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RECENT CHANGES IN THE TAXATION OF FOREIGN INVESTMENT FUNDS ("FIFs")

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PDF ATTACHMENTS:

1. Applying the AFI Method to Indirect Interests in Foreign Companies
2. Attributable FIF Income (AFI) Method and Active Income Exemption

3. Calculation of Attributable CFC Amount for FIFs for which the AFI Method is used
4. Choice Between Available FIF Calculation Methods
5. Choice Between FIF Methods From 1 July 2011 Onwards
6. Choice Between FIF Methods Before 1 July 2011
7. Comparison of Methods Available Pre- and Post-1 July 2011
8. Elective Attributing FIFs
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13. Non-attributing Active FIFs
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1. INTRODUCTION

1. The current Foreign Investment Fund ("FIF") rules are the result of a series of legislative amendments in recent years. The rules were significantly changed effective for income years beginning on or after 1 April 2007. The changes that apply from April 2007 were contained in sections 61 to 81 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 and are explained in pages 28 to 45 of IRD *Tax Information Bulletin* Vol. 19, No 3 (April 2007).

2. Since then, there have been some further fundamental changes to the FIF rules since the introduction of the new CFC rules in 2009. The changes affect income years beginning on or after 1 July 2011.

3. The relevant sections of the *Income Tax Act 2007* are as follows:
   (a) The rules are mainly contained in Subpart EX.
   (b) Sections CQ 4, CQ 5 and CQ 6 are the taxing provisions, which set out when attributed FIF income arises.
   (c) Sections DN 5 to DN 8 set out the rules for deducting FIF losses.
   (d) The rules for carrying forward and using attributed FIF losses are contained in Subpart IQ. These rules apply only if the Attributed FIF Income (AFI) method is used to calculate FIF income or losses.
   (e) The rules for claiming a foreign tax credit on an attributing interest from a FIF are in sections LJ 2(6) and LJ 2(7).

(f) The rules for carrying forward branch equivalent ("BE") tax credits arising under the pre-1 July 2011 rules are covered in Subpart LK.

(g) The dividend exclusions are contained in section CD 36.

4. The main focus in this section is on the recent changes to the FIF rules from 2011 onwards. However, the general scheme of the rules is also considered due to the piecemeal nature in which the rules have evolved.

2. INCOME TAX LAW CHANGES FROM 2011 ONWARDS

5. The *Taxation (Tax Administration and Remedial Matters) Act 2011* (the "Tax Administration Act 2011") was enacted with a date of assent of 29 August 2011 and contained a few amendments, notably the removal of "fixed rate foreign equity" from the definition of a non-ordinary share and substituting it with a "fixed-rate share". This affected the FIF calculation method that could be used for fixed-rate foreign equity. The difference between "fixed rate foreign equity" and a "fixed rate share" has been set out in the attached PDF *Fixed Rate Share vs Fixed Rate Foreign Equity Comparison*.

6. The *Taxation (International Investment and Remedial Matters) Act 2012* (the "International Investment Tax Act") was enacted with a date of assent of 7 May 2012 and contained major amendments including:

   (a) The introduction of the Attributed FIF Income (AFI) method to allow FIF owners to access the CFC active income exemption;

   (b) The removal of the grey list exemption for non-portfolio FIFs and the introduction of the Australian non-portfolio exemption;

   (c) Making the Fair Dividend Rate (FDR) method the default method;

   (d) Limiting the ability to use the Comparative Value (CV) and Deemed Rate of Return (DRR) methods;

   (e) The repeal of the Accounting Profits (AP) and Branch Equivalent (BE) methods;

   (f) Dealing with indirect FIF interests;

   (g) Extending the new residents' accrued superannuation exemption to include all rights accruing on interests acquired before NZ tax residence (but note the changes to foreign superannuation discussed in the PDF attachment *Foreign Superannuation Withdrawals Taxation*);

   (h) A new exemption for FIFs held by insurance CFCs if the Commissioner has issued a Determination exempting the FIF;

   (i) Other changes consistent with the changes to the foreign dividend exemption in s. CW 9; and

   (j) The removal of the CFC exemption (for FIFs that are CFCs) for Portfolio Investment Entities, which must therefore treat FIFs that are CFCs as FIFs (and not as CFCs).

