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## **HIGH COURT DECISION - STATE INSURANCE OFFICE v CIR**

- **Sec 65(2)(a) Profits from Sale of Shares; Capital or Income?**
- **Did Share Exchanges due to Takeover amount to Realisation?**
- **Were Shares Trading Stock?**

### **Introduction**

This item has been prepared in light of the recent High Court decision in State Insurance Office v CIR. It raises questions on the assessability of share exchanges in relation to the Department's policy on the taxation of profits from selling shares by insurance companies.

### **Issues**

There were three main issues in the case for consideration by Judge Heron, they were;

- (1) Whether pursuant to section 65(2)(a) of the Income Tax Act 1976 State's assessable income included profits from any business being such profits or gains from share exchanges, including those where a cash element was involved.
- (2) If the gains are income, whether there has been a realisation of the gain by reason of the share exchanges.
- (3) If the gains are taxable, whether the shares are trading stock.

### **Decision**

#### **First Issue**

Judge Heron concluded that whilst there is a nexus between the income generated by the shares and the operation of State's business, there is no nexus between the realisations which occurred and the method of operation of the business. He considered the realisations which did take place to be "sporadic isolated transactions". He said that while sale of the shares had some connection with the business because the income fell into the cash flow there was no nexus

between those sales and the method of operation of the business.

His final statement on the issue says that the gains were made without the intention of meeting the needs of the "insurance" business or the desire to realise or vary any investment, and to that extent they were at least not motivated by business considerations. He sees State as an unusual case with quite unique considerations.

#### **Second Issue**

Judge Heron found that because section 65(2)(a) speaks of gains "derived", it must be construed as meaning realised.

#### **Third Issue**

Judge Heron cited the case of Anson v Commissioner of Taxes [1922] NZLR 330, where it was held that the test is "whether an asset has been procured for the purpose of being sold at a profit". He found that the dominant purpose of State's acquisition of the shares was to hold, not sell.

#### **Comment**

Judge Heron's decision turns to a large degree on his findings of fact, such as the finding that State is unique in the way it operates its business. Ultimately, the matter has been decided on the basis of the unique capital structure and methods of business adopted by State. He also points to the distinctions between State's case and the case of other insurance companies.

It therefore does not change the Department's policy in relation to the taxation of profits from the sale of shares by insurance companies.



# CASINO CONTROL ACT 1990

## Amendments to the Goods and Services Tax Act 1985

### Summary

This item explains the amendments contained in the Casino Control Act 1990 which amend the Goods and Services Tax Act 1985 to provide the GST treatment for gaming conducted within a casino.

### Introduction

The Casino Control Act 1990 provides for the licensing, supervision, and control of casinos. It also contains amendments to the Goods and Services Tax Act 1985 to provide the GST treatment of gaming activities conducted within a casino.

This treatment reflects the recommendations of the Committee of Enquiry into the Establishment of Casinos in NZ in that GST will apply to the casino's "win". The treatment is consistent with that afforded to other forms of gaming such as games of chance and lotteries conducted in terms of the Gaming and Lotteries Act 1977.

These amendments to the GST Act will have no application until casinos become operational and commence to make supplies in respect of their gaming activities. The Casino Control Act comes into force on the 2nd of August 1990.

### GST Amendments

Section 5 of the GST Act, which deals with the meaning of supply, is amended by the insertion of two new subsections. The amendment deems

a supply of services to occur where a person pays money to purchase a chip or otherwise to participate in a game played or conducted in a casino. This deemed supply is made by the holder of the casino licence.

Section 9 of the GST Act, which sets out the time of supply rules, is amended by the insertion of a new time of supply rule in respect of the deemed supply described above. The new time of supply rule deems the supply to occur at the time a "casino count" occurs. A "casino count" is a defined term and means a count of money or money's worth paid for the right to participate in gaming. Such counts will occur on a regular basis in terms of the conditions that will be attached to a casino licence.

