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Inland Revenue Calendar

The Tax Calendar (IR 24) which sets out the due dates for returns and payments has been updated for the year 1 April 1992 to 31 March 1993. We've changed the name to "IRD Calendar" because it now includes Earner Premium and Employee Commencement/Cessation details.

A copy of the IRD Calendar is included with this TIB. If you need more copies they are available from your local Inland Revenue office.

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GST - Farm Houses and Section 21(5) Deductions

Background

A farmer (registered for GST) who has acquired a residential dwelling for private or exempt purposes may then use the dwelling for the purpose of making taxable supplies. Where an asset acquired for a non-taxable purpose is used for a taxable purpose, the registered person can make a deduction under s.21(5) of the Goods and Services Tax Act to the extent the asset is applied for the taxable purpose.

In PIB 171 of March 1988 (paragraph 2.2.3) we stated that s.21(5) deductions could only be made where part of the residential dwelling had been set aside as an office. This statement has caused uncertainty because it only allows s.21(5) deductions for farm house expenses (phone, electricity, etc.) where the registered person sets aside an office. We have been asked to review paragraph 2.2.3, particularly the requirement that an office must be set aside before s.21(5) deductions can be made for farm house expenses.

Ruling

An office does not have to be set aside before s.21(5) deductions can be made for farm house expenses. Where Inland Revenue has accepted for income tax purposes that a percentage of the phone, electricity, or farm house etc. is used in the farm business (and has allowed an income tax deduction to that extent), that percentage can also be used for GST purposes and s.21(5) deductions.

This ruling reverses that in PIB 171 paragraph 2.2.3 and applies from 1 April 1992. Objections will be considered in terms of Inland Revenue's policy on the acceptance of late objections. That policy is set out in TIB No.5 of November 1989.

Example

Inland Revenue accepts for income tax purposes that a farmer uses the phone (25%) and electricity (25%) in the farming business and an income tax deduction to that extent is allowed. The farmer has not actually set aside an office and wants to know if those percentages can be used for s.21(5) deductions for the phone and electricity.

The farmer can use the 25% figure for the s.21(5) deductions for the phone and electricity. It does not matter that the farmer has not actually set aside an office.

Reference: H.O. GST A.7.1F
Technical Rulings 110.9.2.1

GST - Apportionment and Farm Houses

Background

In PIB 171 of March 1988 we stated that when farm land and a residential dwelling are sold in the same transaction, GST is only charged only on the value of the farm land. GST is not charged on the value of the residential dwelling. We have recently been asked to confirm that policy.

Ruling

When a registered person sells farm land and a residential dwelling in the same transaction, our view is that GST is only charged on the value of the farm land. GST is not charged on the value of the residential dwelling. This confirms our earlier view set out in PIB 171.

When a registered person purchases farm land and a residential dwelling, an input tax credit is allowed on the purchase of the farm land where it is acquired for the principal purpose of making taxable supplies. That will usually be the case. An input tax credit is only allowable on the purchase of the residential dwelling where the dwelling is also acquired for the principal purpose of making taxable supplies. That will not usually be the case as the farm house will usually be acquired principally for a private or exempt purpose.

Discussion

When farm land and a residential dwelling are sold in one transaction, we consider that the single transaction can be "apportioned" or "divided" into two separate supplies for GST purposes. The first is the supply of farm land, and the second is the supply of the residential dwelling including land attached to the residential dwelling. This land is often referred to as "curtilage".

The supply of the farm land and the supply of the residential dwelling must then be considered independently to determine whether GST is charged by the vendor or an input tax credit can be claimed by the purchaser.

The supply of farm land by a registered person will fall within the terms of s.8 of the GST Act. It will be subject to GST at 12.5 percent. The supply of a residential dwelling (including curtilage) is not a supply "in the course or furtherance of a taxable activity" and will not be subject to GST.

Whether a purchaser is permitted an input tax credit on acquisition of the farm land and residential dwelling depends on whether the farm land and/or the residential dwelling are acquired for the principal purpose of making taxable supplies. As a general

rule, the farm land will be acquired for the principal purpose of making taxable supplies, and an input tax credit will be available to the purchaser. However, the residential dwelling will usually be acquired for a private or exempt purpose, so no input tax credit will usually be available to the purchaser.

Valuation

Where there are two supplies, one that is taxable and one that is non-taxable, GST is only charged on the taxable supply. No GST is charged on the non-taxable supply. Each supply must therefore be separately valued for GST purposes so that GST is only charged on the taxable supply.