7. The *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012* (the "Annual Rates Tax Act"), with a date of assent of 2 November 2012, contained a further number of very significant amendments including:

(a) A revised formula for calculating Net Attributable CFC Income Or Loss, which is relevant for the AFI method;

(b) The ability to elect to be an attributing active FIF (when using the AFI method); and

(c) Other changes to the AFI method and the treatment of intra-group transactions and the definition of a "taxed FIF connection".

8. The *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill* (the "Livestock Tax Bill") was introduced on 13 September 2012 and reported from the Finance and Expenditure Committee on 6 June 2013, and contains some remedial amendments to intra-group exemptions under the taxed FIF connection concept, and corrects the consequences of changing methods to ensure they work as intended.

9. The *Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill* (the "Superannuation Tax Bill") was introduced on 20 May 2013 and contains the proposed removal of foreign superannuation from being a category 2 FIF from 1 April 2014, due to the introduction of the *foreign superannuation withdrawal tax*, and the "grandfathering" of *FIF superannuation interests*.

3. MEANING OF FIF

10. The meaning of FIF is covered in section EX 28. A FIF is any of the following:

(a) A foreign company.

(b) A foreign superannuation scheme.

(c) An insurer under a life insurance policy (but not if the policy was offered or entered into in NZ).

11. A person has an attributing interest in a FIF if the person holds rights in one of the 3 categories described below, and none of the exemptions described in **Section 4** apply:

(a) Category 1 is a direct income interest, as defined in section EX 30 and paragraph 12 below, in a foreign company.

(b) Category 2 is rights to benefit from a foreign superannuation scheme, as a beneficiary or a member. Note however, that clause 40 of the Superannuation Tax Bill proposes changing this FIF category to "a FIF superannuation interest held as a beneficiary or a member" effective from 1 April 2014. Clause 43 proposes inserting a new section EX 42B, which will remove from the FIF regime all rights to benefit from a foreign superannuation scheme that are not "FIF superannuation interests" as defined, effective from 1 April 2014.

(c) Category 3 is rights to benefit from a life insurance policy in relation to which a FIF is the insurer.

12. A person has a direct income interest in a foreign company, at any time, equal to the highest percentage the person holds of any of the following:

(a) Any of the shares in the foreign company;

(b) Any of the shareholder decision-making rights for the company;

(c) A right to receive, or to apply, any of the income of the company for the accounting period in which the time falls;

(d) A right to receive, or to apply, any of the value of the net assets of the company, if they are distributed.

13. The following explanation has been taken from Inland Revenue's website.

14. A FIF is an offshore investment held by a New Zealand-resident taxpayer who holds:

    (a) Less than 10% of the shares in a foreign company

    (b) Less than 10% of the units in a foreign unit trust

    (c) Between 10% and 40% of the shares in a foreign company which is not a CFC

    (d) An interest in a life insurance policy where a FIF is the insurer and the policy is not offered or entered into in New Zealand

    (e) An interest in a foreign superannuation scheme.

    (f) It does not include interest earned from term deposits, bonds, debentures or money lent.

15. Under the rules introduced in 2007, you have FIF income when you have an investment that is an attributing interest in a FIF. This occurs when income from your investment is attributed to you, even though you may not have received any income at that point in time. An attributing interest includes:

    (a) A direct income interest in a foreign company or unit trust, for example:

        (i) Shares in a foreign company, except shares in certain Australian companies, or

        (ii) Units in a foreign unit trust, except units in certain Australian unit trusts, or

    (b) A right to benefit from a foreign superannuation scheme, either as a beneficiary or a member, or

    (c) A right to benefit from a life insurance policy where a certain foreign investment fund is the insurer and the policy was not offered or entered into in New Zealand.

