GST policy issues

An officials' issues paper
15 May 2020

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AUSTRALIA + NEW ZEALAND

15 May 2020

Deputy Commissioner, Policy and Strategy

Inland Revenue

Wellington

By email: policy.webmaster@ird.govt.nz

Dear David

Thank you for the opportunity to comment on 'GST policy issues - An officials' issues paper'.

Our Submission and Recommendations

The Issues Paper seeks to address and clarify a number of technical and remedial issues that have arisen. It also suggests updating some areas of the GST rules to deal with changing technologies and business practices.

It is important that any legislation that arises as a response to this Issues Paper is fit for purpose, practical for taxpayers to apply and that it reflects modern business.

Our key comments are:

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Tax invoice requirements

The suggested changes are positive. Allowing e-invoicing and the retention of information via accounting systems to support GST output and input tax will align GST invoice requirements with modern business practices. The changes will enable businesses to operate efficiently and effectively in today's business environment.

Cryptocurrencies

Our preference is for the development of a coherent framework whereby the classification of crypto-assets would be based on their specific characteristics. The existing tax regimes and principles would then apply to each characterisation. For GST purposes we would be happy for crypto-assets to be categorised as either a deemed currency or a financial service depending on their particular characteristics.

Apportion and adjustment

We encourage Officials to consider a comprehensive review of the apportionment and adjustment rules. Although changes in 2011 were intended to simplify the method for apportioning input tax deductions for goods and services that are used for both taxable and non-taxable purposes we do not believe this has been achieved. The issues identified, and the suggested proposals illustrate how complex and difficult the rules are to apply. The difficulties experienced by registered persons in applying the rules suggest a revamp of the apportionment rules are required so that they are easy to understand and practical to apply.

Compulsory zero-rating of land

The suggested solution placing the output tax liability on the purchaser where a vendor incorrectly zero-rates a supply even where they have been provided the

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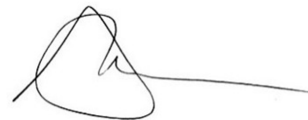
correct information is untenable. Inland Revenue are seeking to transfer the risk to the purchaser rather than recovering the unpaid GST from the vendor.

Our submissions are summarised at the beginning of each chapter and are also included in full in chapter 1 of our submission. We have broadly addressed the "Questions for Submitters" throughout the document

We are happy to discuss our submission further, and any questions can be addressed to john.cuthbertson@charteredaccountantsanz.com.

Yours sincerely



John Cuthbertson CA	Greg Haddon FCA
CA ANZ NZ Tax Leader	Tax Advisory Group Chair

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General Position

In formulating its submissions, Chartered Accountants Australia and New Zealand takes a best practice, public policy perspective. That is, we endeavour to provide comment on a "what is best for New Zealand" basis.

We recognise Government's legitimate right to set tax policy direction. We comment on those policies, and also make comment on their practical implementation. Our public policy perspective means we endeavour to provide comment free from self-interest or sectorial bias.

Research confirms that in practice the best tax system is one with a broad tax base and low tax rates. Such an approach restricts the conditions that make tax avoidance attractive.

Our guiding principles in formulating this submission are that New Zealand's tax system must not impede New Zealand's international competitiveness; growth of the New Zealand economy; and innovation and entrepreneurship.

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Recognising there are judgments and trade-offs, taxes should, as far as possible:

- be simple and certain in their application;
- be perceived as broadly fair;
- minimise the costs of compliance and administration; and
- minimise distortions to the economic behaviour of individuals and businesses.

We believe one of the pillars of an effective and efficient tax system is taxpayer certainty. This will increase voluntary compliance, decrease administration costs, and deliver positive economic benefits. Tax legislation must be clear in its policy intent and application. Further, any identified errors post-enactment should be corrected without delay.

In Chartered Accountants Australia and New Zealand's view tax legislation should not be retrospective unless it corrects an anomaly to ensure taxpayers pay no more tax than Parliament intended. Retrospective application dates undermine the principle of taxpayer certainty and the Generic Tax Policy Process.

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Chapter 1
Executive Summary

Since the introduction of GST in 1986 there has been no major overhaul of the GST rules and most changes have been of a remedial nature or to reduce compliance costs.

Changing technologies and business practices mean some of the existing GST legislation is no longer fit for purpose and should be updated. In addition, a number of problems have been identified where either the original policy intent is not being achieved or the legislation is unclear. The Issues Paper examines:

1. Modernising the tax invoice requirements;
2. The GST treatment of cryptocurrencies;
3. Improving the apportionment and adjustment rules;
4. Zero-rating the domestic leg of the international transport of goods;
5. Zero-rating business conference and staff training services supplied in New Zealand to non-resident businesses;
6. Changing the GST treatment of manager and investment manager services supplied to managed funds;
7. Changing the GST treatment of insurance pay-outs to third parties;
8. Clarifying compulsory zero-rating of land rules; and
9. Other technical and remedial amendments

In summary, our submissions on the document are as follows:

Tax invoice requirements

- We support the rationale for the changes.

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- We support removing the requirement for Inland Revenue approval to issue buyer-created tax invoices.
- We agree that shared invoices should be able to be used in a wider range of situations and agree with the proposed liability for paying the tax.
- We support removing the penalty for issuing more than one invoice.
- Government will need to specify when an invoice is not a "Tax Invoice".

Cryptocurrencies

- We support clarifying the tax treatment of crypto-assets. The current position is complex and inconsistent.
- We believe tax officials should develop a principled framework (similar to that developed by the FMA) to classify cryptocurrencies according to their characteristics and apply existing tax rules.
- If a principled framework is not developed to classify cryptocurrencies according to their characteristics, we support a broad definition of crypto-assets. The definition should include a requirement that the asset "be designed to be widely available without restriction".
- Crypto-assets should be treated as financial services for GST purposes, otherwise those who issue or supply crypto-assets with financial services characteristics to offshore recipients will be over-taxed because they will not be able to claim back their input tax.
- We agree that input credits should be allowed for capital raising via cryptocurrencies.
- If officials consider that miners of crypto-assets are providing a service they should issue public guidance to say so.
- Taxpayers should have the option to return GST on crypto-assets on an unrealised basis.
- The application date of 1 January 2009 is appropriate for the GST changes but not the income tax changes.
- Inland Revenue needs to expand its publicly available information on the tax treatment of crypto-assets.

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Apportionment and adjustment

- The change-in-use rules would benefit from a complete redesign with the aim of ensuring that the rules are simpler and easier to apply.
- We support a new wash-up calculation for non-land assets that have had a permanent change-in-use.
- The introduction of a similar provision to section 20(3J) for zero-rated supplies of going concerns is appropriate.
- We support limiting section 21E to exclude the situation where the only taxable use of the land is holding land for its eventual sale or development. Transitional rules will be essential.
- We support changing the concurrent use apportionment formula to take into account the extent to which the actual use of land has been for taxable or non-taxable purposes. However, further consideration of the two proposed formulas is required.
- CA ANZ supports the proposal to remove the final adjustment cap for non-developers.
- Consideration should be given to removing the cap for other appreciating assets.
- The proposed formulas for the land wash-up calculation require further consideration. We are not convinced either formula will solve the issues.

