increase the liability previously assessed, after four years from the end of the year in which the assessment was made.[38] However where the Commissioner is of the opinion that returns have

35. Union Steam Ship Co of NZ Ltd v Commissioner of Inland Revenue [1962] NZLR 656.
36. TRA Case 13 (1978) 3 TRNZ 179, 186.
37. Babington v Commissioner of Inland Revenue [1957] NZLR 861, 866.
38. Section 25(1). For express exceptions from the four year rule see Butterworths Taxation Library Vol. 1 P. 1078.

been fraudulently made, are wilfully misleading, or have omitted all mention of income which is of a particular nature or was derived from a particular source (and in respect of which a return was required to be made), the assessment may be altered at any time so as to increase the amount previously assessed.[39] Income referred to in Section 25 bears its ordinary meaning and is not limited by categories of assessable income in Section 65.[40] Further, the maxim "de minimus non curat lex" may operate to excuse comparatively small omissions of income.[41]

Section 26 provides that the validity of an assessment shall not be affected by the reason that any of the provisions of the Act have not been complied with, while Section 29(6) specifically provides that the omission to give notices of assessment and determinations required by Section 29 shall not invalidate any assessment or determination, or in any manner affect the actual operation of such an assessment or determination.

Further, except in proceedings on objection to an assessment,[42] no assessment made by the Commissioner shall be disputed in any Court or in any proceedings (including those before a Taxation Review Authority) either on the

39. Section 25(2).
40. E.g. Sleeman v Commissioner of Inland Revenue [1965] NZLR 647; Public Trustee v Commissioner of Inland Revenue [1961] NZLR 1034.
41. Babington v Commissioner of Inland Revenue Supra n. 34, 869.
42. See Part III of the Act for provisions relating to objections to assessments.

ground that the person so assessed is not a taxpayer or on any other ground. Except in objection proceedings then, every assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed is determined accordingly.[43] Pursuant to s 19(5) of the Act, Sections 22 to 28 and Part III of the Act apply with respect to determinations. Therefore provisions relating to validity of assessments and the deeming of an assessment to be correct, similarly apply in respect of determinations.

An undisputed assessment or determination is not conclusive against the taxpayer, however, upon prosecution under the offence provisions of the Act.[44] In such circumstances, because the burden of proof is on the Commissioner, the taxpayer may challenge the Commissioner's assessment, including his opinion that returns were fraudulently made or were wilfully misleading for the purposes of Section 25(2).[45] On the other hand, but subject to the judicial prohibition of the Commissioner extending the grounds of liability established in an earlier re-assessment,[46] an assessment is not conclusive against the Commissioner.[47] As outlined above, he may amend assessments pursuant to Sections 21 and 23, subject to the provisions of Section 25.

43. Section 27.

44. E.g. Maxwell v Commissioner of Inland Revenue supra n. 12. See also Part Sevenof this paper, post.

45. Macfarlane v Commissioner of Taxation [1923] NZLR 801, 836, CA (Salmond J.).

46. See n.36, supra.

47. Supra n. 45.

There is, however, no definition of "assessment" in the Act. An assessment cannot be equated with the notice received under Section 29. In R v Deputy Federal Commissioner of Taxation, Ex parte Hooper[48] Isaacs J said[49]

> ..."an assessment" is not a piece of paper, it is an official act or operation; it is the Commissioner's ascertainment, on consideration of all relevant circumstances, including sometimes his own opinion, of the amount of tax chargeable to a given taxpayer.

Liability for tax is imposed by the various charging sections of the Act[50] and not by the act of assessment itself.[51] The first step of an assessment therefore involves a qualitative analysis and application of the legislative provisions and relevant taxation principles. The second step is then the quantification of the amount on which tax is payable and of the amount of that tax, i.e. the assessment is an evaluation of the applicability of the charging provisions of the Act and the quantification of that evaluation. The provisions giving the Commissioner power to make assessments and determinations are therefore the machinery provisions by which the process of evaluation and quantification can be put into action.

On receipt of a taxpayer's return, the Commissioner

48. (1926) 37 CLR 368, HC.
49. Ibid, 373.
50. Particularly s 38.
51. See Elmiger v Commissioner of Inland Revenue [1967] NZLR 161.

pursuant to Section 19, makes an assessment or determination on the basis of the return as filed, together with any other information he may have in his possession. Such other information would appear to encompass other returns required by the Commissioner, or enquiries made by him.

No extensive investigation is undertaken at this stage, although adjustments may be made to a taxpayer's return by simply "adding back" assessable income where the Commissioner considers that certain claims cannot be permitted in light of the appropriate charging provisions, or conversely, by "adding in" all exemptions and rebates which may be claimed on the basis of the return, but which have not been so included by the taxpayer. This assessment is basically a qualitative evaluation of the details of the return as submitted and a quantitative check of the figures therein.

In the absence of sufficient details, or in light of subsequent investigation by the Department, the Commissioner may make an assessment under Section 21 or Section 23 as appropriate. Again, this may involve a consideration of the applicability of the relevant charging provision, and in such circumstances may require the adding-back of various amounts into the original assessment of the return. Where, however, there is no available evidence against which amounts to be added-back can be assessed, then the "add-back" procedure will involve an estimation of the amount on which the

Commissioner judges tax ought to be levied. As is more often the case there is some evidence available, either on a consideration of the taxpayer's own circumstances or on a comparison of the taxpayer with similar taxpayers in similar circumstances. In such cases the quantification of the amount upon which tax is assessed is arrived at by the assets accretion, peer group comparison, or gross percentage profit methods.

In practice the Commissioner tends to use various combinations of these assessment methods. In the case of businesses that are controlled by non-residents and appearing to produce insufficient taxable income however, the Commissioner makes an assessment or determination pursuant to Section 22, considered in Part Six of this Paper. In all cases a taxpayer may be assessed on a basis peculiar to his own circumstances or by agreement with the Commissioner as to the amount on which he should be taxed.[52]

The Commissioner is required to make an assessment of every taxpayer for every year and has the discretion to re-open assessments (subject to Section 25). Where the relevant charging sections of the Act do not assist in the process of quantifying a taxpayers liability to tax, the Commissioner has complete discretion as to what method he chooses in arriving at an assessment, although in making his assessment he must act bona fide.[53] The onus is on the

52. The agreement itself would be the assessment, providing it was accepted as determining the taxpayer's liability to tax and was not merely an agreement as to the proposed treatment of liability prior to the submission of statutory returns.

53. Babington v Commissioner of Inland Revenue supra n.37,865.

taxpayer not only to furnish returns and other particulars, but also to show that the Commissioner is wrong in making his assessment, and to what extent.

The Legislative framework, therefore, is designed to assist the Commissioner in the collection of taxes. In submitting his returns then, the taxpayer in light of the Legislative provisions discussed above, is obliged to furnish all such information as required of him and then to accept, except in the case of objection, the Commissioner's assessment. Even on objection the onus is upon the taxpayer. "There is no equity about a tax."[54]

3. Ancillary Taxes

Under the Income Tax Act 1976, the Commissioner may make assessments of ancillary taxes such as bonus issue tax, excess retention tax, withdrawal tax, and as outlined above, penal tax. Assessments under Sections 262 (bonus issue tax) and 334 (withdrawal tax) are made subect to Sections 23 and 26-29 of the Act, while assessments made under Sections 252 (excess retention tax) and 420 (penal tax) are made according to the provisions therein.

54. Rowlatt J. in Cape Brandy Syndicate v Commissioners of Inland Revenue [1921] 1 KB 64, 71, in discussing the interpretation of taxing statutes.