4. FIF EXEMPTIONS

16. The following exemptions are covered in detail on the pages referred to in the PDF attachment *FIF Exemptions*:

    (a) Exemption for a natural person holding FIF interests of not more than $50,000 (page 1);

    (b) Limited exemption for particular trustees holding FIF interests of not more than $50,000 (page 2);

    (c) Transitional resident exemption throughout the year (page 3);

    (d) Transitional resident exemption for part of the year (page 4);

    (e) Exemption from look-through calculation methods if the accounting period does not end in the year (page 5);

    (f) Exemption for shares held in ASX-listed Australian companies (pages 5 to 8); refer also to the 2013 IRD *Australian Share Exemption List*;

(g) Exemption for units held in Australian unit trusts with adequate turnover or distributions (pages 9 to 10);

(h) Exemption for Australian regulated superannuation savings (page 10); but note the changes from 1 April 2014 and the new rules on trans-Tasman superannuation portability in place since 1 July 2013 (page 11);

(i) Exemption for FIF interests that are CFCs (page 12);

(j) Exemption for non-portfolio interests of 10% or more in a grey list company for income years beginning on or before 30 June 2011 (page 12);

(k) Exemption for non-portfolio interest of 10% or more in a FIF resident in Australia – the 10% minimum interest applies to both direct and indirect FIF interests (page 13);

(l) Exemption for 10 years for shares in a venture capital company emigrating to a grey list country (page 14);

(m) Exemption for 10 years for shares in a grey list company owning a NZ venture capital company (page 15);

(n) Exemption for a shares acquired in a grey list company under a venture investment agreement (page 15);

(o) Exemption for shares acquired under an employee share purchase scheme of a grey list company (page 16);

(p) Exemption up to the 2011-12 income year for shares in a grey list company with numerous NZ shareholders – the GPG shares exemption (page 17);

(q) Exemption for rights subject to exchange controls (page 18);

(r) Exemption for a transitional resident or a non-resident for rights in a category 2 or a category 3 FIF (page 18);

(s) Exemption for a new resident's accrued superannuation entitlement – up to 31 March 2014 (page 19);

(t) Exemption for an interest in a foreign superannuation scheme other than a FIF superannuation interest – from 1 April 2014 (pages 20 to 21);

(u) Exemption for pension or annuity rights acquired as a non-resident (page 22); and

(v) Exemption for a FIF with active income when the AFI method is used – for income years beginning on or after 1 July 2011 (page 22).

5. THE CHOICE BETWEEN FIF CALCULATION METHODS

17. If a person has an attributing interest in a FIF, and none of the exemptions apply, then the person will need to calculate FIF income (or loss if the method used allows a loss to be calculated) for the income year. For income years commencing from 1 July 2011 onwards, there are 5 available FIF calculation methods:

(a) The Attributable FIF Income (AFI) method; or

(b) The Comparative Value (CV) method; or

(c) The Deemed Rate of Return (DRR) method; or

(d) The Fair Dividend Rate (FDR) method); or

(e) The Cost method.

18. For income years commencing on or before 30 June 2011, the AFI method was unavailable: instead the Branch Equivalent (BE) method could be used if the requirements for using it were met. In addition, the Accounting Profits (AP) method could be used if the requirements for using this method were met.

19. It is useful to broadly compare the methods available pre- and post-1 July 2011: the PDF attachment *Comparison of Methods Available Pre- and Post-1 July 2011* sets out the comparison in tabular form.

20. Before looking at the mechanics of the calculation methods, it is useful to first consider the choice between methods, as the use of a particular method may be qualified or completely restricted. That way, only the methods available as choices for a particular FIF interest need to be considered in detail:

    (a) A tabular summary of the choices available for individuals, trusts, and companies, depending on the type of FIF, for income years beginning on or after 1 July 2011 is set out in the PDF attachment *Choice Between FIF Methods From 1 July 2011 Onwards*; and

    (b) A tabular summary of the choices available for individuals, trusts, and companies, depending on the type of FIF, for income years beginning on or before 30 June 2011 is set out in the PDF attachment *Choice Between FIF Methods Before 1 July 2011*.