Domestic legs of the international transport of goods

- We support extending the zero-rating rules to include a supply to a non-resident primary transport supplier contracted to transport goods to or from New Zealand.

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Business conferences

- We agree it is appropriate for Inland Revenue and Treasury to investigate this further as part of an economic stimulus package.
- We agree that the current definition of "non-resident business" in section 54B is appropriate.
- We agree that only the conference services should be zero rated but are concerned about the compliance costs of separating them from other services provided by conference organisers.

Managed funds

- The solution should be principled and transparent.
- Government should legislate to deem managers and investment managers to have a certain percentage of taxable and exempt supplies. We suggest 10%.
- The law change should be prospective and with a long transition period.
- Management of a superannuation scheme should have the same treatment.
- The new rule should not apply to outsourced administration services.

Insurance pay-outs to third parties

- We do not believe a legislative amendment making the insurer responsible is the correct response.
- It would be sensible to require the insurer to make a written disclosure.

Compulsory zero-rating of land

- We do not support an amendment making the purchaser liable for the output tax where the supply has been incorrectly zero-rated by the vendor.
- We agree a non-taxable supply should be recharacterised if it has been incorrectly zero-rated by the vendor.

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- We support an amendment to treat a deemed supply under section 5(23) as occurring on the date it becomes apparent the original supply was incorrectly zero-rated.
- Amending section 25AB to require the purchaser to make an output tax adjustment in the period it becomes apparent the amount of the input tax credit was incorrect will effectively extend the time bar and result in a lack of certainty for purchasers.
- The suggested amendment to section 20(3J) will provide clarity. However, we do not support an application date of 1 April 2011. The law change should be prospective.

Technical and remedial issues

- We agree with the proposal to clarify that the GST grouping rules should be applied prior to the application of other provisions (the "wide interpretation").
- We recommend consideration be given to allowing joint and several liability to be limited to one or more members of the group like s FM 4 of the Income Tax Act 2007.
- The legislation should be amended to allow an input tax credit where goods are "used for, expected to be used for, or are available for use in" a taxable activity as well as for making taxable supplies.
- We agree with the proposal to amend the second-hand goods input credit and believe it should be backdated to 1 April 2011.
- We agree with the proposal to remove the requirement for the period end date.
- We support widening the exclusion for members of statutory boards to include members of non-statutory boards.
- We agree s138E(1)(e) should be amended to remove s108A from the excluded provisions list.

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Chapter 2
Tax Invoice Requirements

Summary

- *We support the rationale for the proposed changes.*
- *We support removing the requirement for a copy invoice to be marked as a copy and agree that only the information required to be kept on a Tax Invoice should be retained.*
- *We support removing the requirement for Inland Revenue approval to issue buyer-created tax invoices.*
- *We agree that shared invoices should be able to be used in a wider range of situations and agree with the proposed liability for paying the tax.*
- *We support removing the penalty for issuing more than one invoice.*

Overall comments

CA ANZ supports the move towards electronic invoicing and has made submissions to both the Australian and New Zealand governments in support of its introduction. As you are aware, the New Zealand GST legislation is a significant impediment to the introduction of electronic invoicing, so we support the rationale for these changes.

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Required information on the tax invoice

The document proposes removing the requirement to specify the quantity and volume of goods because these will be included in commercial documentation.

Some of our members have suggested that this information should be retained because in many situations a tax invoice is the only documentation the recipient receives. However, in most cases this information can be held elsewhere.

Use of electronic invoicing

CA ANZ supports the move towards electronic invoicing and has made submissions to both the Australian and New Zealand governments in support of its introduction. Electronic invoicing will save taxpayers both time and cost. In the medium term it may also speed up the GST return process.

The document proposes removing the requirement for a copy invoice to be marked as a copy. We support this move. This requirement is no longer relevant in an electronic invoicing environment.

The document also proposes requiring only that the information required to be kept on a Tax Invoice be retained. We support this approach. Some of our members have queried whether the information kept electronically would allow identification of each individual supply; however, we understand that this can be done. We recommend that you check with software providers to confirm.

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Buyer-created tax invoices

We support removing the requirement for Inland Revenue approval to issue buyer-created tax invoices. We have previously submitted that this is unnecessary and agree with the view of the Tax Working Group.

The document proposes that there be an agreement between the supplier and recipient that the recipient will issue the tax invoice. We support this.

The document suggests that the agreement should also stipulate the commercial reasons for issuing the buyer-created tax invoices. We do not agree that this is necessary and do not believe it should be in legislation but could be included if the parties desire it.

Shared invoices

We agree that shared invoices should be able to be used in a wider range of circumstances.

In particular we agree with the proposed requirements in paragraph 2.21 and we agree that the underlying supplier should remain ultimately liable for the GST. However, as noted, the agency provisions in the Act could be used to allow the supplier issuing the invoice to pay the tax as agent of the underlying supplier. We have discussed this with our members and believe this would work well in practice.

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Tax invoice related penalties

We support removing the penalty for issuing more than one invoice. This is outdated. We support a penalty for multiple input tax claims for the same supply.

Other issues

Some suppliers deliberately issue an invoice to a recipient, rather than a Tax Invoice, at first instance. For example, a business will issue an invoice to a customer and state that they will provide a Tax Invoice on payment. This does not affect the time of supply but does affect the ability of the recipient to claim input tax. If the legislation is enacted, government will also need to clearly specify when an invoice is simply an invoice and not a Tax Invoice.

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Chapter 3
Cryptocurrencies

Summary

- *We support clarifying the tax treatment of crypto-assets. The current position is complex and inconsistent.*
- *We believe tax officials should develop a principled framework (similar to that developed by the FMA) to classify cryptocurrencies according to their characteristics and apply existing tax rules.*
- *If a principled framework is not developed to classify cryptocurrencies according to their characteristics, we support a broad definition of crypto-assets. The definition should include a requirement that the asset "be designed to be widely available without restriction".*
- *Crypto-assets should be treated as financial services for GST purposes, otherwise those who issue or supply crypto-assets with financial services characteristics to offshore recipients will be over-taxed because they will not be able to claim back their input tax.*
- *We agree that input credits should be allowed for capital raising via cryptocurrencies.*
- *If officials consider that miners of crypto-assets are providing a service they should issue public guidance to say so.*
- *Taxpayers should have the option to return GST on crypto-assets on an unrealised basis. Any election should be irrevocable.*
- *The application date of 1 January 2009 is appropriate for the GST changes but not the income tax changes.*
- *Inland Revenue needs to expand its publicly available information on the tax treatment of crypto-assets.*

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Overall comments

CA ANZ supports officials aims of clarifying the New Zealand treatment of crypto-assets. The current treatment is unclear and inconsistent. Two examples of this inconsistency are as follows:

First, crypto-assets are "goods" for the purposes of section RD 40 of the Income Tax Act 2007 (ITA) and may be valued at market value for FBT purposes. However, it is not clear whether crypto-assets will be treated as "goods" for the remaining FBT provisions. Cryptocurrency will not be "goods" for the purposes of the GST Act.