We have discussed how separate supplies can be valued for GST purposes in PIB 171, and also in TIB Volume Two No.8 of April 1991. This method still applies.

Reasons for the Approach

We consider the transaction can be "apportioned" or "split" in the way first set out in PIB 171 and discussed above for the following reasons:

(1) The GST Act contemplates apportionment

The GST Act contemplates apportionment. In particular s.10(18) contemplates that there are circumstances where a single transaction will be partly taxable and partly non-taxable. When this happens s.10(18) ensures that GST is only charged on that part of the consideration that is attributable to the taxable supply. GST is not charged on that part of the transaction that is non-taxable.

(2) The Taxation Review Authority (TRA) Cases

In *Case M89* (1990) 12 NZTC 2,556 the vendor sold farm land to a purchaser for $170,000 "inclusive of GST if any". The farm land had a residential dwelling and a cottage on it. The vendor attempted to zero rate the transaction as the sale of a going concern. However, Inland Revenue considered that the sale of the farm land was subject to GST at 12.5 percent. The TRA agreed.

In deciding what amount was subject to GST, the TRA determined that it was not the entire purchase price ($170,000) that was subject to GST. Rather, that amount was to be reduced by the value of the dwellings on the farm land. The value of the two farm houses was $80,000. This meant that the value of the farm transaction for GST purposes was only $90,000.

The valuation adopted in *Case M89* supports our policy on farm houses. In *Case M89* only the farm land was subject to GST. The farm houses were not. We further consider that *Case M98* (1990) 12 NZTC 2,599 and *Case N46* (1991) 13 NZTC 3,382 support our approach.

(3) We adopt the same approach in other situations

The most common example is the insurance industry and insurance policies that cover life (exempt) and fire and general (taxable) insurance. In such circumstances GST is not charged on the life insurance part of the premium but is charged on that part of the premium relating to any other insurance (See PIB 168 of January 1988).

Examples

Example 1

A dry stock farmer (registered for GST) decides to sell bare farm land (farm land without stock). On the land there is a residential dwelling which the farmer has lived in. The farm land is valued at $135,000 and the dwelling (and curtilage) is valued at $85,000. The farmer wants to know whether GST should be charged on the transaction.

GST Treatment

The supply of the farm land is a taxable supply and GST (12.5 percent) must be charged on the value of the farm land ($135,000). The supply of the residential dwelling (and curtilage) is a private sale and no GST is charged.

Example 2

A hobby farmer (not a registered person for GST) sells bare farm land to a neighbour who is registered for GST as a farmer. On the farm land there is a residential dwelling. The sale price is $235,000 with the residential dwelling (and curtilage) valued at $100,000 and the farm land valued at $135,000. The neighbour intends to use the farm land to run stock and will live in the residential dwelling. The purchaser wonders if a secondhand goods input tax credit can be claimed.

GST Treatment

Because the supplier is not a registered person no GST is charged on the transaction.

The farm land is acquired for the principal purpose of making taxable supplies (the farming business) and a secondhand goods input tax credit can be claimed of $15,000 (1/9 of $135,000). The residential dwelling (and curtilage) is not acquired for the principal purpose of making taxable supplies, so no secondhand input tax credit can be claimed.

Example 3

A registered person (a dry stock farmer) sells a farm consisting of:

i. Farm land (valued at $150,000);

ii. A residential dwelling (valued at $100,000); and

iii. An orchard (valued at $200,000).

The orchard is sold "lock, stock, and barrel" as a going concern.

The vendor finds a purchaser (a registered person for GST) who is interested in buying the property with the intention of using the farm land in an already existing farming business. The purchaser also intends to continue the orcharding business. The parties agree the purchase price will be $450,000 "plus GST (if any)". The vendor now wants to know whether GST should be charged on the transaction.

GST Treatment

The supply of the farm land is a taxable supply and GST (12.5 percent) must be charged on the value of that supply ($150,000). The supply of the residential dwelling is not subject to GST as it is not a supply in the course or furtherance of a taxable activity. The supply of the orchard is the supply of a "taxable activity as a going concern" and is subject to GST at 0 percent.

The vendor charges GST at 12.5 per cent on the $150,000 ($18,750) and GST at 0 per cent on $200,000 ($0). No GST is charged on the sale of the residential dwelling.

The purchaser can claim an input tax credit for the farm land only ($18,750).

Reference: H.O. GST A.5.1F
Technical Rulings Ch 110.9

Depreciation Rates Increase and Petroleum Mining Legislation

This article is about the Government's announcement of 16 December 1991 regarding depreciation rates increase and petroleum mining legislation.

