



WEEKLY COMMENT: FRIDAY 25 JANUARY 2013

1. This week and the next two weeks I am focusing on GST. There have been a number of recently enacted GST changes in the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012* ("the *Annual Rates Tax Act*"), which was enacted with a date of assent of 2 November 2012. There are further significant changes proposed in the *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill* that was introduced on 13 September 2012. And *GST remedial issues: An officials' issues paper* contains further proposals for change that are to be included in the first tax Bill of 2013.
2. This week I look at the GST changes in the *Annual Rates Tax Act*. I discussed the income tax amendments in *Weekly Comment 4 January 2013*. The GST changes can broadly be divided into:
 - (a) Changes to the apportionment rules.
 - (b) Changes to the zero-rating of land rules (there is some overlap here with the apportionment rules).
 - (c) Other changes.

Changes to the apportionment rules

3. There changes that affect the apportionment rules can be divided into eight categories..
 - (a) *Secondhand goods input tax credit denied for a supply by any non-resident of goods previously supplied***
4. Effective from 14 September 2011 (the date of introduction of the *Annual Rates Tax Bill*) an amendment in s. 208(1) of the *Annual Rates Tax Act* replaces s. 3A(2)(b) so as to deny a secondhand input tax credit when a supply of goods:
 - (a) Has previously been made to a registered person who has claimed an input tax credit on importation (whether the person was registered at the time of importation, or later); and
 - (b) Is made by a non-resident, whether or not they made the earlier supply referred to above.
5. The change that is effected by the amendment is that it does not matter if the non-resident supplier is the original non-resident supplier or another non-resident who sells the same goods to a registered person in NZ. This rule covers the situation where a non-resident leases goods to a person in NZ who enters them for home consumption and either claims an input credit straightaway, or claims it later if importation precedes GST registration, and sometime afterwards, a non-resident supplier sells the same goods to a registered person in NZ. The NZ buyer of the secondhand goods is denied an input tax credit.

[Section 3A(2)(b) amended effective from 14 September 2011 by s. 208(1) of the *Annual Rates Tax Act* – see page 3 of the attached PDF *The GST Apportionment Rules*]

(b) GST on importation deduction not available for mere delivery of goods

6. The general input tax deduction rule in s. 20(3C) has been amended so as to specifically deny an input tax deduction for GST paid on importation if the goods are used for making taxable supplies that involve:
 - (a) The delivery of goods to a person in New Zealand; or
 - (b) Arranging or making easier the delivery of goods to a person in New Zealand.

[Section 20(3C) as replaced by s. 214(2) of the *Annual Rates Tax Act* effective from 1 April 2011 – see page 5 of the attached PDF *The GST Apportionment Rules*]

(c) Final adjustment period ends on date before disposal

7. If an asset is disposed of before the limit on adjustments is reached, the final adjustment period ends on the date before the date on which the asset is disposed of. The amendment applies from the date of assent of the amending legislation – 2 November 2012.

[New s. 21G(7B) inserted by s. 220 of the *Annual Rates Tax Act* applying from 2 November 2012 - see pages 13 and 20 of the attached PDF *The GST Apportionment Rules*]

(d) Motor vehicle logbook can be used to determine percentage use

8. A registered person can refer to a logbook used for income tax purposes to determine the percentage intended use and the percentage actual use of a motor vehicle.

[New s. 21(5) inserted by s. 216 of the *Annual Rates Tax Act* effective from 1 April 2011 - see page 15 of the attached PDF *The GST Apportionment Rules*]

(e) Expanded input tax claims for goods acquired before registration

9. Effective from 1 April 2011, the ability of a person to claim input tax credits for goods acquired before registration has been expanded so that it applies not only to goods acquired by the person on which GST has been charged, but also to:
 - (a) Imported goods on which GST has been charged on importation; and
 - (b) Secondhand goods that have either always been in New Zealand or had GST charged on importation.
10. In addition:
 - (a) The rule now applies to all goods: the \$5,000 minimum value rule has been repealed; and
 - (b) The rule in s. 3A(3C) that limits the input tax claim to the amount charged by the supplier when the supplier and the recipient are associated does not apply to imported or secondhand goods.
11. It has been clarified that the tax fraction that applies to secondhand goods is the tax fraction that applied at the time the goods were acquired.

