

## **GST - MEANING OF PAYMENT**

### SUMMARY

This item clarifies what is a payment for the purposes of section 20(3)(a)(ia) of the Goods and Services Tax Act 1985.

### BACKGROUND

Subsection (2) of section 6 of the Goods and Services Tax Amendment Act 1989 inserted a new subparagraph (ia) into section 20(3)(a) of the principal Act. From 22 March 1989 an input tax credit in respect of secondhand goods is only allowable to the extent that a payment has been made.

The word payment is not defined in the Goods and Services Tax Act 1985. This item discusses what the Department will accept as a payment.

### RULING

Where the parties are at arm's length it is not expected that there will be any problem in determining whether payment has in fact been made. However with associated persons it is expected that "payment" will frequently be by a credit entry to an account for the shareholder, partner, etc. within the purchaser's books of account.

The mere crediting of such an account is not accepted as a payment as this simply acknowledges the debt. To be treated as a payment the amount credited must be applied in some way to the vendor's benefit. This would occur if the credit was offset against an amount(s) owing by the vendor or if moneys expended on behalf of the vendor are debited against the credit but only to the extent so applied. The purchaser is not entitled to an input tax credit until such time as the moneys credited are applied to the vendor's benefit.

Reference: HO. GST.S.2.1  
GST Manual Paragraph 3.2.9

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## **WINDING UP DISTRIBUTION TAX**

### SUMMARY

This item states that in the course of winding up companies may choose to distribute:

- (a) By dividend with imputation credits attached;
- or
- (b) Subject to winding up distribution tax.

### BACKGROUND

The question has been raised as to whether companies who are considering winding up have the option of either distributing dividends and paying the WUDT [Winding up Distribution Tax] or paying dividends with imputation credits attached. Instances occur where, if a company was to pay the WUDT, it would be at a disadvantage "relative" to a company in a similar situation which declares dividends with imputation credits attached. If a company declares a taxable dividend to a shareholder in the 1990 year where the taxpayer's maximum tax rate is 33 per cent, that shareholder will be better off than if the dividend had been paid tax free after payment of winding up distribution tax. Similarly, if the shareholder in receipt of the dividend is able to absorb any tax assessability due to accumulated losses, the company is penalized by payment of the WUDT.

### RULING

Section 28[2][b] of the Income Tax Amendment Act No.3 1988 provides companies with an exemption from WUDT if the dividends in question have been included in the assessable income of the shareholders. Therefore provided the dividends are assessable income in the hands of the shareholders, winding up distribution tax is not payable by the company concerned.

Reference: HO. 10.W.2.2.

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## **RECOVERY OF INTEREST**

### SUMMARY

This item states that the recovery of interest provisions under section 129 of the Income Tax Act 1976 apply to all dispositions of land where that land has been used in the production of assessable income.

### BACKGROUND

Section 129 of the Income Tax Act 1976 provides that where land which has been used in the production of assessable income is sold within 10 years of purchase and a deduction for interest has been allowed in respect of that land, any excess of sale price over purchase and other costs, including interest, is deemed assessable income up to the amount of that interest.

Technical Rulings chapter 11, part 1, paragraph 23 indicates that due to the exemption from the section of farmland sold after 12 December 1985, section 129 effectively applies only to rental ventures This is incorrect.

## RULING

The recovery provisions apply to all land disposals, unless specifically exempted by the section, where the land has been used in the production of assessable income and interest has been allowed as a deduction.

Reference: HO. 10.S.2.2.

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## **GST - IN SPECIE DISTRIBUTIONS**

### SUMMARY

This item deals with the GST implications of in specie distributions. In each case the Department's position is that an in specie distribution is a supply of goods for GST purposes and that there is no consideration given by the shareholder in return for the goods.

### BACKGROUND

The Department has been asked to clarify the situation when an in specie distribution is made on the winding up of a company.

An in specie distribution may be made by a company that is not registered for GST purposes (and has never had a liability to be registered) or by a company that is (or was) registered for GST purposes either before or after its registration is cancelled. Each situation is dealt with below. In each case the Department's position is that an in specie distribution is a supply of goods for GST purposes and that there is no consideration given by the shareholder in return for the goods.

**All references in this circular are to the Goods and Services Act 1985.**

### In Specie Distribution by Company After GST Deregistration

Any goods forming part of the assets on hand at the time of deregistration are deemed by section 5(3) to be supplied in the course of the taxable activity. The supply is valued in terms of section 10(8). The value is deemed to be the lesser of the cost of the goods including any GST, or their open market value.

Any subsequent supply by the company by way of in specie distribution does not have any GST implications for the company or the recipient.