These announcements are not yet law, but the necessary legislation will be passed by 31 March 1992.

Depreciation Rates Increased

The Government has announced the introduction of a 25% loading to be applied to current rates of depreciation.

The following types of assets will qualify for the loading:

- New depreciable assets (excluding buildings);
- Imported second-hand assets (excluding motor cars);
- Primary sector land improvements; and
- Bloodstock used for horse breeding.

All qualifying depreciable assets purchased and first used on or after 16 December 1991 and on or before 31 March 1993 will qualify for the loading.

Assets subject to a binding contract of purchase entered into on or before 31 March 1993 and first used on or before 31 March 1994 will also qualify for the loading.

Appendix A to this TIB contains more information about these changes.

Petroleum Mining Legislation

The Government has announced its intention to introduce new tax legislation affecting the petroleum mining sector. The legislation is intended to eliminate the current punitive tax treatment of petroleum exploration and development expenditure, both onshore and offshore.

The new legislation will involve a restructuring of three key aspects of taxation that affect investment in the petroleum sector: exploration expenditure, development expenditure and farm-out arrangements. It will apply from 16 December 1991.

Appendix B to this TIB contains detailed information about these changes.

GST-The Supply of a Commercial Building as a Going Concern - New Threshold

Background

In TIB Volume One No.5 of November 1989, Inland Revenue provided guidelines on what is a going concern for GST purposes. We indicated in an example that the supply of a commercial building would be accepted as the supply of a going concern where the supplier had been letting it and 80 percent or more of the building continued to be tenanted at the time of supply. We have been asked to review the 80 percent threshold

Discussion

In *Case M89* (1990) 12 NZTC 2,556 the Taxation Review Authority (TRA) discussed Inland Revenue's 80 percent threshold. The TRA indicated it considered a percentage of "...far less than 80 percent could amount to the going concern of property letting".

In *Case N38* (1991) 13 NZTC 3,322 the TRA held there was the transfer of a taxable activity of leasing car sale yards even though only 4 of 8 car yards compris-

ing the taxable activity were leased. Those 4 yards accounted for approximately 52 percent of the land devoted to the taxable activity. The remaining 48 percent comprised the 4 untenanted car yards.

These cases indicate that if the issue was to be decided by the TRA, the TRA may well determine the supply of a commercial building could be the supply of a taxable activity as a going concern even though the building was less than 80 percent tenanted at the time of supply.

Given the approach of the TRA, it is clear the 80 percent threshold is no longer an appropriate guideline of when the supply of a commercial building is the supply of a taxable activity as going concern.

New Guideline

Inland Revenue now accepts that where a commercial building is sold and at the time of supply 50 percent or more of the building is let, there is the supply of a taxable activity as a going concern. The supply is zero rated for GST purposes.

We note the following:

i. In establishing whether the new threshold is met the rentable floor area should be used;

ii. The test must be applied at the time of supply. This is because the time of supply is the point in time at which the obligation to charge GST (if any) is imposed; and

iii. The new threshold will apply from 1 April 1992. Objections will be considered in terms of Inland Revenue's policy on the acceptance of late objections. That policy is set out in TIB No.5 of November 1989.

Reason for Guideline

Inland Revenue is aware that there is difficulty in determining when the supply of a commercial building is the supply of a taxable activity as a going concern. By publishing a threshold we aim to provide certainty to registered persons. They can be certain that when a commercial building is sold and 50 percent or more (previously 80 percent or more) of the rentable floor area is let at the time of supply, we will accept the supply is zero rated for GST purposes.

However, the new threshold is only an administrative guideline. It will be applied with discretion. This means that there may be situations where a commercial building can still be supplied as a taxable activity as a going concern even though it is less than 50 percent tenanted at the time of supply.

Reference: H.O. GST Z.1.6F
Technical Rulings Ch 107.9.2.1

Inland Revenue authorised to match Data with Social Welfare and Accident Compensation Corporation

New Sections 13A and 13B of Inland Revenue Department Act 1974

Introduction

The Inland Revenue Department Amendment (No.3) Act of 1991 introduced new sections 13A and 13B to the IRD Act, together with associated secrecy provisions.

On 18 December 1991 (the date of Royal Assent to the amending Act) Inland Revenue was authorised to disclose certain taxpayer information to the Department of Social Welfare and the Accident Compensation Corporation for matching purposes. The provisions are summarised below.

Background

The Government's Budget Night Policy Statement on Social Assistance, *Welfare that Works*, announced that employers would be required to inform Inland Revenue of their employees' start and finish dates, where these occurred on or after 1 April 1992.