PART THREE - ADD-BACK METHOD

1. Adding-back as a procedural requirement

As alluded to in Part Two of this paper,[55] where an adjustment is made to a return merely by including or excluding items, this "add-back" process cannot be regarded as an administrative method of assessment, but rather as a procedural step required by the relevant statutory provisions imposing the liability to tax. In such circumstances the assessment is arrived at by an evaluation of the applicability of those provisions, and the addition to or the subtraction from the return of the amount as declared by the taxpayer or the amount as assessed by the Commissioner.[56]

2. Adding-back as a quantifying process

Where the Commissioner considers that records are insufficient or that a return is not satisfactory for the purposes of assessment, or considers that previous assessments, in the light of information gained in the course of his investigations, are incorrect, he may have recourse to the add-back method in the absence of evidence otherwise accounting for a taxpayer's income and expenditure.

By this method, an amount representing living expenses, and all other known expenditure and deposits accounted for, is

55. See Assessments and Determinations, p. 17 infra.

56. E.g. Macfarlane & Ors v Commissioner of Inland Revenue supra n.45 (valuation of livestock); Europa Oil (NZ) Ltd v Commissioner of Inland Revenue [1970] NZLR 321 (deduction for expenditure incurred in course of producing assessable income); TRA Case 17 (1975) 1 TRNZ 247 (Loss on farming "business").

deducted from moneys available to the taxpayer. The resultant figure is then added as assessable income and any moneys not declared are added back into income. The method therefore, is used where the Commissioner considers that unexplained deposits should be treated as income, particularly where he considers that such deposits have arisen out of suppressed sales or other undeclared income.[57]

The add-back method may involve an estimation of income alone where the taxpayer's expenditure is known. More likely, and usually concurrently, the Commissioner will make his own calculation of living expenses and other expenditure.

The method may be regarded as having been approved by the courts, the former Board of Review and the Taxation Review Authority in their acceptance of the principle in the dictum of Turner J. in Babington v Commissioner of Inland Revenue.[58]

> In making his original assessment of the amount upon which tax ought to be levied, and in making such alterations thereto as he later thought necessary, the respondent was not, in my opinion, limited to any particular method of assessment and, provided that he proceeded bona fide to assess the amount upon which, in his judgment, tax ought to be levied, I think that his assessment must stand, save only in so far as the appellant establishes his objection that the amount is excessive.[59]

57. This is especially the case where deposits (or excessive expenditure in the absence of accountable income) has been explained away by the taxpayer as arising out of casual gambling winnings (or losses). E.g. Case 57 (1963) 1 NZTBR 424; Case 25 (1964) 2 NZTBR 199, 204- 205; Case 31 (1969) 4 NZTBR 341, 355-356. When deposits are so accounted for, the Commissioner cannot then argue that in order to obtain such winnings (and logically to make losses) the taxpayer must have used an identical amount out of otherwise assessable funds and that the base wagering figure should accordingly be added back: Case 31, n. supra.

Although Turner J in Babington's case was considering the assets accretion method, his dictum clearly goes beyond that particular method. The Commissioner is not limited to any particular method providing he acts bona fide in assessing the amount upon which, in his judgment, tax ought to be levied.

As a result, the Commissioner has complete discretion when using the add-back method when assessing both income and living expenses. For example, in TRA Case 15[60] (where a "cash available" statement was produced to verify the acceptability of an assessment based on the accretion of assets), the taxpayer's income was re-assessed by taking the known income in a particular year and calculating income for the prior nine years on the basis of the cost of living index. In TRA Case 17[61] the Commissioner added-back an amount he deemed to represent the income received by a taxpayer from illegal activities. In that case the Commissioner, in reliance on the conviction of the taxpayer for selling heroin, included as assessable income a substantial refund otherwise due to the taxpayer. As the Commissioner had not acted in bad faith and the taxpayer had not shown the assessment to be wrong, the assessment was upheld.

Since the add-back method of quantifying income

58. Supra n.37; 865.
59. See also Case 25 supra n. 57; 205 where Babington's case was referred to.
60. (1977) 2 TRNZ 294.
61. (1980) 4 TRNZ 173.

requires the Commissioner to make a calculation of the amount deemed to have been derived during the income year (or income years under investigation), as in the case of an assessment under the assets accretion method (and logically under other methods of quantification) the Commissioner's assessment may disclose income for a year which is not in truth the real income for that year.[62] The assessment of income is not conclusive as to actual living or private expenses even for the years to which the assessment specifically relates.[63] The resultant assessment of the amount upon which tax is payable is, however, conclusive against the taxpayer as outlined in Part One of this paper, and it is up to the taxpayer, on objection, to show that the amount is excessive. In doing so, the taxpayer may produce evidence to question the amount of his expenditure or to show that certain income was not derived by him. In the final analysis however, he must show that the amount upon which the Commissioner has assessed his liability to tax is wrong, and by how much.[64]

An assessment of living expenses and other expenditure will often involve a comparison of the taxpayer with similar taxpayers in like circumstances or of like disposition. Furthermore, there is usually some evidence to which the

62. E.g. Case 24 (1962) 1 NZTBR 174, 181-183 referring to Phillips v Commissioner of Inland Revenue [1959] NZLR 1357; (1959) 8 AITR 21. Phillips case and the assets accretion method are discussed in Part Four of this paper.

63. Case 18 (1966) 3 NZTBR 217, 225.

64. Babington v Commissioner of Inland Revenue supra n. 37; Commissioner of Taxes (N.Z.) v McCoard (1952) NZLR 263; (1952) 5 AITR 323.

Commissioner may refer in calculating a taxpayer's assessable income, even in the case of regular salary and wage earners. Such evidence will usually be provided by a consideration of the taxpayer's assets or use of a method of calculation peculiar to the taxpayer's affairs (particularly when considering the gross percentage profit that may be expected of a taxpayer in business). As a result, the add-back method has limited applicability as an independent administrative method. Generally it can be expected to be used to corroborate the acceptability of an assessment reached by other methods.[65]

Does not establish that there is such a thing as an 'add back method' - I don't think there is. - Simply, if commissioner forms the view that t/p in fact derives certain income, then he adds this to the calculation. - Hardly a "method" in the sense of, say, assets accretion method

65. E.g. Case 24 supra n.61 and TRA Case 15 supra n.60 - assets accretion and peer group comparison methods; Case 31 supra n.57 - assets accretion and gross percentage profit methods; Case 18 supra n.63 - assets accretion method.

PART FOUR - ASSETS ACCRETION METHOD

The most commonly used method in the absence of records or where the Commissioner considers a taxpayer's return is not correct, is the assets accretion method. It has been summarised by Wilson J. in Glaussius v Inland Revenue Commissioner (N.Z.)[66] as follows:[67]

> This is a statement of the ascertained assets of the taxpayer at the commencement and at the end of each fiscal year under review (valued at cost) and his sundry debtors, from which is deducted all known liabilities of a capital nature, sundry creditors existing at the end of the year and all moneys received by the taxpayer during the year from non-assessable sources. To the difference is added all known expenditure by the taxpayer for purposes other than the acquisition of the assets already taken into account, including living expenses. The final result should show the money which the taxpayer had received during the year from assessable sources.

In the same case, Wilson J., noting that the assets accretion method had "no express authority", examined the basis upon which use of the method had received recognition and gained approval by the Court in New Zealand.[68]

> The first reported case in which its use was considered was Babington v Commissioner of Taxes (N.Z.) [1957] NZLR 861 at p. 865; 6 AITR, 428, at pp. 432-3, in which Turner J. said "In making his original assessment of the amount upon which tax ought to be levied, and in making such alterations thereto as he later thought necessary, the respondent was not, in my opinion, limited to any particular method of assessment, and, provided that he proceeded bona fide to assess the amount upon which, in his judgment, tax ought to be levied, I think

> that his assessment must stand, save only in so far as the appellant establishes his objection that the amount is excessive. Trautwein's case [Trautwein v Federal Commissioner of Taxation (1936) 56 CLR 63] cited by the appellant, appears to be an authority completely supporting this statement of which I conceive to be the law. It may well be that the use of the 'assets method', in the absence of objection, may result in only a crude approximation to the true amount of the assessable income: but though crude, this may approach accuracy much more closely than the returns provided by a defaulting taxpayer. Thus, Sir John Latham, C.J. in Trautwein's case says: 'In the absence of some record in the mind or in the books of the taxpayer, it would often by quite impossible to make a correct assessment. The assessment would necessarily be a guess to some extent, and almost certainly inaccurate in fact. There is every reason to assume that the legislature did not intend to confer upon a potential taxpayer the valued privilege of disqualifying himself in that capacity by the simple and relatively unskilled method of losing either his memory or his books'."

