Tax-e-mail

DON'T LET THE IRD NAIL YOU
Published by The Small Business Institute Limited
ISSUE 2109

Changing GST period and Covid 19

COV 21/03 is a determination allowing a switch from a six months taxable period to a one-month taxable period to allow taxpayers easier access to GST refunds. It is intended to allow a quicker change than would otherwise occur. It sets out how the variation applies and the conditions for making the change to the frequency of GST returns.
Application is from 1 October 2021 to 31 March 2022.

Repairs and maintenance – rental property

Do you ever stop and wonder whether you are entitled to write off new lino or perhaps the replacement of a stove or a whole kitchen?
IS 12/03 outlines the Inland Revenue's view on repairs and maintenance for residential rental properties.
To answer this question, firstly you need to identify the relevant asset. Is it the lino, the stove or the kitchen, which is the relevant asset or may be it is the whole house?
IS 10/01 lists the assets Inland Revenue views as "stand alone". If the assets you are considering are in the list, they are the relevant assets.
The next step is to determine whether you are replacing the whole of the relevant asset (capital) or just a part of the asset (revenue).
Unlike a free standing stove, lino is attached to the house and can't be removed and still carry on its function (floor covering) when detached, so it is just a part of the house. Replacement lino is therefore a repair to the house. Inland Revenue's view is that carpet is the relevant asset as it isn't glued down like lino. A free standing oven on the other hand could function without needing to be attached to the house so is the relevant asset. If you replace the free standing stove, it would have to be capitalised and you would be permitted to depreciate it. Whether the original stove was separated in the asset register originally is irrelevant.
You also need to consider the nature and extent of the work undertaken on the asset. It may be so extensive that it has resulted in the reconstruction, replacement or renewal of the asset.
You also need to consider whether there is any improvement. When you replace the kitchen are you putting the kitchen back into a similar state to what it was when it was originally installed or are the changes so extensive as to be more than this (for example, replacing a formica bench with a stone one)? In the first case, you have a deductible cost but in the second case you have an addition to the house ie capital and non depreciable.

Landlords, tenants and Covid 19 – Government announcement

The Property Law Act is to have a clause inserted into it, relating to commercial leases, requiring a "fair proportion" of rent to be paid where a tenant has been unable to fully conduct their business in their premises due to Covid 19 restrictions.
Landlords and tenants will need to agree to an amount of rent that is fair or arbitration, mediation or similar will be required.
It is intended the law be effective from 28 September 2021.
The document also discusses changes to the Residential Tenancies Act.

Payments to employees in relation to telecommunications

Inland Revenue has produced Determination EE003, which is a discussion about the extent to which a payment to an employee for telecommunications tools and usage plans by the employee, who is working from home can be exempt income for the employee. It applies from 1 October 2021 until 31 March 2023 and it replaces other Determination is – EE001, EE002, EE002A andEE002B.
It is acknowledged it could be very difficult for an employer to know the extent to which the telecommunications tools and usage plans of an employee are used for business.
Page 4 of the Determination shows a list of requirements for the Determination to apply. This is followed by circumstances where the Determination will not apply.
The Determination is not binding on employers or employees.
The Determination now splits the weekly thresholds according to whether:

- The employee **does not** use their own telecommunications and/or their own usage plans. The weekly threshold is "**Up to** $15 per week of the amount paid by the employer can be treated as exempt income of the affected employee."
- The employee uses their own telecommunications and/or their own usage plans. The weekly threshold is "up to $20 per week of the amount paid by the employer can be treated as exempt income for the affected employee."
- The employee does not work from home but uses their own telecommunications tools and/or usage plans in the course of their employment. The equivalent figure is five dollars per week.

There is more detail including making reasonable estimates, payments for the cost of newly acquired furniture and equipment and telecommunications equipment. Please refer to the Determination to get the details.

 127 Queens Drive, Lower Hutt, Phone 04-9394156, e-mail: mail@smallbusinessinst.co.nz

Interest deductibility

The proposed new laws on interest deductibility for residential rental property are complex.
Three exclusions:

- Main family home.
- Certain types of residential property.
- New builds and property development.

Six Information sheets have been provided and an additional all in one information sheet.

- Interest limitation information sheet all in one file.
- Information sheet 1 – interest deductibility proposals at a glance.
- Information sheet 2 – properties not affected by interest deductibility proposal.
- Information sheet 3 – how the rules work for certain entities.
- Information sheet 4 – exemptions for property development and new bills.
- Information sheet 5 – how interest deductions are affected.
- Information sheet 6 – changes to the bright line property rule.

Information sheet 1

This sheet includes the following headings:

- Acquired date for tax purposes – before and after 27 March 2021.
- Property development new builds will be exempt from the proposed rules.
- Types of property to be excluded from the changes – list has been supplied.
- Exclusions for certain organisations – some of this is repeated in the other information sheets.
- Previously denied interest deductions may be available when residential property is sold if the sale is taxable. The deduction may be limited to the gain on sale.

Information sheet 2

- In general, housing in New Zealand that a person could live in would be affected by the changes. Bare land which could be used residentially would be affected.
- Interest for the use of a main home for income earning purposes will be permissible.
- Interest has to be apportioned for property used for both residential and commercial like a dairy with a rental flat above.
- The information sheet lists various types of accommodation exempt from the rules.