A second example is that some cryptocurrencies will be "shares" for the purposes of section YA 1 of the ITA where the crypto-asset provides ownership interests in the capital of a company. However, crypto-assets that do not confer such an interest will not be "shares" for the purposes of section YA 1. It may not always be possible for the owner to determine whether their particular crypto-asset confers ownership interests. Moreover, it is not clear whether cryptocurrencies that provide an interest in the capital of a company could qualify as "shares" under section CW 26F of the ITA. It is also not clear whether crypto-assets may in some circumstances qualify as an "equity security" for the purposes of the GST Act.

The two examples above are intended to demonstrate that the application of the current law to crypto-assets is complex and difficult to apply. In addition, many holders of crypto-assets are individual wage and salary earners who do not otherwise have a lot of interaction with the tax system. They will not have the ability or resource to interpret the inherent complexities. A simple, clear treatment is needed.

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We have previously requested that Inland Revenue work to clarify and reform the tax laws as they apply to cryptocurrencies. We have suggested that a framework similar to that developed by the FMA be used whereby the tax system would have specific rules that deem crypto-assets to be financial arrangements, shares, debt securities or currency depending on their characteristics. The existing tax treatment for each characterisation would then apply. This remains our preferred treatment.

The issues paper suggests that Australia and Singapore have not looked to classify crypto-assets according to their characteristics. We disagree. The Australian and Singaporean rules exclude certain crypto-assets from the definition according to their characteristics. The result is that crypto-assets with different characteristics will have different tax treatments.

An alternative option would be to classify each cryptocurrency and deem it to be one of the above. While Inland Revenue is often reluctant to "publish lists", they did do so at the time of the changes to the FIF rules and published a list of exempt Australian shares. While initially reluctant, the classification was a useful and valuable compliance tool and gave taxpayers assurance that they were treating their investments correctly.

> *We acknowledge that this is a developing area of technology. Existing crypto-assets will continue to evolve, and new ones will be developed; however, taxpayers who already own cryptocurrencies need certainty for their compliance obligations.*

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The proposed application date demonstrates that this law is overdue. Government needs to develop appropriate rules immediately, even if the rules are subsequently amended as new products evolve or technology changes.

Notwithstanding the above, we comment on the specific proposals below.

How should a crypto-asset be defined?

We agree with the proposal to develop a broad definition of crypto-assets. It is suggested in paragraph 3.37 that the definition could be based on a requirement that the token use cryptography and a block chain. We agree with this.

The issues paper then raises the question as to whether particular types of crypto-assets should be excluded from the definition as was done in Australia and Singapore. The first of these is crypto-assets whose values are pegged to a fiat currency. This would be on the basis that they have characteristics similar to currency and do not need a different treatment. The second of these is utility tokens which can be redeemed for specific goods or services and asset-backed tokens which can be redeemed for specific assets.

We agree that a broad definition is most appropriate for New Zealand. In particular, it seems unlikely that any crypto-asset should be subject to GST and we believe it would be better to include all crypto-assets in an exclusion from the GST rules.

The issues paper asks whether the definition should include a requirement that the asset be generally available without restriction. It suggests that such a requirement

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is impractical because initial coin offerings are often made to a select group of investors before they later become available on an exchange. We agree and believe it would be more appropriate to require that the crypto-asset be DESIGNED TO BE widely available without restriction. This would exclude tokens on private block chains and currency that can only be redeemed within online games but would not exclude crypto-assets where there was an initial, limited offering. The Singaporean definition includes similar criteria.

How should GST be removed from the supply of crypto-assets?

The issues paper proposes two options for excluding crypto-assets from GST. In essence, these are to:

- treat them as money; or
- treat them as financial services.

In our view, the Government should take a principled approach. Those crypto-assets that are more similar to currency should be treated as money, while those that are more similar to financial services should be treated as such.

If the Government does not adopt such an approach, the majority of submitters will want crypto-assets to be treated as a financial service, so that supplies to non-residents may be zero rated. On the other hand, smaller traders or investors would prefer to treat crypto-assets as money because it is often difficult to find out information about the counter-party to a transaction and because they do not want the compliance costs of GST registration and return filing.

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We do not agree that all crypto-assets should be put into one "bucket". However, if there is to be one classification for all crypto-assets, it will be necessary to treat them as financial services. This is because, if crypto-assets were to be classified as currency, issuers of crypto-assets which would otherwise be financial services will be denied their input tax on supplies to offshore recipients and thus be overtaxed.

As mentioned above, a supplier of crypto-assets will need to be able to identify the counter-party to the transaction. As this can be difficult, we recommend that New Zealand use proxy identifiers, in the same way it currently does for supplies of remote services. Singapore has developed a similar framework. This would substantially lessen compliance costs. We recommend that officials review the Singaporean framework and consider its adoption here.

Input credits for capital raising

We agree that issuers of crypto-assets should be allowed input credits for capital raising in the same way as issuers of other securities.

Other services related to crypto-assets

We agree that the proposed changes should apply only to the supply of crypto-assets and not to other, related services. This is principled and supported by the Databank case.

In particular, those who supply goods and services in exchange for crypto-assets should still have to return the GST portion to Inland Revenue as output tax.

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The issues paper also raises the question of mining. Paragraph 3.56 suggests that a miner is providing a service. We understand this may be because, as well as retrieving new crypto-assets, the miner is also securing and validating the network. In our view, if Inland Revenue considers this to be the correct treatment, it will need to issue guidance to the wider public as this is likely to be little understood.

Other tax rules will continue to apply to crypto-assets

We agree that sections CB 4 and CB 5 should continue to apply to crypto-assets where the taxpayer has acquired them for the purpose of disposal or is in the business of dealing in crypto-assets (respectively).

In addition, we agree that the trading stock rules should apply where appropriate.

> *Given the uncertainty surrounding the tax treatment of crypto-assets, and the difficulty of compliance, we believe it is appropriate to offer optionality to taxpayers.*

We suggest allowing taxpayers to opt in and return tax on an unrealised basis if they would prefer to do so. Some taxpayers would prefer to return tax on crypto-assets on an unrealised basis where they have small holdings, or it is difficult to track.

Other taxpayers may prefer to adopt a realisation basis to counter crypto-asset price volatility. A realisation basis will defer the taxing event and may additionally provide funds to satisfy the tax to pay.

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Under current tax rules, there are many situations where there is a realisation (and therefore tax to pay) but no actual cash receipt. For example, where one crypto-asset is swapped for another, or is exchanged for goods and services. Both of these are more common than swapping crypto-assets for cash.

Such an election should apply over the life of the holding, as the intention of the rule is not to be able to arbitrage the tax treatment, but to allow ease of compliance.

Application date

The Issues Paper proposes an application date of 1 January 2009. As a starting point we believe legislation should not generally be retrospective. That said, we do believe that a retrospective application date is appropriate for the GST changes because they are taxpayer-friendly and as it is unlikely that many taxpayers will have returned GST on supplies of crypto-assets; particularly given that Inland Revenue guidance to date has been silent on the issue, leaving many unsophisticated taxpayers to assume it is not required.

For the income tax changes, we believe the application date should be prospective. There is no obvious solution from the proposals.

If a retrospective application date of 1 January 2009 is adopted to exclude crypto-assets from the financial arrangement rules, taxpayers who have treated such assets as financial arrangements and filed tax returns accordingly should have their prior holdings tax treatment grand-parented if they so choose.

