



Seasons greetings

As this is the last edition of *AGENTSanswers* for 2007, I would like to thank all of you for your support and feedback throughout the past 12 months. It has been a busy year!

I would like to wish you and your families a safe and happy break and look forward to working with you all again next year.

Katrina Williams
Customer Insight Manager



GST offsets

We've been asked whether the purchaser of a property can have the resulting GST input tax deduction transferred to the vendor's GST account, to offset the vendor's GST liability from the transaction. This is often referred to as a "GST offset" between GST-registered persons.

The Goods and Services Tax Act 1985 doesn't provide specific authority to transfer input tax deductions relating to individual transactions. However, where a GST return period results in a credit of excess tax, customers may ask that all or any part of the excess tax, is transferred to another customer.

It's possible for a GST registered purchaser to ask us to transfer any part of an excess GST credit that they may be entitled to have refunded to a GST registered vendor. However, the following points should be noted:

- Any request for a GST offset must be made in writing by the purchaser (or their agent) and may be requested whether or not a "GST offset" clause is included in an agreement for sale and purchase.
- We may occasionally be asked to confirm in advance that a GST offset will be made. We can confirm that such transfers can be made but we can't give any assurances in advance that a particular transfer will be made.

There are a number of reasons for this. For example, the purchaser may have outstanding returns or debt with Inland Revenue, so any credit may not be available for offset. In addition the purchaser may have made or received other taxable supplies in the same GST return period, so the full amount of the credit may not be available for offset.

- Even if the vendor has a "GST offset" clause included in an agreement for sale and purchase and for some reason this is not honoured by the purchaser, we'll look to recover the GST from the vendor not the purchaser. Ultimately the vendor is responsible for paying any GST due. If a purchaser fails to comply with any written agreement with the vendor in terms of a GST offset, then this is a civil matter for the vendor and purchaser to resolve between themselves.
- Any excess GST credit will be transferred to a vendor (that is not a close associate of the purchaser) either on or after the date of transfer request, whichever is the later, and after the date the relevant GST return is filed. This means that if a purchaser files their GST return on the due date, the transfer will be effective one day after the vendor's tax payment is due.
- Any excess GST will be transferred to a vendor (that is a close associate of the purchaser) a day after the end of the GST return period in which the excess credit arose to the purchaser.
- The following are close associates:
 - a company in the same group of companies
 - a shareholder employee of the customer
 - a company in which the customer is a shareholder employee
 - a partner in the same partnership
 - a relative
 - a trustee of a family trust of which the customer is a beneficiary.
- A vendor and a purchaser may file GST returns for different return periods. The vendor may be liable to pay interest and late payment penalties if the excess GST credit from the purchaser isn't available for transfer on the date that the vendor's GST is due. (Note: The purchaser can't file their GST return until the GST period at issue has ended ie they can't file a GST return early in order to have any offset effected earlier).

A purchaser who accounts for GST on the payments basis won't be able to include a claim for input tax for the amount of the transfer to the vendor before the transfer has been made. The amount has not been "paid" to the vendor until the transfer occurs.





Elections to enter or leave certain livestock valuation schemes

We've been asked to restate the Commissioner's policy about what form an election should take for a customer wanting to enter or leave certain livestock valuation schemes.

Generally, the Income Tax Act 2004 allows taxpayers to make their election using the method of their choice. However, certain restrictions on the making of elections can be imposed.

Customers wanting to give notice of same year elections under section EC11(2), can't rely on the simplified method of election outlined in the Act. These elections must be in the form of a separate written notice, which needs to be made by the date of filing their return for the income year in which the election is first to apply.

Same year elections under section EC11(2) must be made to:

- value livestock of a particular type under the herd scheme
- adopt a herd value ratio or the Chatham Islands adjustment to the herd value ratio in the year of making a herd scheme election for the type of livestock.

There has been some debate around the effect of the phrase "is first to apply". The Commissioner's view is that customers must make a new election each time they wish to apply the provisions of section EC11(2) to another type of livestock.