As part of budget night legislation, the Inland Revenue Department Amendment Act (No.2) 1991 authorised Inland Revenue to disclose information to Social Welfare for community services card purposes. The information to be disclosed was:

- the names and addresses of taxpayers receiving Family Support Tax Credits
- the number of children to which that credit related
- the amount of that credit.

This authority commenced on 1 August 1991. This provision applied only to particulars from the income year ending 31 March 1991.

This limited supply of information is made so Social Welfare and Accident Compensation can match it with their own beneficiary information. Where that matching indicates an apparent discrepancy, Social Welfare and Accident Compensation must undertake further investigation or verification before taking any adverse action against the beneficiary client.

The Inland Revenue Department Amendment Act (No.3) 1991 repealed these provisions and re-enacted them with slightly expanded scope. It also extended the income years to which the provisions apply up to the year ending 31 March 1994. This is the current proposed date for Inland Revenue to hand administration of Family Support over to Social Welfare.

Data matching undertaken by Inland Revenue with Social Welfare and Accident Compensation is subject to the scrutiny of the Privacy Commissioner in terms of authorities given by the Privacy Commissioner Act 1991.

Key Issues

The purpose of section 13A is to facilitate the exchange of certain specified information between Inland Revenue and Social Welfare and Accident Compensation for the purposes of verifying -

(a) the entitlement or eligibility of any person for any benefit or earnings related compensation; or

(b) the amount of any benefit or earnings related compensation which any person is (or was) entitled to or eligible for.

Subsection (5) permits Inland Revenue to cause a comparison of beneficiary information held by Social Welfare or Accident Compensation to be made with any information held by Inland Revenue about that beneficiary.

Subsection (6) provides that where the result of such a comparison indicates that any person-

(a) receives a benefit and any other income at the same time; or

(b) receives earnings related compensation and any other income (including self-employment) at the same time -

Inland Revenue may supply to any authorised officer of Social Welfare or Accident Compensation all or any of the following information that it holds about that person:

(a) where the person is, or was, employed while receiving any benefit or earnings related compensation, -

  (i) the date or dates on which that employment commenced:

  (ii) where applicable, the date or dates on which that employment ceased:

  (iii) the name and business address of each of the person's employers.

(b) details of any other income that a person receives (received) while also receiving any benefit or earnings related compensation, if that other income would affect the person's benefit or compensation entitlement or eligibility.

Subsection (8) provides that where the result of any comparison indicates that any person who applies for any benefit or earnings related compensation is receiving income from any source, and that income may affect the eligibility for that benefit or earnings related compensation, Inland Revenue may supply details of that income to Social Welfare or Accident Compensation.

In its new form, section 13B was enacted to facilitate the exchange of information between Inland Revenue and Social Welfare -

(a) so Social Welfare can issue entitlement cards (as defined in section 132A of the Social Security Act 1964); and

(b) for verifying any cardholder's entitlement or eligibility for an entitlement card.

Under this section, at any time before 31 March 1994 Inland Revenue may supply to Social Welfare the following information from its records about Family Support Tax Credits for the year commencing 1 April 1990, or any subsequent year:

(a) the names and addresses of people receiving Family Support Tax Credit; and

(b) the IRD number of each person receiving Family Support; and

(c) the amount of Family Support; and

(e) whether the Family Support is a full credit or a partial credit.

For these purposes, Inland Revenue is authorised to compare information supplied by Social Welfare with that held by Inland Revenue.

"Entitlement card" is defined by section 132A of the Social Security Act to include all types of community service cards currently distributed by Social Welfare.

The secrecy obligations imposed on all recipients of taxpayer information by section 13 of the Inland Revenue Department Act 1974 are extended to those officers of Social Welfare and Accident Compensation who possess any information received from Inland Revenue's data.

Application Date

The disclosures authorised by sections 13A and 13B may be made at the Commissioner's discretion at any time between 18 December 1991 and 31 March 1994.

Gaming Machine Duty and Casino Duty Legislation enacted

Gaming Duties Amendment Act 1991

Introduction

The Gaming Duties Amendment Act 1991 inserts into the Gaming Duties Act 1971 two new parts to impose and collect a gaming machine duty and casino duty.

A duty on gaming machine profits applies from 1 March 1992, at the rate of 20 percent. The duty applies to all gaming machines owned by about 2,050 gaming machine operators currently licensed under the Gaming and Lotteries Act 1977.