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It is appropriate that any changes to the capital-raising deduction rules apply from the introduction of the rules originally, being 1 April 2017.

Other tax issues with crypto-assets

There is currently a gap between what Inland Revenue has published to date on the numerous tax issues associated with crypto-assets and the level of guidance needed by taxpayers. A number of those holding crypto-assets are wage and salary earners who do not otherwise have contact with the tax system and a much greater level of explanation is needed. We continue to recommend that the questions and answers on Inland Revenue's website be expanded significantly.

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Chapter 4

Apportionment and adjustment

Summary

- *The change-in-use rules would benefit from a complete redesign with the aim of ensuring that the rules are simpler and easier to apply.*
- *We support a new wash-up calculation for non-land assets that have had a permanent change-in-use.*
- *The introduction of a similar provision to section 20(3J) for zero-rated supplies of going concerns is appropriate.*
- *We support limiting section 21E to exclude the situation where the only taxable use of the land is holding land for its eventual sale or development. Transitional rules will be essential.*
- *We support changing the concurrent use apportionment formula to take into account the extent to which the actual use of land has been for taxable or non-taxable purposes. However, further consideration of the two proposed formulas is required.*
- *CA ANZ supports the proposal to remove the cap of the final adjustment for non-developers.*
- *Consideration should be given to removing the cap for other appreciating assets.*
- *The proposed formulas for the land wash-up calculation require further consideration. We are not convinced either formula will solve the issues.*

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Overall comment

The 2011 amendments, where the 'principal purpose" change-in-use adjustments were replaced with an approach apportioning the input tax deductions based on the relative use of goods and services, were intended to make it easier for taxpayers to use and understand. However, in CA ANZ's view, this has not been achieved. The 2011 rules are still overly complex, difficult to apply and time consuming. Although the latest proposals are intended to simplify the rules and reduce compliance costs we have significant doubts that the proposals will achieve these objectives.

> *In our view the change-in-use rules would benefit from a complete redesign with the aim of ensuring that the rules are simpler and easier to apply.*

Despite our opinion we have addressed the issues and options raised in the discussion document below.

We also recommend Officials conduct a workshop with key stakeholders to develop and refine the proposed changes to the apportionment/adjustment rules. We would like to participate in a workshop of this nature.

Change of use wash-up calculation (non-land)

The GST apportionment and adjustment rules apply when a GST registered person uses or intends to use goods and/or services for mixed-use (taxable and non-taxable). These rules are not straightforward and can be difficult to apply. In addition:

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- the wash-up calculation which arises when an asset used for mixed purposes is applied subsequently to 100% taxable or non-taxable use can result in under or over-taxation;
- the wash-up calculation applies for changes to 100% taxable or non-taxable use only; and
- the usual adjustment provisions are not switched off following wash-up calculation.

Officials' suggest possible changes that will simplify the rules, reduce under and over-taxation, allow a wash-up calculation for a permanent change-of-use of less than 100%, and introduce an exception to calculate an adjustment once a wash-up adjustment has been performed.

Proposal: New wash-up calculation

It is proposed that the formula for non-land assets be changed[1]. This will reduce under and over-taxation and allow for a permanent change-in-use of something less than 100%. The result under the formula will be the same as if the person used the standard change-of-use provisions for the remaining adjustment periods.

$$\frac{(Time\ remaining\ x\ full\ input\ tax\ deduction\ x\ current\ use - actual\ deduction)}{Total\ time}$$

The meaning of "Full input tax deduction" and "Actual deduction" will not change.

"Current use" will be the percentage of taxable use of the asset since the change-of-use.

[1] Section 21FB Goods and Services Tax Act 1985

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"Total time" will be the total amount of time from acquisition of the asset until the end of the last adjustment period.

"Time remaining" will be calculated by subtracting from total time the amount of time from acquisition of asset until the end of the adjustment period in which the change-of-use occurred.

The proposed wash-up formula will apply if the use has been changed and remains unchanged for the remainder of the adjustment period in which the change-of-use occurred and the adjustment period following the period in which the change-of-use occurred.

Comment

The underlying objective of the change-in-use adjustment rules is to ensure that the amount of GST output tax paid or input tax claimed reflects the actual taxable use. In our view the current wash-up calculation is flawed because it fails to recognise prior non-taxable use before a change to full taxable use; and prior taxable-use before a change to 100% non-taxable use. To correct these anomalies, it is appropriate that the existing wash-up formula be replaced and the usual adjustment provisions after a wash-up calculation has been performed are switched off. However, the proposed formula will add further complexity.

Allowing a wash-up calculation for a permanent change-in-use should eliminate the need for ongoing calculations and will therefore reduce compliance costs.

Zero-rated supplies of going concerns

Under section 11(1)(m) a zero-rated supply of a going concern is not correctly accounted for when the recipient intends to use the supply for both taxable and

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private or exempt purposes. Because the supply is zero-rated there is no input tax to apportion. As a result, any exempt or private use is not correctly accounted for.

In contrast, under section 20(3J), any private or exempt use of zero-rated land is taxed because the purchaser is required to determine the nominal amount of GST they would have incurred if the supply was standard rated and return output tax on the private/exempt use portion.

Proposal: New provision - determine nominal amount of GST

Officials propose a similar provision to section 20(3J) be introduced that would apply to zero-rated supplies of going concerns.

Comment

The introduction of a similar provision to section 20(3J) for zero-rated supplies of going concerns should ensure consistent and appropriate treatment for all GST registered persons. We support the proposal.

Apportionment of land

Concurrent use of land

A special rule (s 21E) applies where land with a dwelling is used concurrently for both a taxable (development) and non-taxable (rental accommodation) purpose.

Section 21E adjusts the input tax credits that can be claimed based on the ratio of taxable use to non-taxable use. It applies in the adjustment periods prior to the sale

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of the property. Section 21E was developed based on an assumption that the concurrent use of the land would only be for a short period of time prior to the sale (e.g. where land is actively being advertised for sale or had some other active taxable use whilst simultaneously being used for non-taxable purposes).

However, the rule applies where there is a concurrent use of land for a long period. For example, a property developer rents out houses but has a well-developed plan to sell them in 20 years. Arguably the developer is passively using the land for taxable purposes as they are holding it for future sale at the same time as actively using the land for a non-taxable use of a supply of rental accommodation.

Proposal: limit the application of s 21E

It is proposed to limit s 21E. If the only taxable use of land in an adjustment period is holding the land for its eventual sale or development, the taxable use during that period will be zero percent.

Comment

We are not convinced that limiting taxable use to zero is the right policy response if holding the land for its eventual sale or development is the only taxable use that occurs during the adjustment period. We believe this proposal should be considered further in light of the negative impact it will have on the property development industry. They will be required to account for full output tax on the sale but will not be able claim any input tax when there is passive use of the land. The legislation makes it clear that a registered person is entitled to deduct an input tax deduction *"to the extent to which the goods or services are used for,* ***or are available for use i****n, making taxable supplies" (emphasis added)*[2]. Clearly, where a property

[2] Section 20(3C) Goods and Services Tax Act 1985

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developer passively holds land for its eventual sale or development, the land is available for use in the tax activity.