21. A more detailed explanation of the choice between methods is contained in the PDF attachment *Choice Between Available FIF Calculation Methods*, including:

    (a) How a calculation method is chosen - essentially by completing a tax return accordingly (page 1);

    (b) Calculation method restriction for 2 or more attributing interest in the same FIF (page 2);

    (c) Limitations on the use of the AFI method (page 3);

    (d) Limitations on the use of the DRR method (page 4);

    (e) Limitations on the use of the CV method for a FIF that is a share in a foreign company (page 4);

    (f) Limitations on the use of the FDR method for a FIF that is a share in a foreign company (page 5);

    (g) Limitations on the use of the Cost method for a FIF that is a share in a foreign company (page 5);

    (h) Detailed explanation of what is a non-ordinary share (page 6) – see also the PDF attachment on *Fixed Rate Share vs Fixed Rate Foreign Equity Comparison*;

    (i) Limitations on the use of the AP method (page 7);

    (j) Limitations on the use of the BE method (page 8);

    (k) The default calculation methods: FDR, then Cost – and when they apply (page 9);

(l) The general rule on changing methods – essentially no change unless allowed (page 9);

(m) The basis on which a person may change from a particular method to another method (page 10);

(n) Changing methods by giving notice to the Commissioner (page 11);

(o) Changing more than once from FDR to CV and from CV to FDR (page 12);

(p) Changing to FDR when the rules changed (page 12);

(q) Consequences of changing from a cost-based method to a look-through method and vice versa – essentially a deemed disposal and reacquisition at market value (page 13);

(r) Consequences of changing from the CV or FDR methods to the Cost or DRR methods – essentially a disposal and reacquisition at market value (page 13);

(s) Consequences of changing from the Cost or DRR methods to the CV or FDR – essentially a disposal and reacquisition at market value (page 14);

(t) Consequences of changes between CV and FDR – essentially a disposal and reacquisition at market value (page 14).

6. FIF CALCULATION METHODS (OTHER THAN THE AFI METHOD)

22. Now that we have a better idea of which methods can be used in what circumstances, let us have a look at the calculation methods themselves. Let's first leave the AFI method for the next section, and consider the other methods. The full details relating to the methods other than the AFI method are contained in the PDF attachment *FIF Calculation Methods Excluding AFI Method*.

23. The Comparative Value (CV) method is relatively straightforward, and is covered on page 1 of the PDF attachment. No losses are allowed, unless the method is being used for non-ordinary shares.

24. The Fair Dividend Rate (FDR) method is divided into two parts:

    (a) The "usual method" is covered on pages 2 to 5 of the PDF attachment; and

    (b) The "method for unit valuing funds" is covered on pages 6 to 9 – this method can be chosen if the units or shares held are revalued on a daily basis.

25. The Deemed Rate of Return (DRR) method is covered on pages to 16, which cover:

    (a) The DRR formula if the interest is unchanged throughout the year (pages 11 to 12);

    (b) The DRR formula if the interest changes during the year (pages 13 to 14);

    (c) The DRR top-up of FIF income required under section EX 60, when income gains exceed the FIF income returned (page15); and

    (d) The DRR top-up of FIF income required under section EX 61, for interests held since 2 July 1992 (page 16).

26. The Cost method is covered on pages 17 to 21 of the PDF attachment including a tabular summary of the hierarchical choice between opening values.

7. THE ATTRIBUTABLE FIF INCOME (AFI) METHOD

27. The first thing to note is that the calculation of FIF income or loss under the AFI method follows the CFC rules. All of the changes referred to and explained in the separate CFC Section of this website are relevant for FIFs for which an interest holder uses the attributable FIF income (AFI) method. This method essentially imports the CFC calculation methods as an alternative for determining FIF income if the requirements to use the AFI method are met and the interest holder chooses to use that method.

