

12 October 2018

Public Consultation
Office of the Chief Tax Counsel
Inland Revenue
P O Box 2198
Wellington

Dear Sir / Madam

PUB00299: Goods and services tax - zero-rating of services related to land

Thank you for the opportunity to review the draft Interpretation Statement and provide feedback.

In summary our submissions are as follows:

- The Interpretation Statement, once finalised, will be a key reference document for taxpayers applying the new rules;
- The analysis is clear and the examples are helpful;
- The conclusion in example one has consequences which have not been elaborated on and will be a significant change for many taxpayers and GST practitioners;
- We do not agree that accounting services should come within the scope of the new rules. It is our view that accounting services and tax advice are not intended to enable or assist the change in status of the land.

We would be happy to discuss our submission further with you. Please contact Jolayne Trim in the first instance (Jolayne.trim@charteredaccountsanz.com).

Yours sincerely,



John Cuthbertson, CA
NZ Tax and Financial Services Leader, CA ANZ



Jolayne Trim
Senior Tax Advocate

Appendix one – detailed submissions

General comments

This Interpretation Statement is a crucial aid to interpret the change in GST rules, which created a wider range of services that are connected to land.

The legislation regarding zero rating of services was amended on 1 April 2017 by the Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Act 2017 (2017 No 14). The amendment added in a further exception to the rules for zero rating. Services now may not be zero rated where they are supplied to a non-resident outside of New Zealand if the services are

“supplied in connection with ... land or [an] improvement and are intended to enable or assist a change in the physical condition, or ownership or other legal status, of the land or improvement;”

Prior to the legislative change, the law had been well settled. The Interpretation Statement will be a useful aid in determining where the line is now to be drawn.

Case law was important in the interpretation of the previous rule. The relevant cases on the provision helped to articulate where the line was to be drawn. It is likely that case law will also be crucial in interpreting this new provision. However, prior to any cases coming before the Courts, the Interpretation Statement will be the most useful guide for taxpayers.

Overall, we consider the draft Interpretation Statement is very clear and well set out and will be useful for taxpayers who are trying to understand whether services fall within the new rules.

Our more detailed submissions are as follows:

“Non-resident”

One area that often causes confusion in practice is a purchase of New Zealand property by a non-resident. Sometimes this can mean that a non-resident has become a resident for GST purposes. This is well explained in the draft Interpretation Statement.

Example two explains that a person may be both resident and non-resident, in respect of different activities. We agree that a registered person may have more than one “activity”. For example, a financial service provider could carry on both a taxable activity and an exempt activity.

However, the conclusion in example one has several consequences that have not been elaborated on in the rest of the document. If James is treated as being New Zealand resident in respect of his Wellington rental property, then all services provided to James in respect of this property must be standard rated. (We understand “in respect of” to mean something less than “in connection with”.

For example, advice provided to James about the operation of the tenancy tribunal will be “in respect of” the rental activity even though it is not “in connection with” the rental property).

In this example, there is no need to test whether there is a direct connection in any case because James is not non-resident.

The consequence of this conclusion is that there may be a number of services that James receives that would now need to be standard rated. For example, James’s tax return for his rental income is in respect of his rental property (even if there is no direct connection) and would need to be standard rated. Advertising for tenants would also be standard rated.

The table on page 26 includes a list of services and the corresponding GST treatment. However, it would seem from the conclusion on page 6 that the GST treatment on page 26 is only correct in respect of zero rated services when the rental property is not being rented out.

We believe the conclusion on page 6 should be reviewed both to ensure that it is technically correct and given the above consequences.

If, the conclusion does not change following the review, then the explanation above the table on page 26 should state that the table will not apply if the rental property has been rented out.

We discuss the issue of tax services later in our submission.

Outside New Zealand

This section of the draft Interpretation Statement is clear and the examples explain the rule well.

Meaning of “land”

We agree with the analysis in the Interpretation Statement that “land” includes all interests in land. We also agree with the conclusion that it does not include an interest in a land-owning company.

There is no discussion in this section about whether a licence is an interest in land. Instead, that question is discussed later in the draft Interpretation Statement (at paragraph 93).

It would be useful for this section to also state that a licence does not qualify as an interest in land.

“Directly in connection with”

The draft Interpretation Statement includes a good analysis of when services will be “directly in connection with” land. This area of law is reasonably settled. We have read this analysis and agree with the conclusions reached.

“In connection with”

This section and the next are the key parts of the Interpretation Statement. “In connection with” represents an extension of the previous rules and is the component for which discussion and guidance is most required.

The draft Statement provides a helpful analysis of when services will be “in connection with” land, including an explanation of the difference between the phrases “in connection with” and “directly in connection with”.

We agree with the analysis and the conclusion reached.

“Intended to enable or assist a relevant change to land”

The section explains how the new rules are to be interpreted. The draft Statement gives a series of helpful examples as to when the new rules will apply.

This is important because there is often a practical difficulty in establishing intention. It can be difficult for a supplier to ascertain the “intention” of someone overseas who they have dealt with only through a website or e-mail. It is not always easy to tell whether the other party has formed the requisite intention at the time of supply. It is helpful to state that the supplier may draw a conclusion by reference to objective factors.

The draft Statement is clear about what types of services are intended to be covered and which are not. Paragraphs 80 and 102-103 are particularly helpful in outlining what taxpayers can expect to be covered. This is important because the new rule is a significant change, the previous position was well settled and the rules are now not so clear.

The question of single or multiple supplies is difficult to apply in practice but has been clearly explained in the draft statement.

Further examples

The series of examples provided will be a useful reference for taxpayers looking to determine whether their circumstances fall within the new rules. We have some additional comments in respect of Example 17.

Example 17

Example 17 concerns a land purchase. Included within the fact pattern is tax advice. The conclusion is that the tax advice should be standard rated.

We see accounting services as “one step removed” from the sale of the land. The sale is able to take place without accounting services being provided. Tax advice allows a taxpayer to comply with their tax obligations. It does not allow the sale of land to take place.

In addition, accounting advice would not typically be provided as part of a composite supply where dominant purpose would be relevant.

There may be a limited argument that tax advice is intended to enable or assist the sale where the sale hinges on the tax advice – such as where the sale will not proceed if it is subject to GST. However, this would be rare. In general, we do not believe that tax advice is “intended to enable or assist” a sale of land.

By way of comparison, accounting advice on the sale of another asset – such as a car – is unlikely to be supplied “in connection with” moveable personal property.

This conclusion should be reviewed.