Wilson J. considered that since Babington's case, the right of the Commissioner to adopt the assets accretion method of assessing a taxpayer's income had not been in doubt.[69] He did note however, that in Hall v Commissioner of Inland Revenue[70] he had held that the method was not sufficiently accurate in respect of any particular year to afford proof beyond reasonable doubt that a taxpayer's return of income for that year was wilfully false (on a prosecution under Section 228 (1)(b) of the Land and Income Tax Act 1954, now Section 416 (1)(b) of the Income Tax Act 1976).[71]

fn?

Wilson J. then traced challenges to the method.[72] In Phillips v Commissioner of Inland Revenue[73] Shorland J. held that where the statement prepared by the Commissioner referred to an asset of the taxpayer, the existence of which was denied on oath by the taxpayer, the onus is on the Commissioner to prove its existence as the property of the taxpayer and that the Commissioner, having assessed the taxpayer on the basis of the figures shown by an assets accretion statement, is not entitled to depart from those figures in any particular year merely because the result gives a lower income that that returned by the taxpayer. At 1358; 22, Shorland J. had said:

> The Commissioner cannot of course have it both ways. It is inherent in the "assets method" of deducing income that whereas it shows the income earned over the period to which it is applied, it cannot for certain and with absolute accuracy demonstrate the precise time when such income was earned. If the application of the "assets method" shows a lower figure than that which was in fact earned in a particular year, then it would presumably do so because it attributed part of the income in fact earned in that year to some other year; or, in other words, because it included an overstatement of the true income for some other year.

In Fenson v Inland Revenue Commissioner (N.Z.),[74] Richmond J., in order to bring about a realistic result bearing in mind that the "increase in assets" basis is likely to result in errors in individual years, redistributed the deficiencies

and excesses in the investigating inspector's statement by allocating the sums involved unequally among the relevant years concerned. In Trautwein's case (referred to by Turner J. in Babington's case, supra) the Commissioner had no means of ascertaining in which of the seven years under review understated assessable income of L112,354 should be allocated. In the circumstances he apportioned it equally over the seven years having allocated, as far as possible, the income to the years in which it had been found to have been derived.

In Glaussius' case, Wilson J. concluded:[75]

> From these decisions the following principles may be extracted:-
>
> (1) The assets accretion method is one which the Commissioner is entitled to apply in estimating the assessable income of a taxpayer for the purpose of assessing him to tax.
>
> (2) Provided the Commissioner employs this method bona fide for this purpose his assessment must stand save only in so far as the taxpayer establishes that the amount is excessive (Babington's case and Trautwein's case).
>
> (3) It is not sufficient for the taxpayer to establish that the assessable income for any particular year, ascertained by this method, is not correct. He must also show by how much it is wrong (Babington's case. See also Commissioner of Taxes (N.Z.) v McCoard, [1952] NZLR 263; 5 AITR 323).
>
> (4) The Commissioner may properly spread the value of an asset representing income derived by the taxpayer during the period covered by the assets accretion statement equally over each of those years if

if there is no satisfactory evidence to show the year or years in which it was in fact derived. If he does so the onus is on the taxpayer to prove in what year or years it was derived (Trautwein's case).

(5) Spreading should be adopted in such a way as to produce a "realistic" result (Fenson's case). (By "realistic" I understand Richmond J. to mean "in accordance with the proved facts". In this sense I think that it merely states, in another way, the principle that the taxpayer is entitled to have assessments amended to the extent that he succeeds in proving them to be incorrect. If the reference to the necessity for achieving a "realistic result" was intended to bear a wider meaning than this I respectfully dissent from the proposition.)

The assets accretion method then, is a method by which the net worth of assets acquired in any one year is added to an amount representing living and other personal expenditure, and the balance regarded as assessable income (allowing for income from non-assessable sources). It is a method whereby amounts expended in the purchase of assets and in living expenses is considered in relation to an amount deemed necessary to support such expenditure. The method is therefore used when a taxpayer's return may indicate a substantially smaller income than would be necessary to support outgoings, or when a taxpayer has not kept such books of account or records as would enable an investigator to trace the nature and extent of his income and expenditure.[76] Since evidence relating to such amounts is likely to be available in respect of most taxpayers, it is logical that this

method is most commonly used in a default or amended assessment. As indicated by Turner J. in Babington's case[77] and McCarthy J. in Maxwell's case[78], the assets method produces an "approximation" of the income required to be returned. Because the questions of value of assets, income derived and living expenses, in particular, may be arguable points, the method cannot be regarded as exactly identifying the affairs of each tax payer. (See Shorland J. in Phillips case, supra)

Although Shorland J. in Phillips' case (supra) considered that the Commissioner must prove the existence of an asset that a taxpayer has denied on oath, such does not amount to a finding that, because the Commissioner finds himself compelled to make an estimate of a taxpayer's living or private expenses, he must necessarily relate every item of expenditure to a particular asset.[79] On the other hand, it would appear that the Commissioner must take account of assets owned by a taxpayer at any time during the period covered by the assets statement, if its being brought into account in any way would tend to show that the statement was erroneous to an ascertainable extent.[80]

Although the onus is on the taxpayer to show that the

Commissioner's assessment is wrong, it is reasonable to require of the Commissioner to present evidence of the existence of an asset included in his statement. It would appear, however, (although the matter has not been considered by the Court or Review Authority, that Shorland J.'s statement in Phillips' case is too strong. For the denial by a taxpayer of the existence of an asset, be it on oath, may place an unreasonable burden upon the Commissioner. In light of the onus on the taxpayer to show the Commissioner's assessment is wrong on the balance of probabilities,[81] it is logical to expect of the Commissioner to raise evidence which may be tested on the same basis. At 1359, Shorland J. said as follows:

> The onus is upon the taxpayer to show that the Commissioner's assessment is wrong; but whatever may be said about initial onus, I am of opinion that when the Commissioner seeks to apply the "assets method" of calculating a taxpayer's income, he must, in the final resort, undertake the burden of proving the existence of the asset which he claims the taxpayer has accumulated if the taxpayer's denial on oath of the ownership and existence of any such asset is to be displaced.

In the circumstances, his viewpoint indicates something more than proof on the balance of probabilities. If that is so, then it would also be logical to expect of the Commissioner to produce affirmative, conclusive proof, of living and other expenditure. As the Commissioner's assessment is tested on the balance of

81. Commissioner of Inland Revenue v Legarth [1969] NZLR 137; Duggan v Commissioner of Inland Revenue [1973] NZLR 682; see also McCoard's case, supra n.64 and Babbington's case, supra n.37. See also Part Seven of this paper.

probabilities on objection, such a test should also apply to assertions as to the existence of assets. As Richardson J. noted in Buckley & Young Ltd v Commissioner of Inland Revenue[81A] "[T]he Commissioner could not sensibly be expected to bear the onus of proof of matters that originate with the taxpayer and which usually are peculiarly within his knowledge and power."[81B]

It is also reasonable to expect the Commissioner to adhere to the results of an assessment based on an assets statement even where his figures for a particular year, within a period of years under investigation, may fall short of income declared by a taxpayer. If the Commissioner departs from the taxpayer's return and uses the assets method to arrive at an approximation of a taxpayer's income, then his assessment for a period of years at least should be used with consistency. Should he accept a taxpayer's declared income for a particular year then it should entail adjustment elsewhere in the statement for the period under investigation. This viewpoint would seem to underlie Shorland J.'s statement (supra) that such a disparity must point to the Commissioner's attributing part of the income in fact earned in that year to some other year; that the statement included an overstatement of the true income for some other year. On the other hand the taxpayer's figures may reflect his own understatement in other years.