Concurrent use apportionment formula

Another problem with s 21E is that the formula often allows a high proportion of GST input tax credits to be claimed because the market value of the property is generally significantly more than the rental income received. This may provide a person with a concurrent use a time value of money advantage over someone with a fully taxable use. Section 21E also does not appear to calculate either the extent to which the use of land is taxable, or the extent to which the land holder's purpose in using the land is taxable.

Proposal 1: Treat concurrent land use as 50% taxable

The first option would recognise the land being used equally for taxable and non-taxable purposes. The taxable use of the land for periods of concurrent use would be 50%.

Proposal 2: The benefit received determines taxable-use

Option 2 will calculate taxable use based on the benefit the registered person receives in using the land concurrently. This is achieved by comparing, over the period the land is used concurrently, the taxable benefit the owner receives from the land with the total benefit the owner receives from the land. This is calculated using the formula:

$$\frac{Consideration\ for\ taxable\ supply\ -\ Cost}{Total\ consideration\ for\ supply - Cost}$$

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Consideration for taxable supply and total consideration for supply would maintain their current meaning.

Cost would be the market value of the land at the time the land began to be used concurrently.

Comment

In principle we support amending the s21E formula however, further consideration of the suggested formulas is required. In addition, we believe transitional rules will be essential. For those applying the current rules, a change in the formula may result in a large output tax adjustment.

Disposal of land with a mix of taxable and non-table use

Section 21F applies when there is a disposal and the asset has been used for both taxable and non-taxable purposes.. It allows the person to claim the proportion of the output tax related to the non-taxable use. It is capped at the amount of GST paid on acquisition.

For a depreciating asset, the section 21F adjustment achieves an appropriate result. However, for an appreciating asset, the adjustment will often produce an inappropriate outcome because all of the appreciation in the land value is treated as being related to the land's taxable use and ignores the non-taxable use. This outcome is appropriate in some instances e.g. where a property developer uses the land to supply accommodation in a dwelling before disposal. In this case the appreciation will generally relate primarily to the taxable use of the land.

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In other situations, treating the entire appreciation as relating to the taxable use may not be appropriate, e.g. having a home office, or using a home or bach both privately and for short term commercial accommodation, the appreciation relates to both the non-taxable and taxable uses. The adjustment results in the disposal being overtaxed.

Proposal: Remove the cap on the final adjustment for non-developers

It is proposed to remove the cap on the s21F adjustment for land disposed of by someone other than a property developer.

Comment

CA ANZ fully supports the proposal to remove the cap of the final adjustment for non-developers. As the officials recognise, treating the entire appreciation in value of land as relating to taxable use is not appropriate . The proposal will rectify this inequitable outcome.

We also consider the removal of the cap should not be limited to land but should be extended to other appreciating assets.

Change of use wash-up calculation for land

Section 21FB is a wash-up calculation which applies when there is a change of use of an asset from 100% taxable to non-taxable or vice versa.

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The new section 21G formula, as discussed above, will not apply for land. For land the wash-up calculation can result in

- adjustments that are disproportionately small;
- a worse outcome for a person that changes their use of land to 100% taxable, compared to if they had disposed and acquired the land at its current market value; and
- additional compliance costs because a person needs to perform yearly adjustments if there is a permanent change of use to less than 100%.

Proposal 1: Deemed disposal and reacquisition

To help address the identified problems, the land could be treated as being disposed and reacquired at market value for the change of use wash-up adjustment. The deemed disposal would be considered a standard rate supply.

Officials recognise determining the market value of the land may result in a one-off compliance cost, but this may be less than the ongoing compliance costs of calculating continual yearly adjustments after a permanent change of use. There is also a risk that obtaining an estimate of the land's market value could be open to manipulation.

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Proposal 2: Updated formula

An alternative to proposal 1 would be to replace the current formula with

Full input tax deduction x current use – actual deduction

Current use would be the percentage taxable use of the land since the change of use occurred.

Proposal 2 does not address concerns the wash up calculation for land can result in adjustments that are disproportionately small. A special adjustment rule would apply when land is disposed of within five years following a permanent decrease in the land's taxable use.

The special adjustment would require the actual taxable use of the land since acquisition to be calculated and an adjustment made to claim input tax in line with this percentage. The supply of the land would then be a taxable supply (even if the use of the land had changed to 100% non-taxable). The rule would also apply if a person ceases to be a registered person within 5 years of the permanent change of use occurring.

Comment

We are not convinced that either of the proposed approaches will address the identified issues.

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Proposal 1, a deemed disposal at market value is consistent with the existing deregistration rules when a person is regarded as effectively making a supply to themselves in their private capacity as a final consumer. It ensures that supplies by a registered person to themselves and another person have equivalent GST treatments.

On the other hand, a deemed acquisition at market value is not consistent with the original policy intent which limits a GST input tax credit to the GST paid or in the case of a supply by an unregistered associated person the lesser of the GST included in the original cost of the goods to the original supplier; the tax fraction of the purchase price or the tax fraction of the open value of the supply. The limitation of a second-hand goods input tax credit was to counter any over-inflation of the price in order to increase the value of the credit .

The proposed approach may also allow a GST input tax credit to be claimed in respect of land acquired before 1 October 1985.

In our view proposal 2 does not disturb existing principles limiting the input tax credit, it eliminates the need to obtain a market valuation of the land and reduces the risk of any over-inflation of the price in order to increase the value of the credit.

The special adjustment rule also reduces the risk of a person using the rules to receive an advantage by disposing of the land within five years of the permanent change in use.

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Zero-rated land

If either the existing formula is maintained or proposal 2 is adopted an amendment would need to be made to the definition of actual deduction to include a nominal deduction for the proportion of the nominal GST component not returned as output tax on acquisition of zero-rated land.

Other ways to simplify the apportionment rules

Understanding the rule

To assist navigating the rules a signposting provision could be added.

Alternatively, Inland Revenue could provide additional guidance materials.

De minimis thresholds for minor taxable use

Establish a threshold e.g. 10%. If taxable use is below this level and no input tax deductions claimed, disposal would not be considered as being made in the course or furtherance of a taxable activity.

Comment

CA ANZ supports the inclusion of a de minimis threshold

Prior to the 2011 changes to the GST legislation, the disposal of an asset was not considered to be in the course or furtherance of a taxable activity where there had been minor taxable use. Consequently, there is huge uncertainty surrounding the

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GST treatment when an asset is sold or all taxable use ceases where there has been minor taxable use of that asset. The inclusion of a de minimis will help rectify this problem.

We also recommend including a concession that allows a person, who has had minor taxable use to repay the GST input tax deductions previously claimed so that a disposal would not be considered as being made in the course or furtherance of a taxable activity.

Accuracy of apportionment and adjustments

The rules could require that the taxable use of an asset be calculated to a certain level of accuracy, e.g. the nearest 5% but this may be appropriate for assets less than a particular amount only.

Comment

We support amending the apportionment and adjustment rules to make compliance easier. Requiring taxable use of an asset be calculated to a certain level of accuracy and increasing the existing thresholds to reduce the instances of adjustments being required is sensible.