7.1 Non-attributing active FIFs

28. When using the AFI method, the first thing to do is to determine whether the active income exemption will apply – which will avoid the need to calculate FIF income. The method followed is based on the CFC active income exemption with some modifications as noted below. The entire active income calculation rules, including all of the TIB explanations are contained in the attached PDF on *Non-attributing Active FIFs*.

29. Section EX 50 as amended by section 35 of the International Investment Tax Act contains a number of modifications to the way in which the active income exemption tests apply to FIFs for which the AFI method is used:

    (a) When applying the accounting standards test, providing that the FIF's income appears in the IFRS (NZ equivalents to international accounting standards) or IFRSE (international accounting standards) accounts of the interest holder or another person, *the accounts of the FIF itself (from which the information to perform the active income test is taken) are allowed to be prepared under US GAAP (US accounting standards)*. The FIF's income could appear in IFRS or IFRSE accounts as:

        (i) A share of associate's income using the equity method in IAS 28 or IAS 31; or

        (ii) Dividends and fair value changes under IAS 39.

    (b) The rules under which FIFs are allowed to be grouped and treated as members of the same FIF test group for the purposes of the active income tests are also relaxed in comparison to the equivalent rules for CFCs, subject to the requirement that none of the companies in the group can be (actual) CFCs:

        (i) The top tier FIF must hold more than 50% of companies in the group (the equivalent CFC requirement that the indirect holding by the investor should be more than 50% is relaxed);

        (ii) The companies can be in different jurisdictions (the equivalent CFC requirement that the companies be in the same jurisdiction is relaxed);

    (c) These modifications are explained on pages 24 to 27 of *Tax Information Bulletin* Vol 24 No 6 July 2012.

7.2 Calculating attributable income from FIFs

30. If the active income exemption does not apply, the "attributable CFC amount" must be calculated for FIFs for which the AFI method is used. Again, there are a number of modifications to the CFC rules, as explained below. The modified calculation of attributable CFC amount for FIFs has been fully set out, including IRD TIB explanations,

in the attached PDF on *Calculation of Attributable CFC Amount for FIFs for which the AFI Method is used*.

31. When calculating the attributable CFC amount for FIFs, the rules relating to the exemption for intra-group payments of royalties, rent and interest are relaxed, under new section EX 50(4C), as follows:

    (a) The person must use the AFI method for both the paying FIF and receiving FIF; and

    (b) The paying FIF must be a non-attributing active FIF; and

    (c) There must be a group of persons who hold more than 50% of both the paying FIF and the receiving FIF; and

    (d) The paying and the receiving FIF must each have a taxed FIF connection with the same country or territory (i.e. resident and subject to tax in the same jurisdiction or have a parent company that satisfies the requirement).

7.3 The entire AFI method calculation

32. The entire attributable FIF income (AFI) method, including indirect interests in foreign companies, the active income tests, the calculation of attributable CFC amount for FIFs, and the calculation of net attributable CFC income or loss for FIFs has been set out in the attached PDF on *Attributable FIF Income (AFI) Method and Active Income Exemption*.

7.4 Indirect FIF interests: foreign company interests held through FIFs

33. The rules for foreign companies held through FIFs and a summary of the explanation in the TIB have been set out in the attached PDF on *Applying the AFI Method to Indirect Interests in Foreign Companies*.

34. The general rule in section EX 50(6) & (7), when using the AFI attribution method for a FIF that holds an interest in a foreign company, is to look through the FIF and treat the interest in the foreign company as a separate FIF. The FIF is treated as if it were a CFC.