81A. [1978] 2 NZLR 485; (1978) 2 TRNZ 485, CA.

81B. Ibid, 498; 500.

In respect of an assessment for a single year in isolation, however, the Commissioner need not resort to his assessment based on the assets accretion method, if his taxable figure falls short of the taxpayer's. The Commissioner in such cases may use the taxpayer's figures to make an assessment in any case, or alternatively may decline to make an amended assessment. It is however, unlikely that this situation would often occur since such a finding would most likely lead the Commissioner to a deeper investigation of the taxpayer's affairs over the preceding years.

When investigating a taxpayer over a number of years, it is also reasonable that the Commissioner should re-open the assessments of each year falling within the particular period. Assets may arise out of income sources carried over from previous years. Alternatively should the Commissioner make an amended assessment or a default assessment for a period of years in which no returns, or insufficient returns, have been submitted, he must allocate as far as possible the income that can be attributed to the year in which it is derived. For such purposes a consideration of a consecutive number of years is required.

In Babington's case (supra) Turner J. made it clear that the assets method may result in only a crude approximation to the true amount of the assessable income but that such may approach accuracy much more closely than the returns provided by a defaulting taxpayer. In Trautwein's case identifiable income was allocated to the years in which it was derived and it was only

the balance then remaining which was divided equally over a period of seven years.[82] Richmond J. in Fenson v Commissioner of Inland Revenue had regard to a "realistic approach" in redistributing understated income (unequally), although in that case no argument was addressed to the learned Judge upon the spreading of such income.[83] In Hall's case (noting that this was an appeal against convictions on charges of wilfully making false returns), Wilson J. considered that the appellant's return showed a much more credible pattern than the violent fluctuations in the Commissioner's assessment.[84] It must therefore be assumed that the acceptability of that pattern out-weighed, for instance, the fact that results obtained by an application of the assets method sometimes will accord with the position which would have been disclosed had a taxpayer kept sufficient business records."[85]

In Case 10, having reviewed the above cases, the Taxation Board of Review said:[86]

> [T]he position may, we think, be summarised by saying that, in the few recorded instances where such a procedure has been followed, the Courts, while not laying claim to any statutory authority for what was being done, appear to have detected in the facts of the particular case under review some warrant for the course adopted.

82. (1936) 56 CLR 63. See also supra, n.68.
83. Supra, n.74.
84. Supra, n.70.
85. Case 10 (1965) 3 NZTBR 106, 126.
86. Ibid, 127.

The spreading of understated income then, will depend upon the facts of each case, but in light of a realistic and credible approach, it would seem imperative that each year within a period of years under investigation should be given consideration within the Commissioner's assessment.

This viewpoint is supported by Shorland J. in Phillips' case in referring to "the unfairness which would result from permitting the Commissioner to reject the 'assets method'for a year within the period to which he has applied that method", and noting that in the circumstances "the Commissioner has rejected the appellant's returns and has set up in its place the 'assets method' and submitted his schedule showing the bases upon which he claims that the several figures therein shown are the income earned by the appellant in the particular years specified".[87]

Further (as argued above), in Case 11[88] the Taxation Board of Review considered that the Commissioner is not entitled to assume that income must have been expended when that income, or an asset produced by it, might well only become apparent in a later year.

> In other words, if while applying the assets method, additional income is at the same time calculated by another method, a taxpayer could well be assessed to tax upon that income in the year for which the calculation is made as well as in another year when an asset arising from such income becomes apparent.

87. Supra, n.62; 1358.
88. (1968) 4 NZTBR 113, 127.

The Board of Review in Case 11 in reaching its conclusions had noted that:

> The question so raised does not appear to have been considered in any of the judgments cited to us. We nevertheless do not overlook the fact that in Babington's case (supra), at p. 865, Turner J. said the respondent Commissioner was not, in the learned Judge's opinion, 'limited to any particular method of assessment' and further that provided 'he proceeded bona fide to assess the amount upon which, in his judgment, tax ought to be levied...his assessment must stand, save only in so far as the appellant establishes his objection that the amount is excessive'. We do not, however, regard those words as justifying the use in the circumstances of this case of the assets method and the 'mileage' method at one and the same time.[89]

It is therefore evident that the Commissioner must consider each year under investigation, and, as the Board commented in Case 11, the fact that the Commissioner's assessment may result in the reduction of a taxpayer's declared income in any particular year, is not of "material consequence".[90] As the Board had earlier noted (supra) inconsistency in the method of assessment may lead to an element of double taxation, and as Shorland J. had noted in Phillips' case, the Commissioner could not "have it both ways".

In Lancaster v Commissioner of Inland Revenue,[91] Moller J. summarised the taxpayer's argument as being that if a taxpayer produces, in connection with any point of dispute,

89. Ibid, 126-127.
90. Ibid, 128.
91. [1969] NZLR 589.

evidence that may possibly be the correct representation of the position under consideration, the onus then shifts to the Commissioner to show affirmatively that the representation is wrong, and that that presented by his (the Commissioner's) own evidence is correct.[92] Moller J., in considering the onus upon the taxpayer,[93] distinguished Phillips' case in the circumstances, and concluded:

> This [the taxpayer's submission], in my view, is contrary to all authority in such matters...It is true that, in the course of a hearing before the Board of Review, the onus of proof, in one sense, may, from time to time, shift between the taxpayer and the Commissioner; but the onus of proof, in the sense in which it is used in s.20 [now Section 36 of the Inland Revenue Department Act 1974], still requires that the final question must always be: 'On all the evidence, has the taxpayer discharged the onus of demonstrating that the Commissioner's assessment was wrong, and, if so, why it was wrong, and how far it is wrong?' This is what Turner J. in Babington v Commissioner of Inland Revenue [1957] NZLR 861, called the 'considerable handicap explicitly laid upon him by the statute'.[94]

Moller J. in Lancaster's case was considering what is now Section 36 of the Inland Revenue Department Act 1974. That section relates to the grounds of objection on the hearing and determination of any objection, and further provides that "subject to the provisions of subsection (2) of Section 423 of the Income Tax Act 1976, the burden of proof shall be on the objector". In light of the discussion in Part Two of this paper relating to assessments and the authority of Babington's case in particular,[95] the onus is clearly on the taxpayer to show the

92. Ibid, 590.

93. McCoard's case, supra n.64.

94. Lancaster's case, supra n.91; 590-591.

95. Supra, p.21.

actual assessment as made by the Commissioner, is wrong. He cannot merely produce alternative evidence that may indicate some other figure. As the Taxation Board of Review commented in Case 5[96]

> We do not overlook the use by Turner J. of the words 'in the absence of objection' in Babington's case; but we adopt the view that they mean simply that, while the correctness of assessments made by the assets method could be questioned, the time has long since passed when the validity of such method would be open to attack.

In Buckley & Young Ltd v Commissioner of Inland Revenue[97] however, Richardson J. in delivering the judgment of the Court, referred to Moller J. at 591 in Lancaster's case (supra) and concluded:[98]

> The reason for this statutory onus is obvious enough. The Commissioner could not sensibly be expected to bear the onus of proof of matters which originate with the taxpayer and which usually are peculiarly within his knowledge and power. Thus, there are sound if not compelling practical reasons why the legislation requires him to provide satisfactory evidence to support his calculation of his assessable income. If he fails or is unable to provide sufficient evidence to discharge that onus, his objection to the Commissioner's assessment will fail.

He then considered Evans Medical Supplies Ltd v Moriarty[99] in which Viscount Simonds had remarked that in apportionment cases, the mere fact that an apportionment might be difficult would not of itself be reason for failing to provide an answer upon evidence proferred in support of it. Richardson J. then

96. (1961) 1 NZTBR 23, 27.
97. Supra n.81A.
98. Ibid, 498; 500.
99. (1957) 37 TC 540, 580.

concluded:[100]

> A fair balance must be maintained in this kind of case. As Cooke J observed in Duggan v Commissioner of Inland Revenue [1973] 1 NZLR 682, 686, the onus of proof must be applied in a broad and commonsense way. So that in such an apportionment case as the present the taxpayer must be able to point to some intelligible basis upon which a positive finding can be made that a defined part of the total sum is deductible. Where the Commissioner has refused a deduction and his assessment is challenged, then the taxpayer must establish that the decision is wrong and the extent to which the assessment should be varied. That last matter does not require an answer of absolute precision or one that has been calculated by some kind of scientific process but, unless the taxpayer can demonstrate affirmatively that at least a minimum quantifiable sum is deductible, he will have failed to discharge the onus that for good practical reasons has been placed upon him by the legislature.