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Chapter 5

Domestic legs of the international transport of goods

Summary

We support extending the zero-rating rules to include a supply to a non-resident primary transport supplier contracted to transport goods to or from New Zealand.

Background

The transportation of goods to and from New Zealand is zero-rated. Zero-rating does not apply to the domestic delivery transport services provided in New Zealand by another party. Common commercial practice is for an international courier to subcontract a New Zealand based courier to supply the domestic delivery transport services. This commercial practice has led to many goods transporters incorrectly zero-rating their domestic services even though they do not qualify under the GST rules.

Possible solution

The proposed solution would be to allow domestic transport services supplied to the primary transport supplier contracted to transport goods to or from New Zealand to be zero-rated if the primary transport supplier is a non-resident.

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Comment

CA ANZ notes, zero-rating can apply to a supply by a New Zealand subcontractor who moves goods in New Zealand provided:

- the services are supplied to a non-resident transporter who is outside New Zealand when the services are performed; and
- the contract between the New Zealand subcontractor and the non-resident transporter is made before the goods are imported; and
- the performance of the services is reasonably expected to be completed within 28 days of import.[3]

However, practically it is not always possible to achieve these requirements and if the domestic leg of the international transport of goods is not zero-rated non-residents will be drawn into the New Zealand GST system. To the extent non-residents are not GST registered, this will lead to increased transportation costs and higher priced goods due to the embedded GST. This will make GST a real cost to New Zealand businesses which is inconsistent with one of the fundamental design features of GST.

[3] Section 11A(1)(cb) Goods and Services Tax Act 1985

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Consequently, we support extending the zero-rating rules to a supply of domestic transport services supplied to a non-resident primary transport supplier contracted to transport goods to or from New Zealand.

The approach is consistent with the existing rules for services supplied to:

- overseas postal organisations for delivery of postal articles in New Zealand irrespective of whether parts of the service are provided by the same transport provider[4] and
- a non-resident transporter in respect of imported goods (see above (s 11A(1)(cb)).

Furthermore, it will remove the need for non-residents to register for GST.

We consider the inclusion of a prescriptive definition of when domestic transport services have been supplied as part of the international transport of goods to be sensible and will provide additional clarity.

[4] Section 11A(1)(g) Goods and Services Tax Act 1985

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Chapter 6
Business conferences

Summary

- *We agree it is appropriate for Inland Revenue and Treasury to investigate this further as part of an economic stimulus package.*
- *We agree that the current definition of "non-resident business" in section 54B is appropriate.*
- *We agree that only the conference services should be zero rated but are concerned about the compliance costs of separating them from other services provided by conference organisers.*

Overall comments

The Issues Paper proposes zero rating supplies of business conferences and staff training when a conference is held in New Zealand and a non-resident business is the recipient of the supply.

The zero rating would apply where an offshore business pays for its employees to attend a conference in New Zealand. Most offshore businesses are not registered for GST in New Zealand so are unable to claim the GST input tax on New Zealand conference costs.

However, it is already possible for such businesses to register for GST in New Zealand and claim refunds. This may be done under section 54B of the Act which

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allows a short form registration and return process for overseas businesses to get their GST back. The discussion document suggests that the short form process is too onerous for businesses in this situation so proposes zero rating as a compliance cost saving.

In our view, compliance costs are within the control of Inland Revenue and it should consider other avenues beyond GST policy to reduce compliance costs. We have previously suggested a "registration on behalf" system, or amendments to the START system, or both.

> *A "registration on behalf" system would allow the conference organiser to register and collect the GST on behalf of the attendees and refund it to them. We believe this would be the most efficient method and could deal most easily with conferences where there were attendees from multiple employers.*

Notwithstanding the above, we understand from our members that this measure will be helpful in attracting business to New Zealand. This may be a measure that will help stimulate our economy in the future once the global economy begins to recover from the COVID-19 pandemic and our border restrictions are lifted. The proposal document requests market data on the current size of this market and we agree it is appropriate for Inland Revenue and Treasury to investigate this further as part of an economic stimulus package.

Given the policy outcome is that no net cost should arise to the non-resident the zero-rating can be supported on policy grounds while eliminating the compliance costs.

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Design issues

Notwithstanding the above, we comment on the design issues in implementing a robust rule.

Non-resident business

We agree that it will be important to have a robust definition of "non-resident business". We agree that the definition in section 54B is robust and would be appropriate.

Of particular importance is paragraph (c) of the definition. It must be clear that the services are being received by the non-resident business and not the individual attending the conference. However, this may be difficult to determine in practice.

Services which qualify for the zero-rating provision

As noted in the issues paper, it will be important that the legislation provides a clear boundary between services that are zero rated and those which are not. We agree that Singapore's rules seem clear and principled. However, we agree with the concern outlined in paragraph 6.21. We understand that it is industry practice to bundle other services into the conference fee. For example, accommodation, meals and sightseeing trips. We are concerned that the compliance costs involved in unbundling the various services involved may outweigh the compliance cost savings achieved by zero rating rather than a claim made under section 54B.

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Chapter 7
Managed funds

Summary

- *The solution should be principled and transparent.*
- *Government should legislate to deem managers and investment managers to have a certain percentage of taxable and exempt supplies. We suggest 10%.*
- *The law change should be prospective and with a long transition period.*
- *Management of a superannuation scheme should have the same treatment.*
- *The new rule should not apply to outsourced administration services.*

Overall comments

The issues paper acknowledges that, in practice, there are differing GST treatments for fund management services. This is in part because the issue is complex and in part because it is difficult to know what the "right answer" should be. We believe the position should be clarified. The solution must be clear, transparent and principled.

Policy objectives

In our view the underlying GST policy objectives remain sound. Financial services should be exempt from GST and suppliers who provide a mix of exempt and taxable supplies should be required to determine the proportion of each that is supplied.

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The Issues Paper raises the issue of how to prevent biases created by GST. The current biases arise for two reasons. First, because the administration of a superannuation scheme is an exempt supply, whereas the administration of a unit trust is (mostly treated as) partly taxable. Second, GST exemptions also create a bias for exempt service providers to provide services in-house because if they outsource they will be charged unrecoverable GST ("in-source bias"). Any solution should attempt to address both to the extent possible.

The other issue raised by the issues paper is that of certainty. The treatment is uncertain because current treatments are not legislated and have been adopted by industry agreement. It is not clear to what extent the agreement applies to suppliers who were not a party to the agreement, those whose service offering is slightly different and those who are "one step removed" in the supply chain. This uncertainty has created business risk and additional compliance costs. However, we acknowledge that the existence of the agreement has also saved compliance costs for some.

The issues paper also notes the importance of minimising adjustment costs compared to current commercial practices.

We agree that the three issues above should be addressed to the extent possible within the parameters of sound GST policy.

Policy options

The paper proposes four broad policy options. These may be summarised as:

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1. Making all management services supplied by investment managers and other fund managers taxable supplies.
2. Exempting all management services supplied by investment managers and other fund managers.
3. Legislating that managers and investment managers are deemed to have a certain percentage of taxable and exempt supplies.
4. Zero-rating or RITC.

We prefer the third option.

