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# Client Newsletter

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June & July 2011

## GST on Second-hand Goods

GST may be claimed on second-hand goods by a GST registered person if those goods are bought from a non-registered vendor, provided:

- The buyer actually pays for the second-hand goods before claiming GST on it;
- The buyer keeps sufficient records such as an ordinary invoice because the unregistered vendor will not be able to issue a GST invoice; and
- The goods comply with the definition of second-hand goods in the GST Act.

The GST definition of second-hand goods specifically excludes livestock but land purchased from an unregistered vendor may be second-hand goods; therefore a registered purchaser of such land may be able to claim GST on the purchase price. However, an input tax credit will be available only on that part of land that is related to a taxable activity. For example, if a farmer purchases a piece of land that has a dwelling on it for farming activity then GST cannot be claimed on the dwelling and curtilage.

IRD policy requires the goods be both previously *used* and previously *owned* by someone else i.e. prior ownership on its own does not make the goods second-hand. There have been instances where taxpayers incorrectly claim GST under the second-hand goods provisions. The following are some examples:

- When goods are purchased from an unregistered associated party, GST is not claimable if the associated party did not pay GST when buying those goods;
- When GST is claimed on second-hand goods before payment is made because the taxpayer is on invoice basis. Regardless of the taxpayer's GST accounting basis, second-hand goods claims are limited to the amount actually paid during the taxable period; and
- When goods are purchased from a GST registered supplier. Inland Revenue will not allow a claim unless the taxpayer holds a valid tax invoice at the time of filing the GST return. In cases where the supplier claims to be unregistered for GST, it is best to obtain a written confirmation from them that they are not registered for GST.

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## Fringe Benefit or Entertainment?

Employers often enquire about the treatment of expenses made on account of employees – whether they are subject to fringe benefit tax (FBT) or considered to be entertainment expense. Generally, when employers consume or enjoy the expenditure at their discretion, and it is not in the course of their employment duties, then the expenditure is subject to FBT. Examples of such expenses are:

- Subsidised gym memberships;
- Memberships to golf club.
- Goods sold at a discounted price; and

Any expenditure that is subject to FBT is fully deductible by employers. Entertainment expenditure, on the other hand, is an expense that is not enjoyed at the employee's discretion, e.g. staff Christmas parties or entertaining customers. These expenses are only 50% deductible for tax purposes. The following checklist sets out the rules regarding the tax treatment of entertainment expenses.

## ENTERTAINMENT EXPENSES CHECKLIST

	50% Claimable	100% Claimable	FBT Payable
Staff Christmas party costs	✓		
Gifts for New Zealand Clients	✓		
Business lunches in New Zealand	✓		
Morning tea 'shout' on employers' premises (for all employees)		✓	
Transport costs provided to employees to attend staff Christmas party		✓	✓
Entertainment consumed overseas		✓	
Gifts to staff		✓	✓
Light meals provided to employees at lunchtime meetings		✓	
Friday night drinks for employees	✓		
Sales staff's meal costs while out of town		✓	
Corporate box costs or season passes	✓		
Subscriptions to sporting clubs e.g. golf clubs		✓	✓

The above list does not cover every situation. Please contact us if you have queries on any other types of entertainment

## Treatment of subvention payment

The Inland Revenue Department has made a change to its practice of requiring an actual physical payment (transfer of funds and not just book entries) for subvention payment purposes. Previously, for a subvention payment to be complete they required an actual payment. They have now reconsidered their view and in the absence of any statutory definition in the context of a subvention payment, "payment" will be given its ordinary meaning.

In the context of subvention payment agreements, "payment" will be satisfied when the obligation has been discharged. There are a number of ways an obligation may be discharged, including a cash payment or equivalent or by certain accounting entries. An obligation will generally be discharged where the payee can no longer sue the payer for the payment.

## Working for Families Tax Credits income changes

The definition of family income for Working for Families Tax Credits has been amended. From 1 April 2011 people receiving Working for Families Tax Credits will no longer be able to use investment losses, such as from rental properties, to reduce their family income. The definition also includes the following income types:

- Attributable trustee income (including income of a company controlled by the trust) if you're a settlor of a trust;
- Attributable fringe benefits – when 50% voting is held by shareholder-employees or their associates;
- PIE income – excluding superannuation funds or a retirement savings scheme;
- Passive income of children – includes interest, dividends and rent. Amounts over \$500 a year (per child) are included as family income;
- Income of non - resident spouse – worldwide income;
- Tax exempt salary or wages – under specific international agreements in New Zealand (eg, United Nations);
- Main income equalisation scheme deposits - made by you, your trust or a company controlled by you or your trust;
- Certain pensions and annuities – includes 50% of payments from life insurance policies or a superannuation fund (excluding NZ Super); and
- Other payments – received from any person or entity and used for the family's day-to-day living expenses. This is only included if the total amount exceeds \$5,000 per family.

If you are receiving weekly or fortnightly Working for Families Tax Credits payments, you need to let the IRD know if they have any of the above types of income so they can pay the correct entitlement. If you are receiving Working for Families Tax Credits as a lump sum at the end of the year, then let the IRD know before the end of year assessment is completed (year ending 31 March 2012).

Important: This is not advice. Clients should not act solely on the basis of the material contained in the *Client Newsletter*. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The *Client Newsletter* is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 188/2011.