If the recipient is registered for GST purposes and the goods will be used in that person's taxable activity the recipient is unable to claim an input tax credit for those goods. The goods have not been

acquired from a registered person, therefore the provisions of paragraph (c) of the definition of "Input Tax" in section 2 must be met if a second-hand goods input tax credit is to be allowed. The amendment to this definition in the Goods and Services Tax Amendment Act 1989 requires there to be a supply by way of sale, and an in specie distribution is not a sale. Prior to the amendment, the proviso to the definition of "Input Tax" would have excluded a claim as there would not have been a purchase price, therefore the lesser of the two values would be Nil.

### **In Specie Distribution by Company Before GST Deregistration**

The supply from the company to the shareholder is a supply to an associated person (this is a result of the trustee relationship that arises once the company is in liquidation, and the effect of the "associated persons" definition in section 2 of the Act). Therefore, if the recipient is not a registered person and the goods are to be used in that person's taxable activity, the supply will be valued in terms of section 10(3), i.e., the supply is valued at the open market value of the goods. This will determine the company's output tax liability.

When the supplier and recipient are registered persons and the goods are to be used in that recipient's taxable activity, and were a taxable supply, the provisions of section 10(3A) apply. The supply is valued at the consideration given (section 10(2)). In the case of an in specie distribution the consideration given by the shareholder is Nil so the supply has Nil value. The output tax liability and input tax deduction are Nil. As the supply is a taxable supply it cannot come within paragraph (c) of the definition of "input tax".

### **In Specie Distribution by Company not Registered for GST (and not any time liable to be registered for GST purposes)**

There are no GST implications for either party. If the recipient is registered for GST purposes, a secondhand goods input tax credit is not available for the reasons stated above.

Reference: HO. GST S.7.1

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## **DEPARTMENT'S NEW CORPORATE PLAN NOW AVAILABLE**

The Department's Corporate Plan for the 15 months 1 April 1989 to 30 June 1990 represents a fundamental departure from the previous Corporate Plans produced by the Department. For the first time the Plan reflects the totality of Inland Revenue's purpose, functions and operations and is centered on

the division of the whole Department into 5 programmes These are:

- Legislation
- Taxpayer Services
- Revenue Assessment and Collection
- Income Maintenance
- Taxpayer Audit

The new Plan sets the direction of the Department over the next 3 years and aims to give taxpayers and Government a clear view of where Tax Management is heading.

Copies of the Plan are available to the Public at a cost of \$7.50 including GST by applying to the:

Corporate Planning Officer,  
Head Office,  
Inland Revenue Department,  
PO Box 2198,  
WELLINGTON

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## **RETURNS FOR NON-RESIDENTS**

### SUMMARY

The non resident centre in Dunedin are receiving a large number of returns on behalf of non residents who are not required to furnish returns.

### BACKGROUND

Section 310 of the Income Tax Act defines Non Resident Withholding Income as dividends, interest or royalties which are subject to Non Resident Withholding Tax (NRWT) pursuant to Section 311.

Providing NRWT is correctly deducted and accounted for by the payer (or agent), that tax is generally a final tax and the income need not be included in the assessable income of the recipient. There are odd exceptions such as when the taxpayer is operating a business through a fixed establishment in NZ.

### COMMENTS

In order to avoid the need to file returns where the income is solely Non Resident Withholding Income, financial institutions should be advised of your client's overseas address. They will arrange for the deduction of NRWT at source which will also ensure that the new domestic PAYE is not deducted.

If you find that returns have been filed unnecessarily in the past and that future returns are not required, please let us know at the address below so

that our computer records may be updated.

Inland Revenue Department  
Non Resident Centre  
Private Bag  
Dunedin

Payment of NRWT should also be sent to this address together with the appropriate forms IR 267 and IR 202.

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## **DEPARTMENTAL TECHNICAL RULINGS**

The following is a list of Departmental information currently available with corresponding purchase price, inclusive of GST which is released in terms of the Official Information Act 1982:

Income Tax Technical Rulings	\$450.00
GST Technical Manual	\$68.60
Gift Duty Office Rulings	\$9.00
Stamp Duty Office Rulings	\$20.81
Totalisator and Lottery Office Rulings	\$2.81
Estate Duty Office Rulings	\$27.00
Donee List as at 31.3.89	\$22.50
Imputation Training Package	\$84.38

Any person wishing to purchase copies of any of the information listed above should forward their order, cheque, name and both postal and street address to:

Manuals Sales  
Taxpayer Services (Communications)  
Inland Revenue Department  
Head Office  
P O Box 2198  
WELLINGTON

Telephone (04) 721-032 Fax (04) 733-250

**NOTE:** Payment in full is required before information will be released.

The Department does not supply folders.

All manual holders are put on a mailing list: as an amendment is issued holders are advised that it is available, together with the cost. The amendment, with filing instructions, is forwarded on receipt of the payment.