The solution should be determined by reference to the underlying policy objectives. As we have stated above, the overall policy objective of exempting financial services remains sound. Precise activities may vary across the funds management industry but in general they will all be undertaking some level of financial services (usually arranging the transfer of debt and equity securities), which should remain exempt, and some level of administration services, which should be subject to GST.

Certainty is also important. The current situation whereby the most common treatment is outside of the public domain is not satisfactory. We believe that the treatment should be legislated or, at the least, made publicly available.

> *We have not seen data that would displace the current presumption of 10% taxable supplies. We have worked with fund managers and administrators and believe the figure to be sound.*

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In our view the current treatment should continue. It should be included in legislation so that the treatment is certain and transparent.

One question which arises is whether the Commissioner should have a discretion to allow a different treatment on application - for example, if a taxpayer can demonstrate that 10% is not appropriate for their business. This would improve accuracy but also reduce certainty and increase compliance costs. For these reasons we do not favour such an approach.

We acknowledge that not including such a clause means that the definition of fund management services will become crucial. This is discussed later in our submission.

Application date

We believe any law change should be prospective. While many fund managers are already working on the basis that 10% of their activities are taxable supplies, some are not. Those businesses would need time to make system changes. For those that are treating their services as fully taxable, they will need to develop a model for input tax recovery, which has a high compliance cost.

We agree with the suggestion in the Issues Paper to grandparent existing contracts for a three-year period to allow time for renegotiation and for a smooth transition.

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Defining the relevant management and investment management services

As we have noted above, if the government legislates a fixed percentage, the definition of fund management services will be crucial. We have reviewed the definitions included in the Financial Markets Conduct Act and believe that they are appropriate; however, they could be refined in consultation with the industry if necessary.

The Issues Paper also raises whether there should be a GST exemption for the management of a superannuation scheme. In our view, these services are substantially the same as management of an investment fund and the GST treatment should be the same for both. We acknowledge that there was a deliberate policy reason for the exemption but believe that this is superseded by the need for certainty and consistency of treatment.

Other outsourced services which are not management services

The Issues Paper states that officials do not propose changing the GST treatment of other services provided to managed funds such as accounting, administrative or registry services. We agree. As stated above, we believe certainty and clarity are important. The treatment of administration services is principled, supported by case law and widely understood.

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Chapter8

Insurance pay-outs to third parties

Summary

We do not believe a legislative amendment making the insurer responsible is the correct response. However, it would be sensible to require the insurer to make a written disclosure.

Current GST rules

A GST registered person must account for GST output tax if they receive a payment under an insurance contract for a loss incurred in carrying on their taxable activity. This applies irrespective of whether the person is a party to the insurance contract. Officials are concerned that GST is not being accounted for because recipients do not know the source of the payment and treat it as a compensation payment.

Policy Options

Three alternative options are proposed:

1. To make the insurer responsible for any GST obligations on behalf of the claimant;
2. Require the insurer to disclose that the payment is subject to GST to the claimant or third party; or
3. Provide education and guidance material for advisors and taxpayers.

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Comment

We are not convinced that a legislative amendment making the insurer responsible is the correct response. Not all payments are subject to GST. No output tax liability arises for a GST non-registered recipient or where the payment is not received in respect of a taxable activity (e.g. payment is received in relation to a residential dwelling).

> *The existing rules deeming insurance benefit payments to be a supply by a GST registered recipient if it is received in respect of a taxable activity have a number of advantages over other mechanisms used by other countries.*

The "deemed consideration" rules are less complex and more straight-forward in their application, implying a lesser administrative and compliance burden on the insurer. Furthermore, the existing rules make it possible to achieve GST neutrality.

That said, we acknowledge it would be sensible to address the perceived problem by requiring the insurer to disclose in writing to the third party that the amount of the settlement payment is covered by insurance and that if they are GST registered, they may be required to return GST on the payment under section 5(13). This is a much simpler option that should not result in significantly increased compliance costs for the insurer.

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Chapter 9
Compulsory zero-rating of land

Summary

- *We do not support an amendment making the purchaser liable for the output tax where the supply has been incorrectly zero-rated by the vendor.*
- *We agree a non-taxable supply should be recharacterised if it has been incorrectly zero-rated by the vendor.*
- *We support an amendment to treat a deemed supply under section 5(23) as occurring on the date it becomes apparent the original supply was incorrectly zero-rated.*
- *Amending section 25AB to require the purchaser to make an output tax adjustment in the period it becomes apparent the amount of the input tax credit was incorrect will effectively extend the time bar and result in a lack of certainty for purchasers.*
- *The suggested amendment to section 20(3J) will provide clarity. However, we do not support an application date of 1 April 2011. The law change should be prospective.*

Relationship between sections 5(23) and 78F when land incorrectly zero-rates land

The legislation is not clear how section 5(23) interacts with section 78F, which requires the purchaser of land to provide information to the vendor.

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Under section 5(23) the output tax liability falls on the purchaser when a supply is zero-rated at settlement and it later transpires that zero-rating status is incorrect.

Section 78F requires the purchaser to provide a written statement on or before settlement stating whether at the date of settlement:

- they are, or expect to be, GST registered;
- are acquiring the goods with the intention of using them for making taxable supplies; and
- do not intend to use the land as a principal place of residence for themselves or a relative.

Proposal

To amend section 5(23) placing the output tax liability on the purchaser, where a vendor incorrectly zero-rates land, regardless of the information provided (or not provided) by the purchaser.

Comment

As noted in the document, business to business zero-rating of land was introduced to address GST risk base concerns and to enable Inland Revenue to recover the unpaid GST if a vendor ceases to operate. The current proposal shifts that risk from Inland Revenue to the purchaser.

When section 5(23) was originally introduced it was intended to apply to an unregistered purchaser who provided incorrect or insufficient information to the vendor. The purchaser was then liable for the output tax. CA ANZ accept that in

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these circumstances placing the obligation on the purchaser to account for output tax was entirely reasonable.

However,

> *where a vendor unilaterally and incorrectly zero-rates a supply after being given the correct information by the purchaser, the proposal that the liability for output tax lies with the purchaser is not acceptable.*

The requirement on the vendor to obtain the recipient's details is intended to provide initial certainty about the correct GST treatment. If the vendor chooses to ignore the information provided by the purchaser it is iniquitous that the purchaser is responsible for the output tax. The document even acknowledges that the proposal could lead to unfair outcomes. It is unfair and unreasonable to expect the issue to be resolved through the contracts between the parties. If the contract price is expressed as GST inclusive (if any), the purchaser will be out-of-pocket and will have to incur unnecessary legal costs to try and recover the GST from the vendor.

The proposal provides vendors with an incentive to zero-rate a land sale and shift the liability to pay output tax on to the purchaser.

Non-taxable supply incorrectly treated as zero-rated

When a transaction is zero-rated at settlement and it later transpires that the transaction was incorrectly zero-rated, section 5(23) makes the purchaser liable for

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the output tax. However, section 5(23) does not produce the right result for a non-taxable supply that has been incorrectly treated as zero-rated by the vendor. This can arise when a vendor carries on both taxable and non-taxable activities and land used for non-taxable purposes is erroneously treated as taxable. Alternatively, it can occur because of retrospective deregistration i.e. the vendor was not a registered person at the date of deregistration.

