

QUESTIONNAIRE

As we want to know what our readers think about our Tax Information Bulletin we have included a questionnaire with this issue. We would like all readers to complete the Questionnaire and return to us before 8 December 1989.

TAXATION OF TRUSTS

The legislation governing the income taxation treatment of trusts was substantially revised by part II of the Income Tax Amendment Act (No. 5) 1988. The new trust regime applied from the beginning of the income year commencing on 1 April 1988.

The Appendix to this TIB provides an explanation of the new trust taxation legislation. Part 2 of the Appendix contains a general overview of the legislation, highlighting the main features. Parts 3 to 15 of the Appendix contain a detailed explanation of the legislation.

GST - SECONDHAND GOODS

SUMMARY

This item clarifies what the Department considers to be secondhand goods for the purposes of the Goods and Services Tax Act 1985.

BACKGROUND

The Department has published three rulings in respect of secondhand goods since the definition of "secondhand goods" was amended by the Goods and Services Tax Amendment Act 1988. These were contained in Public Information Bulletin No 174 (following the Goods and Services Tax Amendment Act 1988), Public Information Bulletin 181 (following a subsequent amendment contained in the Goods and Services Tax Amendment Act 1989) and Taxation Information Bulletin No 1 (which was issued to clarify the Department's position, particularly with regard to wool). Unfortunately the item in Taxation Bulletin No.1 did not take into account the 1989 amendment which specifically included "Livestock" as an exclusion from "Secondhand goods". The Department's policy on secondhand goods is therefore restated in full.

RULING

Effective from 24 March 1988 "Secondhand goods" is defined as:

"Secondhand goods", does not include -

- (a) Secondhand goods consisting of any fine metal;
- or

- (b) Secondhand goods which are, or to the extent to which they are, manufactured or made from gold, silver, platinum, or any other substance which, if it were of the required fineness, would be fine metal; or

- (c) Livestock: [(c) is effective from 22 March 1989]

With the exception of these specific exclusions "Secondhand goods", takes its commonly understood meaning. The Shorter Oxford English Dictionary defines "secondhand" as:

"Not original or obtained from the original source; borrowed. Not new, having been previously worn or used by another."

It is on this concept of used or not new or obtained from the original source that the Department has based its policy. While it is not intended that the following be an exhaustive list of the goods that the Department does not accept as secondhand, it is intended as a guide.

All animals, including progeny (Livestock includes domestic animals generally and any animals kept or dealt in for use or profit).

Primary produce produced by a farmer, e.g., wool, meat, milk.

Any goods which have been manufactured that are being supplied for the first time.

Trading stock that consists of any of the above.

Reference: GST - Secondhand goods
GST Manual 1.1.4
GST Manual 3.2.9

GST - GOING CONCERNS

SUMMARY

This item provides further guidelines on what is a going concern for the purposes of the Goods and Services Tax Act 1985 (the Act).

BACKGROUND

As a result of the Goods and Services Tax Legislative Audit the Department undertook to restate its interpretation of what is a going concern and to provide explicit examples of what may constitute a going concern.

Section 11(1)(c) of the Act zero rates the supply to a registered person of any taxable activity (or part of a taxable activity where that part is capable of separate operation) that is a going concern.

Whether or not the taxable activity being supplied is a going concern is a question of fact. If it is the supply must be charged with tax at zero percent. Both the vendor's and the purchaser's GST liability will be established by this question of fact and not by how either or both parties to the transaction have treated it. However it is suggested that both parties reach agreement on whether the transaction is GST inclusive or exclusive and if it is GST inclusive whether in their opinion the supply was of a taxable activity as a going concern

RULING

A going concern should have the following characteristics:

- (i) The taxable activity should be capable of being carried on without interruption after the transfer from the supplier to the recipient. It is not necessary that the recipient of the supply continue the same taxable activity or any taxable activity but there must be a capacity to continue.

NB In an English case [C&E COMRS v Prem Narayan Rakshit (LON/87/716)] it was held that the purchaser's intention was irrelevant.

- (ii) There should be an express supply of goodwill. A business contains an element of goodwill and is not just a number of assets. The goodwill of a trade or business comprises every advantage which has been acquired by carrying on the business whether connected with premises in which the business activity has been carried on or with the name of the firm by whom it has been conducted.

NB It is often not possible for this factor to be supplied concurrently with a farming activity as the value in such cases is in the livestock and the ability of the farmer to farm, not in the assets such as the land and buildings associated with the farm.