In cases where apportionment of expenditure is permitted,[101] failure to prove the Commissioner is wrong will not necessarily result in the standing of the full amount as assessed by the Commissioner. In such cases evidence of apportionment will accordingly reduce the assessment of income. In all other circumstances however, except to the extent the taxpayer can show the Commissioner is wrong (i.e., incorrect) and to what extent, the taxpayer cannot lead evidence to indicate a different possible assessment. In light of the provisions of Sections 26 and 27, in particular, and in light of the approach taken by the Board in Case 5 (supra), the validity of the assets accretion method itself cannot be called into question when used by the

100. Supra n.81A; 498; 500.

101. E.g. Income Tax Act 1976, s 104 (formerly Land and Income Tax Act 1954, s 111).

Commissioner.

As Turner J. said in Babington's case,[102] such is the 'considerable handicap' explicitly laid upon the taxpayer by Statute. Arguments as to the Commissioner's duty to make an assessment for the purposes of the collection of tax aside, it would seem equitable that a taxpayer should be able to produce prima facie evidence of an error in the Commissioner's assessment, and that once shown, that the Commissioner should then have to show that on the balance of probabilities that the taxpayer's assertion was wrong.

This by no means disregards the fact that there is no equity about a tax in itself,[103] but does point to equity in the method of determination of that tax. Although the taxpayer should not be able to shield himself from liability to tax by the suggestion that an affirmative burden should rest upon the Commissioner when his assessment is challenged, it does appear reasonable that a taxpayer, on indicating an error in the Commissioner's assessment, should be able to lead evidence in support, with the final assessment determined ultimately on the balance of probabilities. Such a viewpoint does not interfere with the Commissioner's discretion in arriving at an amount upon which liability to tax is assessed, but does present the taxpayer, on objection, with an opportunity to present the true state of his affairs to the extent that he considers the Commissioner has not reached an appropriate assessment by means of the assets accretion method.

102. Supra n.37; 872. See also Lancaster's case, supra nn.91,94.

103. See n.54, supra.

PART FIVE - PEER GROUP COMPARISON AND GROSS PERCENTAGE PROFIT METHODS.

In making an assessment, the Commissioner may have regard to income that in ordinary circumstances would be expected to be declared by a particular taxpayer, or to expenses which such a taxpayer may ordinarily be expected to incur. In Case 9[104] the Taxation Board of Review put it this way:

> It is, I suggest, inevitable that an inspector, confronted as he was in this case by an absence of records of certain aspects of the appellant's business, should of necessity make his calculations and estimates upon such information as he was able to garner from the evidence available to him, be it ever so slight. It was also, I think, proper that he should supplement or check results so obtained by making a comparison, wherever this could validly be done, with the results obtained in businesses of a similar nature.[105]

Although in Case 9 the inspector had considered businesses of a similar nature (i.e. the inspector had considered the records of a peer group), such a comparison may be made in respect of a hypothetical taxpayer in similar circumstances and of similar disposition. For example, in Lancaster's case [106] regard was given to "a hypothetical taxi driver operating in Tauranga", and in Fenson's Case,[107] "the average living expenses of a person in the appellant's position".

In respect of taxpayers in business, a peer group

104. (1961) 1 NZTBR 45.
105. Ibid; 47.
106. Supra n.91; 596.
107. Supra n.74; 258.

comparison is, in practice, generally made on the basis of gross percentage profit i.e. the gross profit that may be expected to be returned by a similar taxpayer in a similar business. If the matter of expenses is also in issue, then regard may be had to expenditure normally expected in such a (peer) business. This is particularly the case in assessments of taxpayers such as taxi proprietors,[108] hotel owners[109] and milk vendors[110] where the Commissioner is able to conduct extensive investigations on the basis of the returns of similar taxpayers and on the basis of reports relating to the price structure operating within the particular business or to the known or accepted operating rates applicable within that type of business. In cases where the Commissioner cannot supplement or check the taxpayer's return or his assessment of the taxpayer's affairs by comparative means, then it would appear that he may calculate the gross percentage profit by checking the taxpayer's source of supply and stock purchased, and deducting known expenses in the taxpayer's trading of that stock within the income year.

I would expect it to be the way would use peer group then the actual position cannot be ascertained

The peer group comparison and gross percentage profit methods have been accepted by the Court, the Taxation Review Board and Taxation Review Authority in the light of Turner J.'s statement in Babington's case[111] to the effect that the Commissioner is not limited to any particular method of assessment,

108. E.g. Case 9 (1968) 4 NZTBR 95, 101 where the inspector explained that "a rate per mile is the most common measure of revenue in the transport industry" and that "taxi revenue is directly related to business mileage"; Case 28 (1967) 3 NZTBR 339; Case 40 (1974) 5 NZTBR 391. See also Lancaster's case, supra n.91.

109. E.g. Avey v Pascoe (1969) 1 ATR 314, SC(NZ); Case 12 (1965) 3 NZTBR 155; Case 29 (1967) 3 NZTBR 346; Case 31 (1969) 4 NZTBR 341.

110. E.G. Macken v Frethey [1961] NZLR 245; Case 9 supra, n.104.

111. Supra n.53.

although he must act in good faith.[112]

As a result, in cases involving these methods, the evidence of departmental investigations, specialist witnesses, and investigations by parties other than the department has been held admissable where records are scarce or non-existent. Although the onus is on the taxpayer to show the Commissioner's assessment is wrong, the Commissioner's evidence must, however, relate to the individual taxpayer. In Case 12[113] the Board stated:

> In dealing with the question in other cases and in other situations, this Board has always adopted the view that, having regard to the variety of factors which may affect a percentage rate of gross profit, extreme care must be exercised in scrutinising evidence adduced as to the rate likely to be earned in any particular instance.

and in Case 9:[114]

> We agree that statistical information must be evaluated with care. At the same time, we record our view that provided ... such information is collated with appropriate care and each facet thereof viewed ... as not being necessarily conclusive in itself but as providing a basis for conclusions ultimately reached in respect of the totality of the information available, that procedure must be regarded as unobjectionable.

Income estimated by the peer group comparison or the gross percentage profit method may have been used in the acquisition

112. E.g. Lancaster's case, supra, n.91; Case 9, supra, n.104; Case 9, supra, n.108; Case 12, supra, n.109; Case 40, supra, n.108

113. Supra, n.109; 161.

114. Supra, n.108; 104.

of assets. Further, the methods may be used to provide a check as to the acceptability of an assessment based on the assets accretion method. Also, a peer group comparison may indicate either an amount of deemed expenditure or assessable income within an assessment based on either the add-back or assets accretion methods. As a result the various methods are frequently used together, though subject to the qualification of the Board in Case 11[115] to the effect that the Commissioner may not also calculate income by another method when that process could give rise to the assessment of tax on income not only in the year in which it is derived, but also in another year in which an asset arising out of such income becomes apparent.

In light of the frequent comparability of taxpayers in both business and private spheres, and in light of the Commissioner not being limited to any particular method of assessment, the peer group comparison and gross percentage profit methods usually will be an effective tool in assessing a taxpayer's liability to tax. As in the case of the assets accretion method however, and accepting that the Commissioner should not bear the onus of proving matters which originate with the taxpayer and which are peculiarly within his knowledge and power, it seems reasonable that a taxpayer should have the opportunity of leading evidence, based upon another method of

115. See supra, nn.88,89.

assessment, in order to show the correct position of his affairs. such as? Curious idea, unless the other method relates to the truth.