35. However, section 35(6) of the International Investment Tax Act introduced a new section EX 50(7B) which contains a number of exceptions to the look-through rule – i.e. circumstances in which the interest in the underlying foreign company is ignored. These are:

    (a) If the foreign company meets the accounting standards test or the tax measures (default) test to be a non-attributing active CFC and the person is able to include the foreign company in the same test group as the top tier FIF for the purposes of those tests;

    (b) If the top tier FIF would meet a modified version of the accounting standards test to be a non-attributing active FIF if certain amounts, relating to the FIF's interests in the underlying foreign companies that are included in the FIF's accounts or the consolidated accounts of the FIF's test group under the equity method or a dividends and net fair value changes, are included in the items "added passive" (numerator) and "reported passive" denominator; in order for this exclusion to apply the top tier FIF must first pass one of the active income tests on its own (i.e. excluding the additional amounts from the underlying companies);

36. *Tax Information Bulletin* Vol 24 No 6 July 2012, pages 28 to 30, contains a good explanation of the way in which section EX 50(7B) is meant to operate.

7.5 Elective attributing FIFs and deduction limiting rules

37. Effective for income years beginning on or after 1 July 2011, a concept of an **elective attributing FIF** has been introduced, which is a FIF that would be a non-attributing active FIF under the AFI method, except for the fact that the interest holder has elected to return net attributable FIF income or loss. These rules mirror the rules for CFCs.

38. New section EX 73 in section 52 of the Annual Rates Tax Act allows an interest holder to elect that a FIF that would otherwise be a non-attributing active FIF instead be a FIF that attributes FIF income or loss. In general, this election would probably only be made if the interest holder would have an attributed FIF net loss. The election for FIFs can only apply to income years beginning on or after 1 July 2011, because the AFI method can only be used from then on.

39. A FIF for which such an election is made is defined as an "elective attributing FIF" and the first year for which such an election would be effective is define as the "election commencement year".

40. This election will not be available for a FIF that is:
    (a) An entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity; or
    (b) A non-attributing Australian CFC.

41. The election will be effective for all accounting periods of a FIF ending in the interest holder's income years beginning on or after 1 July 2011 if the election notice is filed by the end of the interest holder's income year that included 2 November 2012, the date of assent of the Annual Rates Tax Act (or a later date if allowed by the Commissioner).

42. If the election is not filed within the time referred to above, the election will be effective for all accounting periods of the FIF starting in the interest holder's income years beginning after the date the notice is filed (or a later date if agreed by the Commissioner). This will also be the case if an earlier election made by a person associated with the interest holder has ceased to be of effect.

43. There are additional rules relating to:
    (a) Revocation of the election;
    (b) The election ceasing to be of effect; and
    (c) A subsequent or "further election" being made after an election is revoked or ceases to be of effect.

44. There are new rules that limit a deduction that a person is allowed in an income year for an attributed FIF loss from an elective attributing FIF. These rules are contained in a new section DN 8(1B). In general, there can be no net attributed FIF loss from all of a person's elective attributing FIFs from the same country taken together.

45. The operation of the election rules has been set out in a Flowchart in a PDF attachment titled *Elective Attributing FIFs*. Please refer to the PDF attachment for the details.

8. NO INCOME OTHER THAN FIF INCOME

46. When a person has an attributing interest in a FIF and calculates their FIF income or loss using a method other than the AFI method, the person is treated, under section EX 59, as not having any income other than FIF income and, in particular, any dividends derived in the period from the interest and any income gained from disposing of the interest are disregarded.

47. The person cannot deduct any amounts other than the losses allowed under the relevant FIF method.

48. This rule does not apply if the FDR method is used and the person's FIF interest was an exempt interest at the beginning of the year due to being a non-portfolio interest in an Australian FIF.

49. Under section CD 36(1), the person is treated as not receiving dividend income from the FIF, so any dividends received are effectively exempt. However, when a taxpayer uses the FDR method, and the interest was exempt due to being a non-portfolio Australian interest at the beginning of the year, the FDR result for the year would be zero, so dividends remain taxable in that year, under section CD 36(2).

9. ENTRY AND EXIT RULES

50. The rules relating to entry and exit from the FIF rules are contained in sections 64 to 67B. These rules have not changed, and are explained as follows on the Inland Revenue website in a posting dated 8 November 2006.

51. When a person using the FDR or cost methods for an attributing interest in a FIF ceases to be resident in New Zealand they are deemed to have disposed of the interest at its market value at the time immediately before they cease to be a New Zealand resident.