- (iii) There should be a supply of all assets that are central to the business both of a tangible and intangible nature. The supply of a number of assets will not in itself constitute the supply of a taxable activity as a going concern.

SPECIFIC EXAMPLES

All supplies are between registered persons

COMMERCIAL BUILDINGS

- (a) The supply of a commercial building is accepted as the supply of a going concern where the supplier had been letting it and 80% or more of the building continues to be tenanted at the time of supply. In establishing whether the 80% test is met the rentable floor area should be

used. However the question of whether a building is supplied as a going concern is a question of fact - the 80% rule is no more than a guideline that must be applied with discretion.

- (b) A company constructs a commercial building and as part of the sale and purchase agreement contracts to arrange tenants for the building. This would NOT be the supply of a taxable activity as a going concern.

FARMS

- (a) An established kiwifruit orchard is sold, at the end of the season after all fruit has been sold, complete with all the equipment used for spraying, harvesting, etc. This would be the supply of a taxable activity as a going concern.
- (b) A dairy farmer sells his or her farm with all plant previously used on the farm but retains the herd to take to a new farm. This would NOT be the supply of a taxable activity as a going concern.
- (c) A farm is sold at auction with the livestock, plant and machinery being sold separately from the land and buildings to various purchasers. This would NOT be the supply of a taxable activity as a going concern.
- (d) A husband and wife partnership supply their sheep farm to a trust set up for the benefit of their children. The farm is supplied "lock, stock and barrel" with the husband and wife not retaining any of the assets of the taxable activity. This would be the supply of a taxable activity as a going concern.

MANUFACTURERS

- (a) A company operates two factories. One is used for manufacturing children's clothing the other manufactures plastic goods. The company sells the latter. The purchaser acquires all the plant, equipment, supply contracts and the premises. This is the supply of part of a taxable activity that is capable of separate operation and is therefore a going concern.
- (b) A company sells all the assets used in a taxable activity with the exception of the building from which the taxable activity was conducted. This would not be the supply of a taxable activity as a going concern. Although the purchaser has acquired all the plant, equipment, etc necessary to commence manufacturing without the premises there has been a break, however brief, in the continuity of the taxable activity.

Reference: HO. GST Z.1.6
GST Manual Paragraph 1.7.6.(2)

WATERFRONT INDUSTRY RESTRUCTURING ACT 1989 - MISCELLANEOUS LEGISLATION

The Waterfront Industry Restructuring Act 1989 was assented to on 11 September 1989.

This Act establishes the Waterfront Industry Restructuring Authority with power to make payments to employers who have obligations to pay redundancy to waterside workers, as part of the port reform programme.

Section 13 of the Waterfront Industry Restructuring Act 1989 (Referred to as the "Act") provides that the Authority is exempt from income tax.

To fund the payments to be made by the Waterfront Industry Restructuring Authority, levies are imposed under the Act on:

- * port company shares (or the proceeds of disposal of those shares); and
- * port related commercial undertakings held by the local authorities; and
- * harbour board land.

In terms of section 32 of the Act, for the purposes of the Income Tax Act 1976, the levies imposed on the port company shares and the port related commercial undertakings are not deductible against the assessable income derived.

Section 39 of the Act provides that where the net income derived from any harbour board land is assessable income to a person under the Income Tax Act 1976, that income is to be reduced by any levy paid by that person under the Waterfront Industry Restructuring Act, in that year in relation to that harbour board land.

Under section 20 of the Act, for the purposes of the Income Tax Act 1976, the payments of assistance made by the Waterfront Industry Restructuring Authority to the employers will be deemed to be assessable income of the employer in the year in which the payments are made.

AMENDED POLICY IN THE LIGHT OF THE GISBORNE MILLS DECISION: REOPENING OF ASSESSMENTS OR ACCEPTANCE OF LATE OBJECTIONS WHERE DECISIONS FOR THE COURTS OR A TAXATION REVIEW AUTHORITY RESULT IN A CHANGE IN THE INTERPRETATION OF THE LAW.

This item sets out the Department's amended policy regarding the reopening of assessments or acceptance

of late objections where decisions of the Courts or a Taxation Review Authority result in a change in the interpretation of the Law.

The amended policy is necessary as a result of the Department's decision not to appeal the High Court decision of Gisborne Mills Limited and others v The Commissioner of Inland Revenue (unreported decision of the High Court, Auckland Registry, M531/87, 8 June 1989, Robertson J) and the Commissioner's decision to exercise his discretion to allow late objections and issue amended assessments in favour of the taxpayers in that case.