In this respect, the citing of Turner J.'s dictum in Babington's case as authority for accepting the Commissioner's assessment save so far as that assessment is shown to be excessive, has been somewhat extended since 1957. This considerable handicap, explicitly laid upon the taxpayer by statute, limits the taxpayer on objection to challenging the results as assessed by the particular method the Commissioner has chosen. That handicap may be seen as providing the Commissioner's assessment with a rather excessive degree of protection. Further, it enables the Commissioner to assess tax at the higher figure of any alternative assessment. Although this is not necessarily the case his protected assessment may, however, misrepresent the affairs of a taxpayer as assessed by another method. It seems reasonable to test that alternative contention on the balance of probabilities.

PART SIX - BUSINESS CONTROLLED BY NON-RESIDENTS: SECTION 22 ASSESSMENTS

Under Section 22 of the Income Tax Act 1976 the Commissioner is authorised to arbitrarily make an assessment of income, or a determination of loss, where a business carried on in New Zealand is controlled by non-residents and appears to produce insufficient income or an excessive loss.

The Section is designed to combat transactions between affiliated companies operating in different countries but structured so that profits arise in countries with low tax rates, and the highest expenses of the companies concerned occur in high-tax jurisdictions[116] (the practice of "transfer pricing"). Since expenses incurred in the production of assessable income are deductible,[117] the higher the expenses, the lower the amount of assessable income. In cases of reinvoicing, for example, the price of trading stock invoiced through an affiliated company in a low-tax jurisdiction is increased when shipped to the company in the high-tax jurisdiction.[118] As a result expenses are higher in the high-tax jurisdiction and profits may be later distributed by the company in the low-tax jurisdiction (where the profit has been made) as a corporate dividend.

116. E.g. Commissioner of Inland Revenue v Europa Oil NZ Ltd '(No. 1)'[1976] NZLR 641, PC; Europa Oil NZ Ltd v Commissioner of Inland Revenue '(No. 2)' [1976] 1 NZLR 546, PC.

117. Section 104.

118. E.g. Federal Commissioner of Taxation v Isherwood & Dreyfus Pty Ltd (1979) 9 ATR 473.

The Commissioner will make an assessment under Section 22 then, when a New Zealand resident company makes excessive payments to a non-resident affiliate, or when a New Zealand resident company controlled by non-residents otherwise declares what he considers to be an insufficient income.

The Commissioner must first look to see whether a business is carried on in New Zealand.[119] If business is not carried on, then the Commissioner cannot make an assessment under Section 22. Secondly, he must establish that the business is controlled by non-residents.[120] The business must be controlled exclusively or principally by non-residents. If persons so controlling are residents, the Section does not apply. Alternatively the business may be carried on by a non-resident company or a company under the control of non-residents,[121] for example, a New Zealand branch of a non-resident company or a New Zealand company controlled by non-residents. The third alternative is that the business may be carried on by persons having control of a non-resident company,[122] for example, a New Zealand business carried on by persons having control of a foreign company.

These prerequisites must be satisfied. Also, the Commissioner must be of the opinion that the business produces an insufficient assessable income or an excessive loss.[123] In

119. See s 22(3).
120. See s 22(3)(a).
121. See s 22(3)(b).
122. See s 22(3)(c).
123. Section 22(2).

making an assessment of income the Commissioner bases his opinion on returns made to him and a consideration of what the Commissioner expects might be expected to arise from that business. He may then assess income on the basis of total receipts of the business (whether cash or credit) or as such proportion as he determines of the total purchase money payable in the conduct of the business (whether in cash or by the granting of credit).[124] There is however, a safeguard against the possibility of double taxation. Amounts that are included in a return of any other person who is assessable for and liable to pay income tax on that amount are excluded from assessment under Section 22.[125] In respect of a loss, the Commissioner may determine the amount in such manner as he considers fair and reasonable.[126]

In an assessment under Section 22, the emphasis lies heavily upon the evaluative process, namely, whether the business may be assessed under the provisions therein. The Commissioner would therefore have regard to matters such as whether the business, i.e. "any profession, trade, manufacture or undertaking", is "carried on" in New Zealand;[127] whether it is carried on for "pecuniary profit";[128] whether the business is carried on by "non-residents";[129] and whether the business is

124. Idem.
125. Section 22(3), proviso.
126. Section 22(4).
127. Section 22(1).
128. Idem.
129. Sections 22(2)(b) and 241.

"controlled" by non-residents.[130]

Quantifying the amount of assessable income or loss involves a further evaluative process, namely whether the charging provisions of the Act or provisions allowing deductions and exemptions apply. In light of /the mechanics involved in the transfer pricing process, the Commissioner would usually be concerned with the applicability of Section 104 (and in the absence of applicability, the provisions of Section 99). In this respect the Commissioner will have regard to considerations such as whether payments for re-invoiced goods in fact have been made for trading stock or whether they have been made for the ultimate purpose of deriving tax-free dividends from a subsidiary in a low-tax jurisdiction and whether the inter-company arrangements or the affairs of the New Zealand business are part of an arrangement to avoid the liability to tax under the Income Tax Act 1976.[131,132].

130. Sections 22(2)(a) and 7. See also and compare Federal Commissioner of Taxation v Commonwealth Aluminium Corporation Ltd (1980) 11 ATR 42 as to a consideration of the Australian equivalent of s 22 (3)(a).

131. See Cecil Bros. Pty Ltd v Federal Commissioner of Taxation (1964) 111 CLR 430 - the Commissioner cannot attack the wisdom or amount of a payment in fact made for Trading Stock; Europa (No. 1), supra n. 116 - deduction disallowed; Europa (No. 2), supra n. 116 - interposed company not for purpose of tax avoidance, deduction allowed therefore no tax avoidance; Isherwood & Dreyfus' case, supra n. 118 - dual purpose, deduction allowed; Halliwell v Commissioner of Inland Revenue [1978] 1 NZLR 363 - trust arrangements not new source of income, arrangements void.

132. Since this paper is concerned with the framework and the bases of the assessment, reference only has been made to matters of concern to the Commissioner in light of the actual provisions of s 22. For more detailed and technical analyses of s 22, and the cases referred to in nn. 116, 118, 130 and 131, see "Business Controlled by Non-residents" New Zealand Tax Planning Report No. 1-81 p. 6; "Taxation and Financial Planning for Companies" NZ Society of Accountants 1980

Section 22 may therefore be seen as the equivalent to Section 19, in respect of the specific circumstances of businesses controlled by non-residents. In the absence of returns, a default assessment, in terms of Section 22, may be made under Section 21. Previous assessments of such businesses may be amended under Section 23, but when the circumstances specified in Section 22 apply, the Commissioner must consider the amount of assessable income or loss upon the bases set out in subsections (2) and (4) of Section 22. In such circumstances an "arbitrary assessment" is called for, and the basis for such an assessment is provided for within Section 22. Time limits for amended assessments, as in Section 25, also apply.

In determining the quantum of assessable income, the Commissioner's opinion relates to what might be expected to arise from that business. In arriving at his opinion it would appear that a comparative analysis may be made of the income or expenditure of similar businesses, or of businesses involved in similar undertakings. In making the actual assessment, however, there arises some complication in applying a peer analysis and indeed in directly adding-back the full amount which the Commissioner considers assessable.

Pursuant to Section 22(2) the Commissioner must make his

Residential Taxation Seminar, T.W. Magney (Sydney); "Recognising and Tackling Problems of Tax Planning in International Trade, Investment, and Employment: an Introductory Survey", NZ Law Society Conference April 1981, Dr. J. Prebble.

assessment either on the basis of total receipts or such proportion as he determines of the total purchase money paid or payable. "Total receipts", however, must be taken to mean actual receipts. Where transactions have been entered into at less than arm's length however, the Commissioner cannot? assess more than the actual receipts. Further, he has the discretion only to determine the percentage of the total purchase money paid or payable. The provisions of Section 22(2) do not give the how is this supported? Commissioner power to calculate either the correct price or the (deemed) receipts of the business for assessment purposes. It is clear that this is what the Legislature intended, but that discretion nevertheless, is not explicitly imposed upon the Commissioner.