Proposal

Section 5(23) will not apply to a non-taxable supply of land that has been incorrectly zero-rated by the vendor. The original supply will be recharacterised as a non-taxable supply.

Comment

Where a supply is incorrectly treated as zero-rated because of the vendor's registration status or by way of oversight because of the vendor carrying on both taxable and non-activities the suggested solution that the original supply be recharacterised as a non-taxable supply is positive.

Date of deemed supply under section 5(23)

Under section 5(23) the purchaser is currently treated as making a taxable supply on the date of settlement therefore the output tax is attributed to the taxable period in which the original supply was made. On the other hand, if the purchaser is acquiring the goods and services for making taxable supplies, the input tax deduction will be in a later period. The timing difference means the purchaser will have underpaid GST, even though the transaction is GST neutral.

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Proposal

Amend section 5(23) to treat the recipient of the incorrectly zero-rated supply as making the supply on the date it becomes apparent the original supply was incorrectly treated as zero-rated.

Comment

We welcome an amendment to treat the supply as occurring on the date it becomes apparent the original supply was incorrectly treated as zero-rated.

Taxable period for adjustment when a second-hand goods deduction has been incorrectly claimed by the purchaser of zero-rated land

Currently, when the consideration for a supply of second-hand goods is varied and the input tax claimed exceeds the correct amount, section 25AB requires the purchaser to return the excess amount as an output adjustment in the taxable period the event occurs (e.g. in the period the supply was cancelled). This is problematic where the supply is incorrectly treated as zero-rated, the purchaser will be required to repay GST in the taxable period the supply was made. Consequently, the purchaser will incur debit interest.

Proposal

It is proposed that the second-hand goods input tax credit rules be changed to require the purchaser to make an adjustment in the taxable period they become aware the incorrect amount of input tax has been deducted.

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Comment

Rectifying this anomaly is laudable but there is a downside to this amendment. Changing the taxable period in which the adjustment is due will allow Inland Revenue to recover input tax erroneously claimed by the purchaser through no fault of their own. This amendment effectively extends the time bar and will result in a in a lack of certainty for purchasers.

Date of output tax adjustment under section 20(3J)

When a purchaser acquires zero-rated land, they intend to use for both taxable and non-taxable purposes they must make an output tax adjustment "on acquisition" to reflect the non-taxable use. It is not clear when the "acquisition" of land occurs.

Proposal

It has been suggested section 20(3J) should be amended so that the "time of supply" triggers the output tax adjustment. It has also been suggested that the amendment apply for all supplies made on or after 1 April 2011.

Where a purchaser acquires land for both taxable and non-taxable purposes, clarify that the purchaser must calculate and return output tax for the nominal GST component that relates to non-taxable use in the taxable period in which the time of supply occurs. It is proposed this change should apply for supplies made on or after 1 April 2011.

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Comment

We are not convinced an amendment is necessary. At the time the legislation was introduced Officials' acknowledged that a purchaser will not be able to use the land until they obtain ownership of the land. Furthermore, they said the "time of acquisition" should be given its normal meaning[5].

Should the amendment proceed , we do not support an application date of 1 April 2011. An application date of 1 April 2011 may unfairly penalise purchasers whose interpretation of "on acquisition" is later than the date "time of supply" occurs by exposing them to penalties and use of money interest.

[5] Taxation (GST and Remedial Matters) Bill Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill page 41

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Chapter 10
Technical and remedial issues

Summary

- *We agree with the proposal to clarify that the GST grouping rules should be applied prior to the application of other provisions (the "wide interpretation").*
- *We recommend consideration be given to allowing joint and several liability to be limited to one or more members of the group like s FM 4 of the Income Tax Act 2007.*
- *The legislation should be amended to allow an input tax credit where goods are "used for, expected to be used for, or are available for use in" a taxable activity as well as for making taxable supplies.*
- *We agree with the proposal to amend the second-hand goods input credit and believe it should be backdated to 1 April 2011.*
- *We agree with the proposal to remove the requirement for the period end date.*
- *We support widening the exclusion for members of non-statutory boards.*
- *We agree with the removal of s 108A from the excluded provisions listed in s 138E(1)(e).*

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GST grouping rules

Proposal

To add a provision to clarify that the GST grouping rules should be applied prior to the application of other provisions in the Act.

Comment

We agree with this proposal .

This issue has arisen, in part, because of differences in interpretation within Inland Revenue. In 2018 Inland Revenue released an Issues Paper IRRUIP13: Consequences of GST Group Registration. We have previously submitted that the "wide interpretation" should apply and agree with the proposal, which will provide specific legislation to give effect to the "wide interpretation".

The "narrow interpretation" would not have given full effect to the GST grouping rules and had the potential to create additional compliance costs.

While this issue has not been included for consideration in the Issues Paper we note that each group member is joint and severally liable for the GST payable by the representative member. We recommend consideration be given to allowing joint and several liability to be limited to one or more members of the group like s FM 4 of the Income Tax Act 2007.

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Input tax credits of goods not physically received yet at the time the GST return is filed

Proposal

To amend section 20(3C) to clarify that the requirement is met to the extent to which goods are "used for, expected to be used for, or are available for use in" making taxable supplies.

Comment

That the amendment should apply where goods are "used for, expected to be used for, or are available for use in" a taxable activity.

We support the amendment - it is principled and reflects the original policy intent. However, we believe it should include goods available for use in a taxable activity, as well as goods available for use in making taxable supplies.

Second-hand goods input tax credits on supplies between associated persons

Proposal

To amend section 3A(3)(a)(i) so that the second-hand goods input credit is limited to the tax fraction of the original cost of goods to the supplier.

Comment

We agree with this proposal but believe it should be back dated.

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Example 25 of the Issues Paper (at paragraph 10.24) provides a good explanation of the problem with the current law. The law change will bring about the right policy outcome. The GST result should be the same as if there had been no transfer between associated persons. So, if John (in example 25) had been GST-registered, he could have claimed the tax fraction of $1.15m. Jasmine should be able to claim input tax of the same amount. Therefore, we support this change.

The issue described is common in family bach situations and we suspect there is some non-compliance although we have made efforts to educate our members about the treatment. The issue came to prominence following the law changes in 2011 because many family baches were then in the position of making taxable supplies (when previously they had been making only exempt supplies).

Our concern with making the amendment prospective is that it penalises those who have been compliant. We believe the amendment should be back-dated to 1 April 2011. A prospective law change would be rewarding non-compliance.

Period end date

Proposal

To remove the requirement in section 15E(2) that the approved date must be within seven days before or after the last day of the month.

Comment

We agree with this proposal.

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This would allow the Commissioner to approve a taxable end date for a broader range of dates (not only the 4-4-5 situation) and we support the proposal.

Members of non-statutory boards

Proposal

To widen the exclusion for members of statutory boards so that it clearly applies to members of non-statutory boards.

Comment

We agree with this proposal.

Challenge rights

Proposal

To remove section 108A from the excluded provisions listed in section 138E(1)(e) of the Tax Administration Act to ensure the challenges to both time bar provisions for income tax and GST (sections 108 and 108A) can be made on the same grounds.

Comment

We agree with the proposal.

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