A duty on the casino win of casino operators applies from 20 December 1991. This duty will initially apply to just two casino operators, licensed under the Casino Control Act, expected to be operating in a year or two.

Background

At present, the Lotteries Commission, racing clubs and the Totalisator Agency Board pay duty on their gaming turnover. Until now, gaming machine operators have not been subject to duty. The new gaming machine duty removes this inconsistency.

The Department of Internal Affairs is responsible for regulatory functions such as the licensing of gaming machine operators. It is also responsible for conducting random audits of gaming machine operators. The Inland Revenue Department is responsible for collecting gaming machine duty. Similar arrangements exist for both lottery and totalisator duty.

The Casino Control Authority is responsible for the regulatory functions relating to casino operators. Inland Revenue is also responsible for collecting the casino duty.

Imposition of Gaming Machine Duty

Duty is imposed at the rate of 20 percent on the gaming machine profits of dutiable games played by means of gaming machines on or after 1 March 1992. A gaming machine is a machine used to play any game of chance, instant game lottery, or prize competition. Explicitly excluded are machines used as a means of drawing a lottery such as Lotto or selecting numbers in a game of Housie. Also excluded are machines used merely to dispense tickets in a prize competition, such as "Avago" cards. "Gaming machine profits" is a defined term in the legislation, equating to the operator's gross margin from games played on machines.

Imposition of casino duty

Duty is imposed at the rate of 4 percent on the "casino win" across all authorised games played in casinos. The casino win is a defined term, similar to gaming machine profits and equating to the casino operator's gross margin on games played. There is provision for a carry-forward of any losses against profits in ensuing months.

Returns and payment of duty

Gaming machine operators must deliver a monthly return of the gaming machine profits of all gaming machines and the duty payable on those gaming machine profits. A gaming machine operator is:

- A society licensed under the Gaming and Lotteries Act 1977 to operate gaming machines; or
- Any other person who operates a gaming machine otherwise than pursuant to a licence issued under the Gaming and Lotteries Act. This is to ensure that unlicensed operators are subject to duty on their gaming machine profits.

Casino operators are exempt from the gaming machine duty on their gaming machine profits. Instead, casino operators pay casino duty on their gross margin across all authorised games. Casino operators must also deliver a monthly return of their casino win and casino duty payable on that win.

The returns and payments for both gaming machine duty and casino duty are due on the 20th of the month following the month to which the return relates. For example, the return and payment of duty for March are due on 20 April.

Where a gaming machine operator or casino operator has had its licence cancelled or its renewal refused, the return and duty payable are due seven days after the cancellation of the licence or the refusal to renew. In these circumstances, the return period begins on the first day of the month in which the cancellation or refusal to renew occurred and ends on the day after the cancellation or refusal. The Department of Internal Affairs will advise Inland Revenue of the cancellation or refusal to renew.

Penalty interest on unpaid duty

Penalty interest at the rate of 5 percent a month or part of a month is payable on unpaid gaming machine duty and casino duty from the due date and is recoverable as if that interest were duty payable. Any interest charged is not subject to any remission. Interest will not be charged on any amount of duty unpaid (deferrable duty) which is subject to an objection.

Assessments and objection procedures

Generally, the filing of returns and the payment of duty will be on a self-assessment basis. However,

Inland Revenue has the ability to issue assessments in certain circumstances. These circumstances are:

- A person defaults in delivering a return;
- Inland Revenue is not satisfied with a return;
- Inland Revenue is not satisfied that the amount of the duty calculated as payable by the person is the correct amount; or
- Inland Revenue believes that a person, although that person has not delivered a return, is liable to pay duty.

Where a return has been delivered, Inland Revenue may not issue an assessment or an amended assessment after the expiration of four years from the end of the month in which the return was delivered or the assessment made. This time limit is waived where Inland Revenue believes that a person has knowingly or fraudulently failed to make full and true disclosures of the facts necessary to determine the amount of duty payable.

If Inland Revenue issues an assessment , it may be objected to in the same manner as is available for GST assessments, and may be referred to the Taxation Review Authority or the High Court. Interest is payable on duty in dispute (refundable) and deferrable duty (payable) in the same way as for GST and income tax respectively.

Recovery of duty

Gaming machine duty and casino duty, along with unpaid duty and interest payable, are recoverable as a debt to the Crown.

In the case of gaming machine operators, it constitutes a debt due and payable, jointly and severally, by:

- for an incorporated gaming machine operator, all persons who, at any time during the return period, were officers, trustees, or other persons acting in the management of the gaming machine operator such as the secretary and treasurer.
- for an unincorporated gaming machine operator, all persons who, at any time during the return period, were members, officers, or trustees of the gaming machine operator.