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## **FBT PRESCRIBED RATE OF INTEREST FOR QUARTER COMMENCING 1 OCTOBER 1989**

The prescribed rate of interest used to calculate the fringe benefit value of low interest employment related loans has remained unchanged for the quarter commencing 1 October 1989, and is confirmed at 15 percent

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## **COST OF DOMESTIC ESTABLISHMENT**

### SUMMARY

In this item we outline a formula that can be used to adjust business expenditure for the proprietor's private use of accommodation attached to a business. This adjustment is often referred to as the "cost of domestic establishment" and is particularly relevant to self employed taxpayers in the motel, hotel, boarding house and similar industries.

### BACKGROUND

Section 106(1)(j) of the Income Tax Act 1976 prohibits taxpayers from claiming a deduction for expenditure that is of a private or domestic nature. In industries such as privately owned or leased motels, hotels, etc., the owner or lessee is required to make adjustments to the deductible expenditure of the business for the proprietor's private or domestic use of the business premises, and/or services. In Public Information Bulletin No. 175 we said that the adjustments should be made on a factual basis.

Recent representations from industry sources sought a more formalised basis for calculating the "cost of domestic establishment".

### RULING

The following formula was arrived at as a practical method of calculating the adjustment. This formula is particularly relevant to the motel industry, but can be adopted by other businesses where an adjustment is required.

The formula is:

$$\frac{a}{b} \times c \times 50\%$$

where:

- a = Area of the motel complex designated as the owner's quarters.
- b = The total area of the motel complex.
- c = Total expenditure on:

- interest or rent
- rates
- power
- telephone rental
- insurance
- "other costs"

"Other costs" = all other costs not solely attributable to the owner's or lessee's occupancy or to the carrying on of the business

**NOTE:** The 50 percent adjustment in the formula is in recognition that in some instances it is difficult to apportion some areas of the owner's or lessee's quarters between business and private use. An example of this is the use of the owner's or lessee's kitchen for the preparation of meals for guests or the use of other areas for entertainment or storage. The entire area of the motel set aside but not necessarily exclusively used by the owner or lessee should form (a) of the formula.

It is expected that the formula will be appropriate in most situations but where its use gives an unrealistic result the matter should be discussed with the taxpayer's local Inland Revenue Office.

The above formula can be used as from the year ended 31 March 1989 (i.e. the 1989 income year and future years.)

Reference: HO. 10.A.8.4  
Technical Rulings.  
Chapter 19 Part 1, 15.1.

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## **INCOME EQUALISATION RESERVE SCHEME - INTEREST PAYE**

Depositors in the Income Equalisation Reserve Scheme should be aware that deposits withdrawn from the scheme after 1 October 1989 will be liable to deductions of Interest PAYE on the total interest paid.

Any Depositor in the scheme holding a valid 'Certificate of Exemption' should ensure that a copy is forwarded to:

Inland Revenue  
Income Equalisation  
P O Box 438  
WANGANUI

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## **PAYMENTS OF DIVIDEND PAYE**

In TIB 3, page 7, the wrong box number was shown for the Processing Centre, Upper Hutt. The correct address is:

Inland Revenue Processing Centre  
P O Box 40-141  
UPPER HUTT.

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## **GST - LICENSED LOTTERY PROMOTERS**

In TIB 3, page 9, the reference to GST Manual was incorrect. The reference is:

GST Manual - Paragraph 1.9.11  
- Paragraph 3.3

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## **PRESS RELEASE**

### **Fringe Benefit Tax - Prescribed Rate of Interest**

Following is a copy of a press statement issued by the Minister of Revenue, Hon. David Caygill on 21 August 1989:

“The Minister of Revenue, David Caygill, today confirmed that the prescribed rate of interest used to calculate the fringe benefit of low interest employment related loans will remain at the existing rate of 15 percent for the quarter commencing 1 October 1989.

Mr Caygill said he expected that reductions in interest rates will be reflected in the prescribed rate of interest for the subsequent quarters”

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## **DUE DATES REMINDER**

- November 1 GST return and GST payment for period ended 30 September due.
- November 7 Due date to pay third instalment of 1990 Provisional Tax for taxpayers with November 1988 balance date. Due date to pay 1989 Terminal Tax for taxpayers with December balance dates. Due date to pay second instalment 1990 Provisional tax for taxpayers with March balance dates. Due date to pay first instalment 1990 Provisional Tax for taxpayers with July balance dates
- November 14 October Non-Resident Withholding Tax Deductions payment due. October Interest PAYE payment due.
- November 20 October Tax Deductions payment due.
- November 30 Shareholder employee statements and AC Levy form ACC 506 to be completed and furnished with AC Levy payment as calculated where remuneration was not determined by 31 May 1989 and included in IR 68 Statement.

## TAX INFORMATION BULLETIN NO.4

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*OCTOBER 1989*

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*TAX INFORMATION  
BULLETIN*

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THIS IS AN INLAND REVENUE DEPARTMENT SERVICE  
TO PEOPLE WITH AN INTEREST IN THE TECHNICAL ASPECTS  
OF TAXATION IN NEW ZEALAND.