Section 10 of the GST Act, which determines the value of a supply, is amended by the insertion of two new subsections. The amendment deems the value of the supply to be the amount of money paid by persons to purchase chips or otherwise to participate in games less the amount of money paid out in winnings by the casino in respect of those games. The amount paid to participate in a game is GST inclusive.

These amendments only provide the GST treatment for gaming activities played or conducted within a casino. In respect of other goods and services supplied by a casino the normal GST provisions of the GST Act will apply.

**Reference:** LA GST 1990 Leg. Vol.

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## AIRPORT OPERATORS

### Depreciation on Concrete Pavements

Effective from 1 April 1988, the taxation treatment of concrete pavements is as follows:

1. Depreciation will be allowed on concrete airport pavements at the rate of 4 percent cost price.
2. In the case of demolition, prior to the end of the pavements useful life, the unallocated cost be allowed as an additional allowance in the year of demolition. The unallocated cost must

be reduced to the extent runways, taxi ways, apron areas, airstrips and other pavement areas are not demolished.

3. No special treatment is available for expenditure incurred on the pavements, other than what is permitted in accordance with Section 108 of the Income Tax Act 1976.

Note: This treatment applies only to concrete pavements and not to asphalt pavements.

# TRANSIT NEW ZEALAND ACT 1989

## Consequential Amendments to the Goods and Services Tax Act 1985

### Summary

This item explains the consequential amendments to the GST Act 1985 contained in the Transit New Zealand Act 1989.

### Introduction

The Transit New Zealand Act 1989 was enacted to:

- (a) Constitute Transit New Zealand as a central land transport authority; and
- (b) Provide the framework for the planning, funding, and development of New Zealand's land transport system.

It also provided the mechanism for the dissolution of the National Roads Board, the National Roads Fund, and the Urban Transport Council. This Act came into force on 1 October 1989.

This reform of the land transport system has a bearing on a number of provisions in the GST Act 1985. Accordingly, the GST Act 1985 was consequentially amended via the Fourth Schedule to the Transit New Zealand Act 1989 to reflect these changes.

### GST Amendments

The Transit New Zealand Act provides for the establishment within the Crown Bank Account for a fund to be known as the Land Transport Fund to which the following revenue will be credited:

- (a) A portion of all excise duty collected in respect of motor spirits;
- (b) All fees and charges collected under the Road User Charges Act 1977;
- (c) All fees and charges collected under Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; and
- (d) Other amounts as specified by section 8 of the Transit New Zealand Act.

Unlike the National Roads Fund, the Land Transport Fund will not be deemed to be supplying goods and services in respect of the receipt of some of these payments and therefore will not be registered for GST purposes. The revenue accumulated in this fund will be appropriated to Transit New Zealand and the Ministry of Transport to meet budgeted costs

in respect of certain output programs. Both Transit New Zealand and the Ministry of Transport are registered for GST purposes and will be required to account for GST on this payment from the Crown.

A number of consequential changes have been made to the GST Act 1985 following the dissolution of the National Roads Fund. Those changes are:

**Section 5(6A):** The provision has been amended to explicitly provide that the taxable activity is carried on by the person who collects those fees. For example, if NZ Post collects these fees it will be required to account for the GST on the supply and issue tax invoices as it is deemed to be carrying on the taxable activity. Previously, the GST Act did not indicate the supplier of those services. The reason for not explicitly identifying the collector of these fees in the legislation, was to recognise that the person collecting these fees may change from time to time.

**Section 5(6B):** Road user charges are deemed to be consideration for a supply of services in course or furtherance of a taxable activity by the person who collects those fees.

**Section 5(13A):** A refund of excise duty paid out of the Land Transport Fund to a registered person, where the excise duty paid by the registered person was incurred for the principal purpose of making taxable supplies, is deemed to be consideration for a supply of services in the course of that registered person's taxable activity. This provision only applies in respect of excise duty on motor spirits.