Unpaid duty will rank in bankruptcy, liquidation, or receivership, without limitation of amount, as a preferential claim. It will have the same priority as PAYE and GST.

Inland Revenue can serve a written notice on a third party to deduct a specified sum from any amount payable or to become payable to a defaulting gaming machine operator, casino operator or any person who has defaulted in the payment of duty. Every amount deducted must be paid to Inland Revenue within the time specified in the notice. Where an amount has been deducted but not paid to Inland Revenue , the amount deducted is recoverable from the person making the deduction as if the deduction were duty payable by that person.

Offences

Penalties for offences will be as follows:

- A fine of up to $200 for failing to deliver a return by the due date;
- A fine of up to $1,000 for willfully or negligently giving false information;
- A fine of up tp $500 for not making a deduction from a payment owing to a gaming machine operator or casino operator and paying that deduction to Inland Revenue.

Refund of duty and interest paid in error or in excess

Gaming machine operators and casino operators are entitled to a refund of any duty and interest paid in excess or in error. Before a refund is made, Inland Revenue must be satisfied that the duty was paid in error or excess. Applications for such refunds must be made within eight years from the month of overpayment.

Exchange of information

The Department of Internal Affairs and the Inland Revenue Department will have the ability to exchange information for the purposes of administering gaming machine duty and casino duty legislation. The type of information that will be exchanged is:

- The names and addresses of societies licensed under the Gaming and Lotteries Act to operate gaming machines;
- Details of licenses cancelled or not renewed;
- Details of under-declared gaming machine profits identified during random audit activities; and
- Details of casino operators' gross margins from authorised games, along with anything uncovered during audit activities.

Application date

The general application date of the gaming duty legislation is 1 March 1992.

The application date of the casino duty is 20 December 1991.

GST and Cheque Clearance Fees

There is some confusion about Inland Revenue's policy on the GST treatment of cheque clearance fees.

Inland Revenue's policy on this matter is set out in PIB 148 (May 1986), at Question 23 on page 8. It states:

> "Cheque clearance fees charged by banks to their customers are charges for financial services, therefore these fees are exempt from GST.
>
> However, when a retailer, e.g. supermarket, charges a fee to customers making payments by cheque, the fee is not a charge for financial services and GST must be accounted for on these fees."

The reason for this is that the charge made by a retailer for cheque clearance fees is simply a charge to cover the retailer's costs in accepting the cheque as a form of payment. The retailer does not supply financial services for the charge made to the customer.

Section 3(1)(b) of the GST Act makes reference to "payment and collection" of a cheque. This may have caused some confusion on the matter.

However, these are legal terms when they refer to cheques. They apply to the receipt of a cheque by a bank and its presentation as agent for the customer to the bank upon which the cheque is drawn (collection), and the clearing of the cheque by the second bank (payment).

The retailer's charge does not come within the definition of financial services in section 3 of the GST Act, so it does not qualify for the exemption in section 14 of that Act. As a result, the retailer's charge is for a supply of services, and is taxable in the normal way.

A recent case which highlights some of the principles applied in this policy is *Commissioner of Inland Revenue* v *Databank Systems Limited*

Reference: Technical Rulings, Ch 104.6.3.2.
H.O. GST.E.3.2

FBT - Prescribed Rate of Interest for Quarter commencing 1 January 1992

The prescribed rate of interest used to calculate the fringe benefit value of low interest loans has been lowered to **10.50** percent for the quarter which commenced on 1 January 1992. The rate for this quarter had previously been set at 11.30 percent, but the rates have continued to fall and the new figure of 10.50 percent reflects the current average first mortgage interest rate from all major lenders.

The new rate will continue to apply for the quarter commencing 1 April 1992 and subsequent quarters until further amended. As usual, we will be reviewing the rate again in May to check whether it still reflects the market rates during that quarter.

The rate was changed by the Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations 1985, Amendment No. 12, which were made by Order in Council on 24 February 1992. We have again made use of the 1991 amendment which allows the prescribed rate to be reduced during the quarter.

Farm Fertiliser purchased before Balance Date

Introduction

We have been asked to clarify when farmers may claim a deduction for fertiliser purchased prior to balance date but applied to the land after that date.

Background

For a variety of reasons farmers often purchase bulk fertiliser before their annual balance date in order to claim a deduction in the income year of purchase. Sometimes the farmers pay for the fertiliser but the fertiliser remains at the vendor company's premises. In other instances the fertiliser is delivered to the farm but not spread until after balance date. The deduction of the expense could be affected by the "accrual rules" under section 104A of the Income Tax Act 1976 (the Act).