In addition, customers are required to give the Commissioner two years' written notice when they wish to:

- stop valuing livestock under the herd scheme
- adopt, after the herd scheme has been adopted, a herd value ratio or recalculated herd value ratio or the Chatham Island adjustment
- switch between self-assessed cost and national standard cost.

These notices must be provided at least two income years before the income year in which the election is first to apply.

The above information is consistent with the Commissioner's previous advice on this point published in *Tax Information Bulletin (TIB)* Vol.2, No.6 (February 1991) and also in *Tax Information Bulletin (TIB)* Vol.3, No.8 (April 1992).

Where customers are required to give notice to the Commissioner, the methods are set out in section 14B of the Tax Administration Act 1994. This section requires the notice to be in writing. In this case it will require separate written notice. There are also a range of ways customers may use to give the notice including:

- personal delivery during working hours
- electronically (using our Send and Receive Mail Service)
- posting it to us.

We occasionally receive elections that don't comply with section 14B, for example, rather than a separate written notice, a return is filed using the chosen election method, or a notation is made in the relevant set of financial accounts (or IR10 if the return is filed electronically). Generally, we will advise the customer (or agent) that this wouldn't be sufficient notice. Despite this, customers have occasionally not been advised that an election is invalid. It's not considered practical, or an efficient use of resources, to make large-scale enquiries for back years to ascertain whether an election is valid. However, where this matter may arise in the normal course of an investigation, we will have little option but to apply the law as set out above.

Reminder

The fastest way for you to start your clients up in business is to go online with the Companies Office and Inland Revenue. You can incorporate their company, apply for a company IRD number and register them for GST—all at the same time. See the August 2007 edition of *AGENTSanswers* for more information.

Our services over the holiday season

Call centre opening hours:

Saturday	22 December	9.00 am – 1.00 pm
Monday	24 December	8.00 am – 5.00 pm
Tuesday	25 December	Closed
Wednesday	26 December	Closed
Thursday	27 December	8.30 am – 5.00 pm
Friday	28 December	8.30 am – 5.00 pm
Saturday	29 December	Closed
Monday	31 December	8.30 am – 5.00 pm
Tuesday	1 January	Closed
Wednesday	2 January	Closed

Our normal hours (8 am to 8 pm weekdays and 9 am to 1 pm Saturdays) resume from 3 January 2008.

E-File

The E-File system and the E-File helpdesk will be unavailable from midday **24 December 2007** to 8 am **3 January 2008**.



Eligibility for In-work tax credit (IWTC)

The Income Tax Act 2004 sets out who is entitled to In-work tax credit (IWTC). It states that, to be eligible, customers must receive a certain type of income for a period of one week or more. Income is gross income and not necessarily net or taxable income. The following types of income may qualify for IWTC:

Beneficiary (Trust) income

This income is generally excluded from the definition of a source deduction payment, which means that customers who receive beneficiary income from a trust are not usually entitled to Working for Families Tax Credits (WfFTC). However, if they are working for the trust for the required hours, and receive business income from the trust, they will be eligible. This is because the income passed on to the beneficiary doesn't lose its origin ie trust interest is passed onto the beneficiary as interest and trust business income is passed onto the beneficiary as business income. The beneficiary has therefore received "business income" and has eligible income for IWTC purposes.

Example:

A husband and wife's farm is held in a family trust. The business activity is therefore carried on under the trust. They work in excess of 30 hours each. At the end of the year they're allocated their beneficiary share of the interest, dividends and business profits. They have met the criteria and they received business income, so they are eligible for IWTC.

Self employed and partnership losses

A principal caregiver or partner, working the required hours to fulfil the full-time earner criteria and receiving gross income, is entitled to IWTC whether or not they have incurred an overall loss. This is because although they may have an end of year net loss, they did receive gross income during the year so they are eligible.

Example:

A husband works 30 hours in a plumbing partnership. At the end of the year, once all expenses and allowable deductions are taken into account, the business income is a net loss. However, during the year the partnership received gross income from their clients for plumbing work undertaken. They have therefore received "business income" so they are eligible for IWTC.