**Section 11(3):** This section is no longer required and has been repealed.

### Dissolution of the National Roads Board and the Urban Transport Council

The Transit New Zealand Act 1989 also provides for all the real and personal property belonging to or vested in these two bodies to vest in Transit New Zealand. The vesting of these goods in Transit New Zealand is a taxable supply made in the course of the termination of the taxable activities carried on by the National Roads Board and Urban Transport Council. However, as no consideration is being paid for the supply, there are no GST implications in regard to accounting for output tax and input tax on this supply.

**Reference:** LA GST-1989-Leg. Vol.

# **GST TREATMENT OF EXPENDITURE BY EMPLOYEES IN THE COURSE OF THEIR EMPLOYER'S BUSINESS**

## **Introduction**

There are many circumstances where employees will incur expenditure in the course of their employment. Employers may wish to reimburse employees for such expenditure. Employers may pay for such expenditure by employees in various ways, such as the payment of allowances or the reimbursement of actual expenditure. As registered persons, employers will want to claim input tax credits arising from such expenditure. The purpose of this item is to set out the circumstances under which this may be done.

## **Background**

For a registered person to be able to claim an input tax credit under section 20 of the Goods and Services Tax Act 1985 (the Act) the supply to which the particular input tax credit relates must have been made to the particular person claiming the input tax credit. The United Kingdom VAT tribunal decisions have determined that a supply is only made to a person if the person is in a contractual relationship with the supplier. This approach may limit the circumstances in which employers can claim input tax credits for expenditure incurred by employees. Thus, where employees contract in their own right to receive supplies, the tax paid on the supplies cannot be claimed as input tax credits by employers, notwithstanding that the expenditure may have been in the course of the employer's business and that the employers may have reimbursed the employees for actual expenditure.

It is the Department's view that the application of the decided UK cases in this context is limited. It was always the intention of the legislation and the practice of the Department to allow employers, who are registered persons, to be able to claim input tax credits for expenditure initially incurred by employees and reimbursed by employers where the expenditure was incurred in the course of the employer's business.

## **Ruling**

### **Reimbursement of Actual Expenditure**

Where expenditure is incurred by an employee in the course of the employer's business, and the actual expenditure is reimbursed by the employer, the employer is entitled to claim an input tax credit. Whether or not the expenditure is incurred by the employee in the course of the employer's business is a question of fact. Examples are the reimbursement of transport costs (taxi fares) and accommodation costs (hotels).

It is also confirmed that expenditure incurred on residential telephone rentals of an employee may be expenditure in the course of the employer's business if the private phone is used for business purposes. Further, subscriptions to professional associations—the New Zealand Law Society or the New Zealand Society of Accountants for example, may be expenditure in the course of the employer's business. In such situations employers will be able to claim input tax credits for such expenditure, where it is shown that the membership to the society relates to the employment of the particular employee.

### **Payment of Allowances**

Where actual expenditure is not reimbursed and/or an allowance is paid by the employer to the employee, an input tax credit will not be allowed as:

- no GST is incurred by the employer if there is no reimbursement; or
- there is insufficient connection between the payment made by the employer and the expenditure incurred by the employee if reimbursement is by way of allowance.

### **Tax Invoices**

Where employers seek to claim input tax credits for expenditure incurred by employees in the course of the employer's business, the invoicing requirements of section 24 must be met. Employers must be in receipt of valid tax invoices before input credits will be allowed.

**Reference:** H.O. GST A.5.1



# USE OF CREDIT CARD SALES VOUCHERS AS TAX INVOICES FOR GST

A credit card sales voucher is acceptable as a tax invoice only when the requirements of section 24 of the Goods and Services Tax Act (1985) (the Act) are complied with.

Some credit card companies have requested approval of their sales vouchers as tax invoices. Further, the credit card companies have requested, and been granted, a dispensation under section 24(6) of the Act. This dispensation precludes the need for the address of the recipient to be shown on invoices where the supply exceeds \$100 in value (\$200 from 1 October 1990). The following credit cards have had Head Office approval for use of their vouchers as tax invoices and have been granted dispensation relating to the recipient's address on a full tax invoice:

- Diners Club
- American Express
- BNZ Visa
- National Bank Visa
- Auckland Savings Bank Visa
- Trustee Bank Visa
- Westpac Mastercard/Bankcard.