The Department's Policy in the Light of Gisborne Mills

The effect of the Gisborne Mills decision is that the Department's general policy (that it will not apply decisions of the Courts or TRA which result in a change to the interpretation of the law as previously understood retrospectively unless there is a live objection) still applies but is subject to the proviso that each case has to be considered, in terms of sections 23 and 30(2) as appropriate, to see whether it would be unfair for the Commissioner to decline to reopen the assessment or allow a late objection.

This change in policy reflects the principle in British Oxygen Ltd v Board of Trade [1971] AC 610 that while it is appropriate for the Commissioner to follow a stated policy he is required in law to always be willing to listen to a new submission and to be ready and willing to depart from the policy in an appropriate case.

Administrative Aspects of the revised policy

This amended policy replaces all earlier policy statements concerning the retrospective application of Court decisions where there is no live objection, including the parts of PIB 123 in respect of this matter.

The Commissioner has decided that at this stage the delegation to exercise discretions under sections 23 and 30 (2), in cases where action has been recommended or requested as a result of a recent Court decision, will lie with Regional Controllers.

INLAND REVENUE DEPARTMENT PUBLICATIONS

Following is a list of our publications together with the latest print date. These publications are available from your local district office.

No.	Subject	Latest Print
FS 6	Family Support Basic Facts	Feb 89
GS 605	Guide to Registration for GST	May 88

IR 40C Tax Facts for Income Tested Beneficiaries	Feb 89
IR 181 Superannuation Contributions - Withholding Tax	Mar 89
IR 184 PAYE Guide for Employers	Feb 89
IR 184X Weekly and Fortnightly Tax Tables	Apr 89
IR 184Y Four Weekly and Monthly Tax Tables	Apr 89
IR 260 Depreciation Allowances	Mar 87
IR 262 National Superannuitant Surcharge	Feb 89
IR 266 Considering Objecting to your Income Tax Assessment	Oct 85
IR 267 Understanding Taxes - A Guide for Secondary school Students	Sep 89
IR 269 Land Tax Guide	Nov 88
IR 274 Imputation	Apr 89
IR 274A Foreign Dividend Withholding Payments	Jan 89
IR 274B Dividend Imputation	May 89
IR 275 International Tax Guide	Jun 89
IR 276 Taxation on Profits from Selling Shares	Sep 89
IR 277 Retirement Allowances and Redundancy Payments	Apr 89
IR 279 Interest PAYE Guide	Sep 89
IR 283 Interest PAYE Guide Payers' Guide	Sep 89
IR 283A Interest PAYE - Registration for business and other payers	Aug 89
IR 283B Interest PAYE - Application for exemption	Aug 89
IR 284 Dividend PAYE	Sep 89
IR 287 Problem Resolution	May 89
IR 288 Taxation of Trusts	May 89
IR 289 Provisional Tax	Apr 89
IR 290 NZ Taxes and Duties	Apr 85
IR 291 Tax Guide for Non Residents	Apr 89
IR 292 NZ Tax Residence	Apr 89
IR 295 New Provisional Tax Rules	Aug 88
IR 300 Verification Interviews	Apr 88
IR 409 Fringe Benefit Tax Guide	Apr 89
IR 634 Estate & Gift Duty	Aug 89

RECENT DECISIONS GIVEN BY THE TAXATION REVIEW AUTHORITY

TRA DECISION - CASE L85 (1989) 11 NZTC 1,485 OR TRNZ CASE 52 SECTION 191(1)(C)(I) - TEMPORARY TRANSFER OF SHARES TO MANIPULATE SHAREHOLDING REQUIREMENTS OF SECTION 191.

FACTS

In this case a private company (the objector) sought to have the losses of another company set off against its assessable income. The objector entered into an agreement to temporarily purchase shares in a loss company, so as to satisfy the grouping requirements of section 191, and to enable the losses to be deducted from the objector's assessable income.

An agreement was signed between the objector (as purchaser), RSC, and D Nominees Ltd (as vendors), for the sale and purchase of the ordinary shares in the company. The agreement had a clause (Clause 6) which prevented the objector from selling the shares

in the loss company without the consent of the vendors, and required the objector to transfer the shares to the vendors, between three and ten years after the date of the agreement. This clause was removed at a later date by an amending agreement.