[Section 21B as amended by s. 218 and s. 3A(3C) as amended by s. 208(2) of the *Annual Rates Tax Act* - see page 21 of the attached PDF *The GST Apportionment Rules*]

(f) Pre- 1/4/11 acquisitions with no adjustments under the old apportionment rules

12. When goods and services were acquired before 1 April 2011, and no adjustment was made or required to be made under the old apportionment rules before 1 April 2011:
- (a) If input tax was deducted under s. 20(3), or the goods or services were zero-rated at the time of purchase, the old apportionment rules must be applied;
 - (b) If no input tax was deducted under s. 20(3), the new apportionment rules apply.
13. These rules do not apply to goods or services referred to in s. 21HB(1): goods or services acquired before 1 April 2011 other than for the principal purpose of making taxable supplies which, because of the changes to the definitions of “dwelling” and “commercial dwelling”, are treated as being used to make taxable supplies if the mandatory registration requirement applies.
14. These rules also do not apply if a contrary tax position was taken between 1 April 2011 and 14 September 2011 (the date of introduction of the *Annual Rates Tax Bill*).

[New s. 21HB(2B) & 21HB(2C) inserted by s. 221(2) & (3) of the *Annual Rates Tax Act* effective from 1 April 2011 - see page 22 of the attached PDF *The GST Apportionment Rules*]

(g) Concurrent uses of land requires simultaneous use of the same land

15. Section 21E(1) has been amended to clarify that concurrent uses of land means the simultaneous use of the same area of land for making concurrent taxable and non-taxable supplies. The amendment is effective from the date of assent – 2 November 2012.

[Amendment to s. 21E by s. 219 of the *Annual Rates Tax Act* effective from 2 November 2012 - see page 24 of the attached PDF *The GST Apportionment Rules*]

(h) Post-acquisition reverse charge threshold raised to 95%

16. The post-acquisition reverse charge rule applies if the percentage actual use of the services (to make taxable supplies) is determined at the end of an adjustment period to be less than 95% (previously 90%).
17. The supply is deemed to be made on the last day of the relevant adjustment period (previously the first day).

[Section 8(4B) as amended by s. 210 and s. 9(2)(h) as amended by s. 211 of the *Annual Rates Tax Act*, applying from 1 April 2011 - see page 26 of the attached PDF *The GST Apportionment Rules*]

Changes to the zero-rating of land rules

18. The changes to the zero-rating of land rules can be divided into four categories.

(a) Meaning of zero-rating of land rules

19. Effective from 1 April 2011, a new definition: *zero-rating of land rules*, applying for the purposes of the definition of *land* in s. 2, was inserted by s. 207(4) of the *Annual Rates Tax Act* which means the rules in sections 5(24), 11(1)(mb), 60B(6), 75(3B), and 78F:

(a) The rule that deems services supplied with zero-rated land to be goods [s. 5(24)].

- (b) The main zero-rating rule for land transactions [s. 11(1)(mb)]
- (c) The rule that treats a supply that wholly or partly consists of land as made by the supplier (person A) to a nominated person (person C) who is not party to the contract [s. 60B(6)]
- (d) The requirement for a supplier of zero-rated land to maintain records [s. 75(3B)].
- (e) The requirement for a recipient of zero-rated land to provide the supplier with a statement in writing [s. 78F].

[New definition of “zero-rating of land rules” in s. 2, applying for the purposes of the definition of “land” in s. 2, inserted by s. 207(2) and s. 207(4) of the *Annual Rates Tax Act* - see page 3 of the attached PDF *GST Land Transactions Rules*.]