Shareholder-employee in a close company

As long as a principal caregiver and/or partner work(s) the

required hours and receive(s) a shareholder salary, they're eligible for IWTC. However, they aren't eligible if they don't receive a shareholder salary because they haven't received "income" in terms of the eligibility criteria. They can't claim they have received "business income" (unlike the working beneficiary who can) as it's the company who receives business income, not the shareholder.

Example:

A principal caregiver and partner work over the required hours. At the end of the year the company makes a loss so there's no profit available to give to the shareholders. This means they aren't eligible for IWTC unless they have other income which enables them to qualify.

Loss attributing qualifying company (LAQC) Losses

LAQC losses are not "earnings" related. A shareholder in a LAQC company can receive an attributed loss without actively working for the company so a claim for IWTC by a customer with an LAQC loss would generally not meet the criteria. To be eligible, the customer(s) must be working for the company and have a shareholder salary allocated. If there is no allocated salary, there is no eligibility for IWTC. Please note that shareholders in loss attributing qualifying companies, qualifying companies and close companies should all be viewed in the same way for IWTC eligibility.

Example:

There are five shareholders in a LAQC company. Shareholder one (S1) and shareholder 2 (S2) actively work in the business and work the required hours. Shareholders 3, 4 and 5 don't work for the company. At end of year the loss incurred by the company is allocated to all of the shareholders. Only S1 and S2 would be able to consider applying for IWTC, if they have been allocated a shareholder salary. Shareholders 3, 4 and 5 have not worked the required hours in this company to qualify but they may be able to claim for IWTC if they have other eligible income.

Online services are moving

Early next year we'll be changing the website address for our online services (including ir-File, Look at account information, Client maintenance).

We'll also be making some changes to the look and feel of the online services web pages, including improving the navigation and personalising menus.

Watch out for more detailed information about these improvements on our website in January 2008.



Provisional tax section added to online GST return

Background

Clients registered for GST and with October balance dates, now have their GST taxable periods aligned to their balance dates. This means they can begin calculating and paying their provisional tax with their GST.

Clients who use our online services to file their GST have the option of filing their provisional tax online from early December—this service is available irrespective of the whether they use the standard, estimation or ration option to calculate their provisional tax.

How to access the provisional tax section

On the first page of the online GST return there is an additional question asking whether clients also pay provisional tax. You or your clients can either select “yes” or “no”.

If “yes” is selected a provisional tax section will be included at the end of the GST section. This includes a section where clients can offset GST refunds against their provisional tax.

The online return can only be used to file provisional tax from the 2008/2009 income year onwards.

If “no” is selected (the return automatically defaults to this) only the GST questions appear on the return.

How to clients use the provisional tax section

The provisional tax section has all of the necessary fields for you or your client to calculate their provisional tax. It will also perform calculations automatically once information is added.

Please note the provisional tax section of the online form isn't customised so you or your clients will need to enter only the information relevant to their circumstances. However, the GST 103 we send is customised and can be used as a guide.

Additional information

When the ratio option has been elected the following information will be used to calculate provisional tax:

- the ratio percentage printed on their GST 103 (or on the notification we send them when they first elect to use the ratio option)
- their asset adjustment amounts for each previous two month period if relevant
- their GST taxable supplies for each previous two month period.

Availability of L letters

Just a reminder, we'll be “turning off” L letters at the end of January 2008. They will be available again from early August 2008 which means you won't be able to request an L letter to be sent to your client during that period.

If you have any clients who haven't given you their records and you would us to send them an L letter, you will need to make your request through INFOexpress before the end of January—remember when using INFOexpress you don't need to wait for the voice prompts before you move onto the next step and it is only available until 10.00pm on the last working day of the month.

By issuing an L letter, the client is removed from your performance statistics until the return is filed.

Note from the editor

If your mailing details are incorrect, we have missed someone off the distribution list or you have suggestions for future topics, please email:

agents.answers@ird.govt.nz

AGENTSanswers is also at:

www.ird.govt.nz/taxagents/newsletters/agents-answers