Gilbert + Sullivan style

In making an assessment of loss, the Commissioner, in turning his mind to an amount fair and reasonable, may clearly have recourse to the methods of assessment as outlined in Parts Three, Four and Five of this paper. In most cases, however, since losses will be considered in light of expenses incurred, and to the extent to which they are permitted as reductions, assessment under Section 22(4) will usually involve the mere (procedural) adding back of amounts disallowed.

this section seems to add almost nothing to a reading of s 22

PART SEVEN - EVIDENCE

It is clear that, except in proceedings on objection to an assessment, every such assessment and all the particulars thereof are conclusively deemed and taken to be correct, and that the liability to tax of the person so assessed is determined accordingly.[133] Further, that in such objection proceedings, the onus is on the taxpayer to show that the Commissioner is wrong and to what extent.[134] As Wilson J. noted in Glaussius' case however, the Commissioner may not disregard proof of the existence of an asset owned by the taxpayer during the period covered by the statement upon which the Commissioner bases his assessment, if the asset had not been brought into account in the statement and therefore tends to show that the statement and the (amended) assessments are erroneous to an ascertainable extent.[135]

The onus on the taxpayer is on the balance of probabilities, not possibilities.[136] In this respect however, the demeanour and evidence of the taxpayer, and the availability of corroborative evidence, may be decisive. The taxpayer's returns and the Commissioner's assessment must be considered in the light

133. Section 27.

134. Babington's case, supra n.37; Lancaster's case, supra n.91; Legarth's case, supra n.81; Mccoard's case, supra n.64; Glaussius' case, supra n.66; TRA Case 35 (1976) 1TRNZ 537, 545; TRA Case 12 (1980) 4 TRNZ 101,119; TRA Case 17, supra n.61 at 179. Inland Revenue Department Act 1974, s 36; Income Tax Act 1976, ss 21, 23.

135. Supra nn. 63, 80.

136. See TRA Case 12, Idem n. 134, referring to Yew and Ors v Commissioner of Inland Revenue (1980) 4 TRNZ 59, 63. See Babington's case, supra n. 37; McCoard's case, supra n. 64; Legarth's case, supra n.81; Duggan's case, supra n. 81, at 684-5; Lancaster's case, supra n.91, at 591.

of the totality of evidence.[137] As indicated in discussion relating to peer group and profit analyses in Part Five of this paper, care must be taken in accepting statistical evidence. Where it is properly obtained and relevant to the assessment, however, it will most likely be accepted.[137A] The Commissioner however, is not estopped by statements made by himself or by his officers from making legally correct assessments. Indeed, it is his duty to do so. This is so whether the statements were or not correct at the time they were made and even though they were made in good faith.[138]

It is also clear that in cases of prosecution under the Income Tax Act the onus is on the informant.[139] An assessment based on the assets accretion method may be admitted as evidence in respect of charges of the wilful making of false returns of income, but it is not conclusive against the taxpayer.[140] However, on prosecution the assessment must be subject to examination, and

137. E.g. Maxwell's case supra n. 12; Legarth's case, supra n. 81; Case 18, supra n. 63; TRA Case 17 supra n.56. Vertelman v Inland Revenue Commissioner (NZ) (1970) 1 ATR 447, 449.

137A. See supra, p. 43.

138. TRA Case 24 (1978) 2 TRNZ 501, 510; Ronell v Federal Commissioner of Taxation (1978) 8 ATR 411, 412.

139. See Bryan v Inland Revenue Department (1980) 4 TRNZ 183, 184-5; Hall's case, supra n. 70.

140. Maxwell's case, supra n. 12; Gideon Trading Co Ltd v Commissioner of Inland Revenue [1961] NZLR 440; Hall's case, supra n. 70.

any hearsay evidence, particularly where a peer group comparison or gross percentage profit method has been used, may not be admitted where corroborative evidence is not available.[141] The fact that the various methods may not show the exact extent of understatement of income is not fatal in criminal proceedings. As Moller J. noted at 185 in Bryan's case in respect of the use of the assets accretion method to prove, beyond reasonable doubt, that returns were both false and wilfully false:

> In Hall's case Wilson J. said:
>
> "The theoretical basis, for employing this method is that, by means of it, the taxpayer's expenditure in a given year is ascertained with substantial accuracy and, when allowance is made for the taxpayer's receipts from non-assessable sources (such as loans and gifts), the balance must, perforce, represent assessable income. Provided the facts are accurately found, this theory is logically sound."
>
> And in Vuleta's case Henry J. said at 329:
>
> "The question always is what inferences can safely be drawn from the proved facts. If the evidence satisfactorily eliminates all possible sources from which the taxpayer might increase his assets other than his business activities, and, if any explanation otherwise by him is properly rejected, then a tribunal of fact may well reach a conclusion beyond reasonable doubt that the source of the increase was undisclosed transactions in the nature of his known business."
>
> Finally it is suggested in Molloy on Income Tax at 513, that it may well be proper to resort to the "assets accretion" method where "the records have been lost, or are unsatisfactory."
> (Emphasis added.)

and further, at 188 (in respect of the inspector's evidence relating to his comparison of a number of other similar taxpayers

141. Maxwell's case, supra n. 12 at 131; Buckley v Commissioner of Inland Revenue [1962] NZLR R29,34,CA; Avey v Pascoe, supra n. 109 at 315. Bryan's case, supra n. 139 at 188.

within the same area and relating to New Zealand statistics available from the Department of Statistics), Moller J. was prepared to have held that the figures were hearsay since it was not possible to cross-examine and test their validity, nor was it evidence of an expert witness:[142]

> It is true that evidence as to "gross profit percentages" was accepted in Avey v Pascoe (1969) 1 ATR 314. But, in that case, a particular witness with personal knowledge of the situation was called to give evidence on the subject of the percentages obtained by other businesses of the same kind in the area, and the evidence of the departmental officer was in respect of his own personal investigations into the taxation affairs of such similar businesses.[143]

In criminal proceedings, each offence must be established in relation to each income year to which the prosecution relates.[144] In all cases the Commissioner is under a statutory duty to make an assessment in respect of every taxpayer for every year, and may otherwise amend an assessment to ensure the correctness thereof.[145] In doing so, however, he must have regard to the facts of each case and realistically assess the income for each year. Since this may involve a spreading of income over a number of years, the allocation of income to particular years must reflect a credible assessment of the taxpayer had he kept sufficient records.[146]

142. In the circumstances the evidence was not essential to the decision.

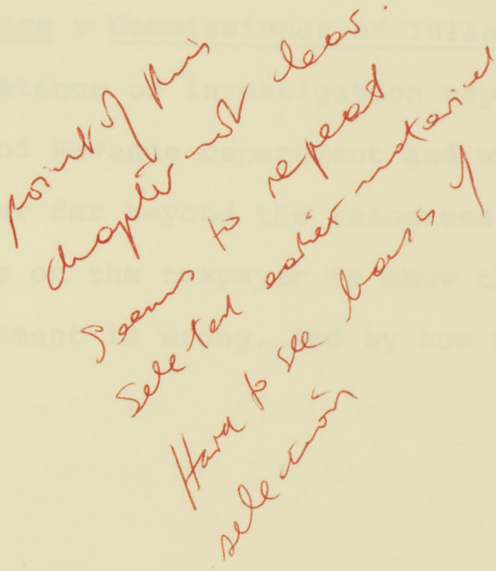
143. See also Buckley's case, supra. n. 141; 29 - persons giving evidence had no personal involvement in the accounting system of the taxpayer.