Reference H.O. T.4.2.1

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## PRIZES WON IN COMPETITIONS RUN BY BANKS AND OTHERS

### Introduction

Inland Revenue has recently looked at the income tax assessability of prizes offered by banks to selected account holders.

### Background

With the changes to the definitions in the Income Tax Act 1976 of "interest" and "money lent" there has been uncertainty as to whether prizes won by account holders were assessable income. Were the prizes "payment in respect of or in relation to money lent"? Industry representatives argued that the account holders only received a right to participate in the competition. The prizes related to that right and not to the money lent and held in the depositors' accounts.

### Ruling

The Department's policy in respect of prizes won in competitions linked to the holding of a bank (or similar) account is:

- (a) Where an account holder receives a right to take part in a competition any prize received is in relation to the competition and not the

money lent. The prize does not constitute assessable income to the account holder.

- (b) The right to take part in the competitions received by the account holder is in relation to the money lent. The value of that right is assessable income to the account holder.
- (c) Where the value of the right is of negligible monetary value the Department would not seek to pursue the income tax owing in respect of that right.

The value of the right to participate in a competition is determined by reference to the chance of winning a prize. The greater the chance of winning, the greater the value of the right to participate. In most cases the value of the right is small and no action is required to include that value as assessable income.

Where the value is more than nominal the Department would seek to treat the value as assessable income to the taxpayer/account holder. Each competition must be looked at individually.

**H.O. Reference:** 10.I.6.8

## **CORRECTION**

In Tax Information Bulletin Volume Two, Number 1, the contact point for voluntary disclosures was shown as Verification Section at IRD District Offices. This is incorrect.

The correct contact person is the Senior Technical Officer (Taxpayer Audit) at each office.

More information on the subject of voluntary disclosures is in the booklet IR 282, "Putting your Tax Affairs Right", which is available from any Inland Revenue Office.

## **FRINGE BENEFIT TAX - PRESCRIBED RATE OF INTEREST**

The Minister of Revenue, Peter Neilson, has confirmed that the prescribed rate of interest used to calculate the fringe benefit of low interest employment related loans will continue at 14.8 percent for the quarter commencing 1 October 1990.



## **PETROLEUM MINING, LIFE INSURANCE AND OTHER AMENDMENTS, AND INCOME TAX AMENDMENTS**

Appendix A to this TIB contains details of the Income Tax Amendment Act (No.2) 1990. The topics covered are:

Short Title	Income assessable to beneficiaries
Interpretation	Trustee income
Definition of term "Dividend"	Calculation of control interest
Commissioner to make Assessments, Determinations of Loss, and other Determinations	Persons not required to calculate attributed foreign income and loss
Rebate for savings in Special Farm, Fishing Vessel, and Home Ownership Accounts	Branch Equivalent income calculation
Rebate in respect of gifts of money and school fees	Foreign tax credits
Incomes wholly exempt from tax	Changes of residence of Controlled Foreign Companies
Exemption of dividends from tax	Foreign Investment Fund income and losses
Interpretation - Accruals	Cases where assessable income calculations cannot be undertaken
New Start Grants for farmers	Application of part relating to non-resident withholding tax
Losses incurred - offsetting against future profits	Interpretation - Resident Withholding Tax
Excessive remuneration by proprietary company to shareholder, director, or relative	Determination of Other Income
Business of life insurance	Interpretation - Fringe Benefit Tax
Separation of life insurer's superannuation business	Interpretation - Pay Period Taxpayers
New section inserted - petroleum mining	Determination of assessable income
Interpretation - trusts	Imputation aspects for life insurance regime
Trusts settled by persons before becoming resident	Tax rates
	Spent provisions
	Transitional provisions for life insurers



# AMENDMENTS TO GST, IRD, AND UNCLAIMED MONEY ACTS

Appendix B to this TIB deals with the amendments made by the following Acts:

- The Goods and Services Amendment Act 1990
- The Inland Revenue Department Amendment Act 1990
- The Unclaimed Money Amendment Act 1990

The topics covered in each are:

## **GOODS AND SERVICES TAX AMENDMENT ACT 1990:**

Short title

Interpretation

- wool

- Retirement villages

Meaning of the term "supply"

Zero rating

- Supplier to be the exporter of the Goods

- Sealed Bag system

- Discretion to extend the 28 day time limit for goods to be exported.