Accrual Implications

Section 104A requires that the deduction for the payment of goods and services not used in the production of income in an income year be deferred until those goods or services are used in producing assessable income. In the situations mentioned above the deduction of the pre-purchase of fertiliser will be deferred until after balance date if the fertiliser has been paid for but not applied to the land. While the fertiliser is sitting in the vendor's store or sitting in the farmer's storage bin it is "not used in the production of assessable income".

There are exemptions to the above rule. Under Determination E7, for the year commencing 1 April 1991, a taxpayer does not have to comply with the accrual expenditure treatment where the unexpired portion of expenditure on "consumable aids" at bal-

ance date is $58,000or less. Fertiliser is a "consumable aid" along with other farm expenditure items such as fuel, hay, chemicals etc. Where the total unexpired portion of expenditure on consumable aids at balance date is $58,000 or less there is no need for farmers to comply with section 104A. The pre-purchase of fertiliser can be claimed as a deduction in the year the expenditure is incurred. Where the unexpired portion of expenditure is more than $58,000 the accrual expenditure rules will apply.

Use of the Income Equalisation Scheme

The income equalisation scheme is designed to even out fluctuations in farm income. Deposits to the scheme are deductible for income tax purposes in the year of deposit. The deposits are assessable income when they are withdrawn. Generally, deposits must be left in the scheme for a period of 12 months for the benefits to apply.

There is provision in the scheme for Inland Revenue to make early refunds where a farming business is affected by an adverse event. Inland Revenue can also make early refunds in "any other case or class of case".

Where, for a particular reason, a farmer has difficulty in applying fertiliser to the land before balance date we will accept deposits to the scheme at balance date. The refund of these deposits can be made when the fertiliser has been purchased and applied to the land.

To qualify for this concession the deposit must be made within two weeks after balance date. The deposit must be accompanied by a letter explaining the reason why the fertiliser cannot be purchased or applied. Reasons could include the condition of the land due to flood or drought, the lack of fertiliser or the unavailability of a top dressing contractor. Refunds of these deposits will be made when the fertiliser has been applied. Farmers must send the invoices from the fertiliser company and the top dressing contractor with the application for a refund of the deposits made.

In cases where the deposit is greater than the fertiliser and application costs incurred the farmer has the option of:

- leaving the balance in the income equalisation account and withdrawing it after the 12 month period. The amount would then be assessable in the year of withdrawal, or
- withdrawing the balance at the time of withdrawal of the expenditure incurred and having that balance treated as assessable income in the tax year of deposit.

Reference: H.O. 10.F.1.5
Technical Rulings Ch 19, Part 4, 22.5

Opossums removed from Withholding Payments Regime

Sellers of opossums are no longer subject to the Withholding Payments regime, although they are still liable for income tax on the net income or profit they derive from opossum trapping activities.

The Government considered the amendment to the Regulations simplified compliance for both trappers and the purchasers of opossum skins. They felt it was important to eliminate any possible disincentive to opossum trapping, in order to help contain the serious threat that bovine tuberculosis poses to New Zealand's beef export trade.

This change was made by the Income Tax (Withholding Payments) Regulations 1979, Amendment No 9, and took effect from 16 January 1992.

Skin buyers should note that they are still required to keep records in order to substantiate their claims for deductions. The requirement that details of sellers be recorded in sufficient detail to enable them to be readily identified is set out in section 428(2)(c)(i).

Sphagnum Moss Pickers included in Withholding Payments Regime

From 1 April 1992 payments made to sphagnum moss pickers will be subject to a withholding tax of 25 cents in the dollar. The change was made by the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 10.

Buyers of sphagnum moss will be required to deduct withholding tax from payments made to sphagnum moss pickers. The withholding tax must be deducted at the rate of 25 cents in the dollar. If the sphagnum moss picker does not give the buyer a signed IR 13, the buyer must deduct withholding tax at the no-declaration rate, which in this case is 40 cents in the dollar.

The IR 10 and Section 25 of the Income Tax Act 1976

Background

The IR 10 is an integral part of Inland Revenue's E-File system. We use it for providing information to the Statistics Department and to build up data for audit case selection.

Accountants and taxpayers who file returns manually (i.e., who don't use E-File) may either send in an IR 10 or a set of financial statements with tax returns. However, we are encouraging accountants to use both the E-File system and the IR 10.