Information sheet 3

The information sheet explains how the rules work for:

- Companies that are not close companies, where the residential property makes up less than half their total assets, will be exempt from the rules limiting interest deductions. Close companies (5 or fewer persons, including trustees own more than 50% of the shares), will not be exempt but close companies which are Maori authorities will be exempt as they are accountable to a larger member group.
- Developers – not exempt from the limits of interest tax deductibility but the development activity itself will be exempt.
- Social housing providers – not affected by the rule. Community housing providers are not exempt but to the extent property is used for emergency, transitional, social and council housing it is exempt.

Information sheet 4

- In general the new rules for bright-line interest non deductibility commence on 27 March 2021 but the new build exemption has a different date, being 27 March 2020.
  EG if the CCC was issued on 25 March 2020 the interest will phase out from 1 Oct 2021 but if the CCC was on 28 March 2020 it will be deductible for 20 years.
- This information sheet defines a new build.
- This information sheet defines when the new build exemption begins.

Information sheet 5

- Refinancing up to the level of the original loan will not affect the deductibility of interest.
- Interest on a revolving credit account will be tax deductible within the phase-out limitations to the extent the amount borrowed does not exceed the original loan at 27 March 2021.
- If a residential rental property is used as a security for funding a business not involved in residential rental, the interest will be tax deductible in the usual way.
- The interest limitation rule will apply where a house is used partly by the owners and partly for rental like a holiday home. The interest is entirely non deductible
- The interest limitation rule will not apply where a main home takes in borders or flatmates. Interest deduction will continue.

Information sheet 6

- 5-year Bright Line test for new builds on or after 27 March 2021.
- The gain on sale of a property where the main home occupies more than half the land, is not subject to the Bright Line test. However, where less than half the land is used for the main home the rule is to be changed so

the gain under the Bright Line test is to be apportioned based on the area of the land used for home and used for rental.
- Technical changes of ownership like 50:50 owners transferring to a look through company they own 50:50 will not affect the Bright Line property rule.

Taxation (Annual Rates for 2021 – 2022, GST, and Remedial Matters) Bill (continued from Tax-e-mail 2108)

The above named Bill was introduced into Parliament on 8 September 2021. It contains some changes to GST policy and a significant number of remedial adjustments to the GST and Income Tax Acts. The commentary on the Bill includes:

- Cryptocurrencies – cryptocurrencies are to be excluded from GST and the financial arrangements rules. The law is to be backdated to 1 January 2009. However GST registered businesses that raise funds issuing crypto assets, with features similar to debt or equity securities are going to be permitted to claim input tax credits on the capital raising costs.
- GST apportionment – any GST registered business which makes supplies which are both taxable and non-taxable will be permitted to agree an apportionment with Inland Revenue. The current $24 million minimum threshold for being able to do this, is to be abolished.
- Transporting goods through New Zealand – the GST charge for transporting goods to and from New Zealand is a zero rated supply. If the same supplier transports goods within New Zealand as part of the international transport of the goods, the service is also zero rated. The current rules state if the same organisation uses a subcontractor, that section of the journey is subject to standard rating. The proposal is to allow the subcontractors to also zero rate their service for this purpose.
- When an asset, which is used for both taxable and non taxable purposes, is sold the taxpayer has to pay output tax on the total selling price.
  In future, when an asset is used for both taxable and non taxable purposes and is sold there will be an input tax adjustment for the non taxable use proportion of the selling price.
  Example:
  A beach cottage is bought for $690,000. The owner has registered for GST. The non taxable use of the cottage is 20% each year. The owner would be entitled to claim input tax on the tax fraction of $690,000 being 80% x 3/23 of $690,000 = $72,000 (80% of 90,000).
  After many years the property is sold for $1,150,000. GST is payable on this amount – $150,000. Under the proposed rules an input tax deduction of the 20% non taxable use (20% x 3/23 x $1,150,000 = $30,000 will be permitted. Previously, the extra input claim would have been limited to $18,000 ie the balance of the GST not claimed on purchase.
- Software designed to understate income – a penalty regime is to be introduced to deal with software programmes designed to interfere with the recording of point of sale transactions designed to either reduce or delete amounts of the income. Some of the penalties will be considered criminal offences and manufacturers could be fined up to $250,000. There are lesser penalties for those who acquire or possess such tools.
- FDR hedging – many investors who invest offshore enter into foreign currency hedges. In 2014 FDR FX hedge rules were introduced to eliminate tax mismatches. Some of the compliance requirements have become burdensome to implement. The new rules, starting from 1 April 2022 are aimed at reducing the compliance costs.
- Returns overlooked – occasionally, a taxpayer will inadvertently overlook filing a tax return. An example might be someone who provides a fringe benefit and does not realise this is subject to Fringe Benefit Tax. Such people, who make a voluntary disclosure, are going to be allowed to use tax pooling to make the payment. This amendment will not apply to income tax and RWT.
- Buyer created tax invoices – the requirement to have Inland Revenue's prior approval for buyer created taxable supply information is to be replaced by an agreement between the registered buyer and registered seller.
- Second-hand goods – currently taxpayers are prevented from claiming GST input tax on second-hand goods bought from an associated person, who had not previously acquired the goods as a taxable supply. Under the new rules you can go back to the last known supply and claim the GST fraction of the purchase at that time. Sam sells to John and charges GST. John uses the goods for private purposes. John sells them to his sister who uses them as part of her taxable activity. His sister can apply the GST fraction Sam used. Her claim is limited to the total amount charged by Sam.