- Choses in action excludes Moveable personal property

- Consequential amendment to section 32 of the principal Act

Imposition of GST on imports

Exempt supplies (leasehold land)

Taxable period (return to the date of bankruptcy or death)

Calculation of tax payable

Cancellation of registration

Recovery of tax

Interest on refunds

Group of companies

## **INLAND REVENUE DEPARTMENT AMENDMENT ACT 1990**

Short title

Evidence of financial or property transactions

## **UNCLAIMED MONEY AMENDMENT ACT 1990**

Short title

Commissioner may make payment to claimant

## **NEW TAXATION REGIME FOR LIFE INSURERS**

The New tax regime for life insurers was introduced with the Income Tax Amendment Act (No.2) 1990. Full details of this regime are given in Appendix C to this TIB.

## **TAXATION OF CONTROLLED FOREIGN COMPANIES**

The Controlled Foreign Company (CFC) regime is contained in Part IVA of the Income Tax Act 1976.

Michael Rigby, from Inland Revenue's Legislative Affairs directorate, has prepared a comprehensive and detailed analysis of the CFC regime.

That analysis will be published as an appendix to this Taxation Information Bulletin. However, as the analysis is approximately 150 pages long, and the CFC regime has a rela-

tively limited impact, the appendix will only be issued on request.

If you want a copy of this CFC analysis, please fill in the coupon opposite and return it to:

Communications Unit  
Legislative Affairs  
Head Office  
Inland Revenue  
Box 2198, Wellington

by 2 November 1990.

# DUE DATES REMINDER

## October

- 7 First instalment of 1991 Provisional Tax due for taxpayers with June balance dates.
- Second instalment of 1991 Provisional Tax due for taxpayers with February balance dates.
- Third instalment of 1991 Provisional Tax due for taxpayers with October balance dates.
- 1989 Terminal Tax due for taxpayers with November balance dates.
- Second instalment of 1990 Land Tax due.
- 14 Interest PAYE deducted during September 1990 due for monthly payers.
- Interest PAYE deducted 1 April 1990 to 30 September 1990 due for six-monthly payers.
- Dividend PAYE deducted during September 1990 due.
- Non-Resident Withholding Tax deducted during September 1990 due.
- 20 PAYE Deductions for first 15 days of October 1990 due - "Large" employers.
- PAYE Deductions for September 1990 due - "Small" employers.
- FBT return and payment for quarter ended 30 September 1990 due.

## November

- 1 GST return and payment for period ending 30 September 1990 due.
- 5 PAYE Deductions for last 16 days of October 1990 due - "Large" employers.
- 7 First instalment of 1991 Provisional Tax due for taxpayers with July balance dates.
- Second instalment of 1991 Provisional Tax due for taxpayers with March balance dates.
- Third instalment of 1991 Provisional Tax due for taxpayers with November balance dates.
- 1989 Terminal Tax due for taxpayers with December balance dates.
- 14 Interest PAYE deducted during October 1990 due for monthly payers.
- Dividend PAYE deducted during October 1990 due.
- Non-Resident Withholding Tax deducted during October 1990 due.
- 20 PAYE Deductions for first 15 days of November 1990 due - "Large" employers.
- PAYE Deductions for October 1990 due - "Small" employers.
- 30 Shareholder-employee statements and AC Levy form ACC 506 due with levy payment where remuneration was not calculated by 31 May 1990 or included in IR 68 reconciliation

Yes, I would like a copy of the detailed CFC analysis TIB appendix.

Please send it to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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*TAX INFORMATION  
BULLETIN*

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