The Commissioner in disregarding the alteration of the shareholding, thus disallowing a deduction for the losses, contended that the transfer was of a temporary nature and, had the effect of altering the incidence of income tax, therefore should be disallowed under section 191(1)(c)(i)

DECISION

Barber DJ, in confirming the assessment, stated that he did not accept that, "... there was nothing temporary regarding the shareholding ...", and that Clause 6 of the agreement spoke for itself.

COMMENT

It should be noted that in the context of this case, Barber DJ considered that a period of three to ten years qualified as "of a temporary nature" under section 191(1)(c)(i).

Reference: HO. 10.C.10.7
Technical Rulings Chapter 5 Pt 26
Paragraph (2)(d)

TRA DECISION - CASE L86 (1989)11 NZTC 1,492 OR TRNZ CASE 56 - WHETHER A SECONDARY VEHICLE AVAILABLE ON A LIMITED BASIS SHOULD BE INCLUDED IN CALCULA- TION OF FRINGE BENEFIT VALUE - TENTH SCHEDULE.

FACTS

This case concerns the correct method of calculating Fringe Benefit Tax where a secondary vehicle is available to the employee on limited occasions.

The objector was a bank which provided a car of a good standard to each of its nine senior executives. A further, cheaper car was purchased for use by all of the bank's staff for bank business, and for private use by the nine executives

The bank in calculating the fringe benefit value provided to the nine executives took the value of each executive's car and added it to the value of cheaper car and then divided by two to arrive at the value from which the fringe benefit calculation was done. The objector cited paragraph (e) of the Tenth Schedule to the Income Tax Act 1976 as their authority for this basis of calculation.

The Commissioner assessed the objector on the basis of 6 percent on the cost price of the motor vehicle of good standard allotted to each of the nine executives in terms of paragraph (a) of the Tenth Schedule to the Act.

DECISION

Barber D J, in deciding for the Commissioner, decided that the cheaper motor vehicle was not available to each of the executives individually, and as such did not fall within the scope of paragraph (e) of the Tenth Schedule.

COMMENT

The subsequent amendment of the Tenth Schedule, which took effect from the quarter commencing 1 January 1989, means that the Commissioner's stance in this case has been confirmed by legislation, though not retrospectively. This case is being appealed by the taxpayer.

Reference: HO. 10.F.15.1
FBT Manual Part VII Paragraph 4

DEPARTMENTAL TECHNICAL RULINGS

The following additional Parts to Chapter 10 of the Technical Rulings are now available:

Part 4A - The Controlled Foreign Company Regime

Part 4B - The Foreign Investment Fund Regime.

The cost is \$30.90, inclusive of GST.

Any person wishing to purchase the above parts should forward their order, cheque, name and both postal and street address to:

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

PRESS RELEASE

New Tax Scheme For Interest

Following is a copy of a press release issued by the Commissioner of Inland Revenue on 29 September 1989.

"The new PAYE tax on interest starts from Sunday 1 October. From then on 24% tax will be deducted from most interest including interest paid by banks and other financial institutions.

Organisations entitled to exemption from the withholding tax including charities and sports clubs can

apply to Inland Revenue for a special exemption certificate which can be then given to the bank or institution paying the interest.

"We have issued more than 63,000 exemption certificates in the few weeks since the law was passed," the Commissioner of Inland Revenue, David Henry, said today.

"I am concerned that some organisations may not yet have applied for their exemption certificates or the exemption certificates may still be in the process of reaching them. If this applies then either the payer of the interest will refund the tax deducted or Inland Revenue will refund it depending on whether the tax has been paid over to Inland Revenue," Mr Henry said.

Organisations which are exempt from the withholding tax and have not yet applied for a certificate of exemption should do so immediately.

Further information is available from any Inland Revenue office or from the IRD's special freephone at:

- . 0800-802-803; or
- . in the Auckland toll free area 302-2600 and 276-0772."

DUE DATES REMINDER

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.

December 1 GST return and GST payment for period ended 31 October due.

December 7 Due date to pay third instalment 1990 Provisional Tax for taxpayers with December 1988 balance dates.

Due date to pay 1989 Terminal Tax for taxpayers with January balance dates.

Due date to pay second instalment 1990 Provisional Tax for taxpayers with April balance dates.

Due date to pay first instalment 1990 Provisional Tax for taxpayers with August balance dates.

December 14 November Non-Resident Withholding Tax Deductions payment due.

November Interest PAYE payment due.

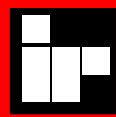
TAX INFORMATION BULLETIN NO.5

NOVEMBER 1989

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BULLETIN*



INLAND
REVENUE

TE TARI TAAKE

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