52. When a person becomes a resident of New Zealand and uses the FDR or cost methods for an attributing interest in a FIF for the period after the change of residence, they are deemed to have acquired the interest at its market value at the time of the change of residence.

53. When a person holds property which becomes an attributing interest in a FIF because an exemption ceases to apply (or the NZ$50,000 minimum threshold is exceeded) there is a deemed disposition and reacquisition at market value of the property at the time of its change in status if the person uses the fair dividend rate or cost methods for the interest.

54. When a person holds property which ceases to be an attributing interest in a FIF because an exemption starts to apply (or the person falls below the NZ$50,000 minimum threshold), there is a deemed disposition and reacquisition of the interest at market value at the time of its change in status if the person used the FDR or cost methods for the interest before the change. This deemed disposition and reacquisition does not set a new cost basis for the purposes of the $50,000 minimun threshold; the original cost basis applies for the purposes of the $50,000 threshold in the following income year.

55. When a person using the FDR or cost methods for an attributing interest disposes of the interest for nil or inadequate consideration they are deemed to have disposed of the interest at its market value at the time.

56. When a person acquires an attributing interest in a FIF for consideration that is not equal to the interest's market value, and they use the FDR or cost methods for the interest, they are deemed to have acquired the interest at its market value at the time.

10. TAX DISCLOSURES AND THE 2013 DISCLOSURE EXEMPTION

57. Section 61 of the *Tax Administration Act 1994* ("TAA") requires taxpayers to disclose interests in foreign entities. However, section 61(2) of the TAA allows the Commissioner to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules. The *International Tax Disclosure Exemption ITR24* for the year ended 31 March 2013 is set out in the Inland Revenue website.

58. In summary, the 2013 disclosure exemption **removes** the requirement of a resident to disclose:

    (a) An interest of less than 10% in a foreign company if it is not an attributing interest in a FIF or if it falls within the $50,000 de minimis exemption. The de minimis exemption does not apply to a person that has opted out of the de minimis threshold by including in the income tax return for the income year a FIF income or loss.

    (b) If the resident **is not** a widely-held entity, an attributing interest in a FIF that is an income interest of less than 10%, if the foreign entity is incorporated (in the case of a company) or otherwise tax resident in a treaty country or territory, and the FDR or CV method of calculation is used.

    (c) If the resident **is** a widely-held entity, an attributing interest in a FIF that is an income interest of less than 10% if the FDR or CV method is used for the interest. The resident is instead required to disclose the end-of-year New Zealand dollar market value of all such investments split by the jurisdiction in which the attributing interest in a FIF is held or listed.

    (d) The 2013 disclosure exemption also removes the requirement for a non-resident or transitional resident to disclose interests held in foreign companies and FIFs.

9.1 Format of disclosure

59. If a disclosure is required, the forms for the disclosure of FIF interests are as follows:

    (a) IR443 form for the deemed rate of return method;

    (b) IR445 form for the fair dividend rate method (for widely-held entities) – must be completed online;

    (c) IR446 form for the comparative value method (for widely-held entities) – must be completed online;

    (d) IR447 form for the fair dividend rate method (for individuals or non-widely-held entities) – may be completed online;

(e) IR448 form for the comparative value method (for individuals or non-widely-held entities) – may be completed online;

(f) IR449 form for the cost method – may be completed online;

(g) IR458 electronic form for the attributable FIF income method (this form can also be used to make electronic disclosures for all other methods).

60. The online forms can be found at the IRD website "Get it done online", "Foreign investment fund disclosure".

11. CONFERENCE PAPER AND PRESENTATION

61. Most of the changes discussed above are explained in a conference presentation on 20 April 2012, although the presentation was made just before the International Investment Tax Act was enacted. A PDF copy of the conference paper has been attached titled *Conference Presentation on FIFs – April 2012*. A copy of the presentation is also attached titled *Conference Presentation on FIFs – April 2012*.