144. Hall's case, supra. n.26; 187

145. Section 19 and default assessment under s.21.

146. See part Four of this page, P. 32 & ff.

In light of the statutory provisions relating to assessments and determinations and in light of the authority of Babington v Commissioner of Inland Revenue, it can only be emphasised that ordinarily the taxpayer cannot challenge the validity of the method which the Commissioner, in good faith, has chosen to use, and that the taxpayer has the considerable burden of showing that the Commissioner's assessment is wrong, and to what extent. Further, in criminal proceedings, although the taxpayer may challenge the assessment, the results of the method by which that assessment was made may be used in evidence against him. In matters of evidence then, considerable attention is focused on the Commissioner's initial assessment. As argued throughout this paper, it would seem desirable that the taxpayer have the opportunity, as early in the course of events as possible, to test the validity of the Commissioner's assessment, on the balance of probabilities, by producing evidence of his affairs assessed by a method other than that the Commissioner has adhered to.



PART EIGHT - CONCLUSIONS

The statutory provisions relating to assessments and determinations provide the Commissioner with the framework within which he may require any such information that is necessary and which is obtainable, for the assessment of a taxpayer's liability to tax. Furthermore, in also providing for the act of assessment, the Legislative framework provides the Commissioner with the discretion as to how he makes an assessment in relation to each taxpayer.

Where the Commissioner rejects the taxpayer's returns and makes an assessment using the methods of quantification as outlined in this paper, his assessment, as in all other cases, is deemed correct, except on objection. In light of the Commissioner's discretion as to method, the support given to that discretion in (and by the subsequent acceptance of the authority of) Babington v Commissioner of Inland Revenue,[146] and in light of the acceptance of investigation reports not necessarily prepared by the Inland Revenue Department and which may relate to a class of taxpayer far beyond the resources of the taxpayer to consider, the onus on the taxpayer to show that the Commissioner's assessment is wrong, and by how much, may indeed prove considerable.

146. supra. n. 37

A solution may be seen in the decision of Gauci & Masi v Federal Commissioner of Taxation[147] where Barwick C.J. considered s 190 of the Australian Income Tax Assessment Act 1936 which is almost identical to section 36 of the Inland Revenue Department Act 1974. In considering whether land had been acquired for the purpose of profit - making by sale, Barwick C.J. held that if there is no material upon which it may properly be concluded that the property was acquired with the relevant purpose, the assessment is thereby shown to be excessive. The Commissioner could not deem such a purpose in the absence of appropriate evidence, despite the onus on the taxpayer to show that the amount was excessive.[148]

In the same case, Mason J., in his dissenting judgment adhered to the explicit onus on the taxpayer as follows:[149]

> The Act does not place any onus on the Commissioner to show that the assessments were correctly made. Nor is there any statutory requirement that the assessments should be sustained or supported by evidence. The implication of such a requirement would be inconsistent with s 190(b) for it is a consequence of that provision that unless the appellant shows by evidence that the assessment is incorrect, it will prevail.

The approach of Barwick C.J. was rejected in the later Australian decision of McCormack v Federal Commissioner of Taxation[150] where the majority followed Mason J. in Gauci. It has also been rejected by the New Zealand Court of Appeal in

147. (1975) 2 ATR 672, HC
148. Ibid, 675.
149. Ibid, 676
150. (1979) 9 ATR 610

Williams Property Developments Ltd v Commissioner of Inland Revenue[151] where the taxpayer specially raised the Gauci decision and Barwick C.J.'s approach.[152]

As P.L. Reddy in an article in (1981) 11 VUWLR 125, 150 submits,[153] it may be a fairer approach, particularly in discretion cases, as follows:

> The objector must have evidence supporting his assertion that, in his case, the Commissioner should have exercised his discretion differently. If this evidence prima facie supports a different result, the Commissioner should then be required to justify his own conclusion. If the discretion in question gives the Commissioner the power to determine the amount of tax to be paid, then the taxpayer should not be required to show by how much the Commissioner's assessment is wrong. Once prima facie evidence of an error is shown, it should be for the Commissioner to show that his assessment was correct.

[Footnote
This approach gains some support from Walker v Commissioner of Inland Revenue [1963] NZLR 339, which suggests that the Commissioner must be able to bring evidence to show that his assessment is reasonable, and not arbitrary. See also the Court of Appeal decision in Lowe v Commissioner of Inland Revenue (1981) 5 NZTC 61006; 4 TRNZ 233, where Cooke and Richardson JJ intimated that in some cases the Commissioner's assessment might fail because he had not passed the "threshold" of providing a proper and intelligible assessment. This may provide something of a halfway house between the very restrictive traditional approach more appropriate in the assets discretion cases, and that ill-fated Barwick approach].

151. (1980) 3 NZTR 513.

152. See Ibid 518 (Richardson P. and Woodhouse J.).

153. "objecting to discretionary determinations by the Commissioner of Inland Revenue"

The approach suggested by Ms Reddy accords with the submissions in the text of this paper. On such a viewpoint, the Commissioner's assessment still would be deemed correct, except in proceedings on objection where evidence produced by the taxpayer supporting a different result, achieved by a different method of calculation, could be considered on the balance of probabilities. This does not mean that the onus to show that the Commissioner is wrong should shift from the taxpayer. It does mean however, that (a) the taxpayer should not be required to show by how much the Commissioner's assessment is wrong, and (b) that the Commissioner should justify his conclusion in the face of that evidence.

Such a less restrictive approach to the onus of proof and to evidence which may be adduced by a taxpayer in support of his objection to an assessment may not only provide the opportunity for the taxpayer to produce such evidence, but may also provide the Taxation Review Authority and the Courts with a more detailed picture of the taxpayer's income and expenditure. Furthermore, such an approach may allow for more effective dialogue between the Commissioner and the taxpayer during the actual process of assessment. It is acknowledged that the Commissioner extensively enters into discussions during the course of his investigations, but in the present circumstances the onus lies on the taxpayer to prove the Commissioner wrong, and by how much, should there be no agreement as to method or quantum of assessment.

Such a viewpoint, as has been argued in this paper, indicates the necessity for judicial re-consideration of Babington's case and the subsequent cases in which Babington has received support. This may be achieved in light of the wording of the present provisions of the Income Tax Act 1976 and the Inland Revenue Department Act 1974, but in light of the support given to Turner J.'s dictum in Babington and in light of the reluctance of the Courts to adopt a less restrictive approach to the onus of proof, Legislative amendment clearly embodying the above submissions would seem to be the only solution.

APPENDIX A

Comparative Sections

(Note: Section headings summarised)

INCOME TAX ACT 1976	LAND AND INCOME TAX ACT 1954	LAND TAX ACT 1976
s. 9 Annual Returns	s. 7	s. 30
10 Partners, Co-trustees, Joint adventurers	10	(See Part II)
11 Executors, Administrators	11	31
12 Special returns & Special assessments	12	(See s.33)
13 Other annual returns	13	32
14 Other returns	15	33
15 Returns to annual balance date	8	(see s.34)
16 Changes in balance date	9	(see s.34)
17 Dates for furnishing annual returns	14	34
18 Presumption as to authority	16	35
19 Assessments and Determinations	17	36
20 Basic rates of tax	18	37
21 Default assessment	19	38
22 Companies Controlled by Non-Residents	(See s.36 Inland Revenue Dept. Act 1974, formerly s.20, Land and Income Tax Act 1954)	(See s.30)
23 Amended assessments	22	39
24 Reassessment balance dates	23	(See S.34)
25 Time Limitation for amended assessments	24	40
26 Validity on Failure to comply with Act	25	41
27 Assessments deemed correct	26	42
28 Evidence	27	43
29 Notice of assessments & determinations	28	44

APPENDIX B

Inland Revenue Department Act 1974

Section 2

FIRST SCHEDULE

INLAND REVENUE ACTS

The Inland Revenue Department Act 1974

The Finance Act 1930 : Part V

The Finance Act 1954 : Part IV

The Land and Income Tax Act 1954

The Estate and Gift Duties Act 1968

The Stamp and Cheque Duties Act 1971

The Gaming Duties Act 1975

The Property Speculation Tax Act 1973

The Payroll Tax Repeal Act 1973

The Income Tax Act 1976

The Land Tax Act 1976