

Taxation Issues for Company/Commercial Lawyers

Part I – Sale and Purchase of a Business	1
General principles	1
Sale of assets	1
Trading stock – What is the value?	1
Depreciable property – depreciation claw-back	2
Shares	3
Goodwill	4
Stamp duty abolished	4
Losses and imputation credits	4
Sale of shares	5
Vendor's perspective	5
Purchaser's perspective	5
Sale of land holding companies	5
Question of indemnities	6
Assumption of liabilities – deductibility on eventual payment	6
<i>New Zealand Forest Research Institute ("NZFRI") case</i>	6
Acquisition of receivables	8
<i>Wrightson case</i>	8
Implication of the accruals regime	9
Restraint of trade payments	10
GST – going concern	10
Sale of shares	10
Sale of business assets	11
Practical steps to take if there is some concern that the transaction is not zero-rated	12
Part II – Corporate Restructuring	15
Companies in crisis	15
Debt capitalisation	16
Consequences if liquidation is the ultimate result	17
Is amalgamation effective solution in such circumstances?	17
Share repurchases	18
Tax implications	18
Available subscribed capital	18
Off-market repurchase	19
On-market repurchase	20
Borrowing costs associated with share repurchases	20

Part III – The Accrual Rules: Recent Developments	23
Introduction	23
Key features of the regime	23
The scope of the regime	23
Key mechanisms – the spreading methods and the base price adjustment	25
The cash basis holder exception	27
Recent legislative changes	28
Finance leases	29
Forgiveness of debt	31
Debt parking arrangements	32
Whether the accrual rules and the spreading provisions apply (flow chart)	34
Which spreading method to use (flow chart)	35
Part IV – Capital vs Revenue	37
Introduction	37
Capital/income distinction	37
Income on sale of property acquired for the purpose of resale	37
Business profits	40
Lease inducements	41
Repairs and maintenance	43
Part V – Timing of Derivation of Income / Deduction of Expenditure	47
Introduction	47
Trading stock rules	47
Excepted financial arrangement shares	47
Land transactions	48
Profits or gains from certain land transactions	48
Revenue account property	48
Deductibility of acquisition costs	48
Deductibility of other costs	49
Derivation of income	49
Derivation of income in respect of invoices not yet issued	49
Proceeds from loss of profits insurance	50
Part VI – Drafting Documents	51
Background	51
Form over substance	51
Genuineness of a transaction or sham	52
Labels irrelevant	53
Appendix – Case Studies	55
1. Accrued employee liabilities	55
2. Apportionment of consideration	57
3. GST: going concern test	59
<i>Sale of tenanted premises</i>	59

<i>Sale of business assets or going concern</i>	60
4. Family trusts	63
5. Documenting transactions	67
<i>Employment termination</i>	67
<i>Inducement / restraint arrangements</i>	68