The New Zealand Society of Accountants has raised concerns about the IR 10. Specifically, there is a lack of information disclosure when using an IR 10 compared with the information disclosed in the financial statements. This could affect how Section 25 of the Income Tax Act 1976 applies to reassessments after the four year time limit has passed.

Problem

1. Income shown in statements, but not in IR 10

A taxpayer who filed an IR 10 instead of financial statements may be disadvantaged if an audit/investigation of back year returns reveals a discrepancy. If such a discrepancy is in an item that is recorded in the financial statements (obtained during the audit/investigation), but which did not need to be recorded on the IR 10, section 25(2) could be used to reopen the statue barred assessment with the argument that full disclosure was not given in the return for that particular item.

This problem does not exist when financial statements are filed with the tax return. If a reassessment is not issued for the item before the four year time limit has passed, then Inland Revenue is statute barred from re-opening that assessment because full disclosure was made to Inland Revenue with the return.

2. All Mention of Income Omitted

The details of income to be recorded on the IR 10 do not cover all income sources. Two situations can occur where there will be omission of income when filing a return (either manually or through the E-File system) with an IR 10.

a) If an item of assessable income did not have to be recorded on the IR 10, but has been recorded in the financial statements.

b) The income is omitted completely from the financial statements, and is not included when calculating taxable income.

Policy

Inland Revenue will be applying the following policy when auditing/investigating back year returns which were filed with an IR 10:

If an audit/investigation reveals an item incorrectly recorded in the financial statements which is deemed to be either assessable income or non-deductible expenditure, but which did not have to be so recorded on the IR 10, then -

- If no conclusive evidence is held to prove a fraudulent or wilful misleading by the taxpayer, no statute-barred back year assessment will be re-opened under section 25(2).
- If there is conclusive evidence that a taxpayer intended to fraudulently or wilfully mislead, then section 25(2) will be applied to re-open statute-barred assessments.

If an audit/investigation reveals an omission of income then -

- If the omission is because disclosure was not required on an IR 10, (but the income was recorded in the financial statements which were not filed with Inland Revenue), then this will not be a reason for re-opening a statute-barred assessment.
- If the income was omitted from the financial statements then section 25(2) may be applied to re-open a statute barred assessment.

Summary

The IR 10 is a means of providing important information to our Department and to the Statistics Department. We acknowledge the concerns raised by the New Zealand Society of Accountants and have introduced the above policy for auditing/investigating back year returns which are filed with an IR 10.

Due Dates Reminder

April

5 PAYE deductions for last 16 days of March due - "large" employers only.

7 First instalment of 1993 provisional tax due for taxpayers with December balance dates.

Second instalment of 1992 provisional tax due for taxpayers with August balance dates.

Third instalment of 1992 provisional tax due for taxpayers with April balance dates.

14 RWT on interest deducted during March 1992 due for monthly payers.

RWT on interest deducted from 1 October 1991 to 31 March 1992 due for six-monthly payers.

RWT on dividends deducted during March 1992 due.

Non-Resident Withholding Tax deducted during March 1992 (or approved issuer levy) due.

20 PAYE deductions and IR 66ES for first 15 days of April due - "large" employers only.

PAYE deductions and IR 66ES for March due - "small" employers.

Completed Tax Deduction Certificates for the year ended 31 March 1992 should have been distributed to all employees.

FBT return and payment for quarter ended 31 March 1992 due.

FBT annual return (1 April 1991 to 31 March 1992) due for employers who pay no fringe benefits.

Gaming Machine Duty return and payment for month ended 31 March 1992 due

30 GST return and payment for period ended 31 March 1992 due.

May

5 PAYE deductions and IR 66ES for last 15 days of April due - "large" employers only.

7 First instalment of 1993 provisional tax due for taxpayers with January balance dates.

Second instalment of 1992 provisional tax due for taxpayers with September balance dates.

Third instalment of 1992 provisional tax due for taxpayers with May balance dates.

14 RWT on interest deducted during April 1992 due for monthly payers.

RWT on dividends deducted during April 1992 due.

Non-Resident Withholding Tax deducted during April 1992 (or approved issuer levy) due.

20 PAYE deductions and IR 66ES for first 15 days of May due - "large" employers only.

PAYE deductions and IR 66ES for April due - "small" employers.

Gaming Machine Duty return and payment for month ended 30 April 1992 due

31 GST return and payment for period ended 30 April 1992 due.

Specified Dividend Reconciliation (IR 17S or IR 17SA) for RWT on dividends due.

Annual reconciliation statement (IR 15S) due for RWT on interest.