(b) An assignment or surrender of an interest in land must be zero-rated

- 20. New s. 11(8D) has been inserted by s. 212 of the *Annual Rates Tax Act*. The section specifies that an assignment or surrender of an interest in land is a supply that must be zero-rated.
- 21. However, this rule does not apply to ordinary commercial leases unless more than 25% of the consideration is paid at any one time.

[New s. 11(8D) inserted by s. 212 of the *Annual Rates Tax Act* effective from 1 April 2012 - see page 4 of the attached PDF *GST Land Transactions Rules*]

(c) Written statement to the supplier to zero-rate a supply of land

- 22. Section 78F requires a recipient to provide written information to allow a supplier to determine whether a supply that includes land should be zero-rated. The rules have been clarified to better accommodate supplies to a recipient who has been nominated as the recipient by the other party to the contract, and supplies to an agent of an undisclosed principal.
- 23. Where a person who enters the contract nominates a different (“third”) person to receive the supply, the written statement could be provided either by the nominator, in which case the information should relate to the nominator’s expectation of the third person’s circumstances, or by the actual third person recipient.
- 24. Where a supply is made to an agent, if the agent does not have a GST registration number, it will be sufficient for the agent to provide their tax file number. In that case, the supplier needs to maintain a record of the agent’s tax file number.
- 25. It has also been clarified that a nominated person who is the recipient of a supply of land must maintain records of the supplier and the supply required under s. 24(7B).

[Amendments to s. 78F, s. 75, and s. 24(7B) by s. 226, 225 & 222 respectively of the *Annual Rates Tax Act* coming into force on 1 April 2011 – see pages 6 & 19 of the attached PDF *GST Land Transactions Rules*]

(d) Recipient must account for output tax on services supplied with land

- 26. Section 20(3J)(a)(iii) has been amended so as to clarify that a recipient of a supply of land must, on acquisition, account not only for the supply of land, but also for any services supplied together with the land.

[Section 20(3)(a)(iii) as amended by s. 214(3) of the *Annual Rates Tax Act* effective from 1 April 2011 - see page 9 of the attached PDF *GST Land Transactions Rules*]

Other changes

27. There are five other changes.

(a) Nominated recipients: rule regarding differing registration status repealed

28. The rule that required a supply to be treated as made to the nominated person if the registration status of the nominator and the nominee was different (one registered and the other not registered) has been repealed.

29. The change does not apply if a contrary tax position relating to an input tax deduction had been taken in the period between 1 April 2011 and 14 September 2011 (the date of introduction of the *Annual Rates Tax Bill*).

[Repeal of s. 60B(5) by s. 224 of the *Annual Rates Tax Act* effective from 1 April 2011]

(b) Payment from a foreign insurer for loss in the course of a taxable activity is not consideration for a supply of taxable services

30. The general rule in s. 5(13) is that a payment received under the contract for a loss incurred in the course or furtherance of a taxable activity is deemed to be consideration received for a taxable supply of services.

31. New paragraph (c) to the proviso in s. 5(13) provides that where a supply of insurance services was subject to GST only because of the rule in s. 8(4B) on imported services (i.e. insurance services acquired from a non-resident and applied less than 95% towards a taxable activity), a payment received under the contract for a loss incurred in the course or furtherance of a taxable activity will not be deemed to be consideration received for a taxable supply of services.

32. The corresponding general rule in s. 20(3)(d) is that the tax fraction of a payment made by a registered person pursuant to a contract of insurance may be deducted as input tax.

33. A corresponding insertion as s. 20(3)(d)(vi) provides that the tax fraction of any payment made pursuant to a contract of insurance cannot be deducted as input tax if the supplier of the contract of insurance was not required to account for output tax on the supply.

[Amendment to s. 5(13) by s. 209(1) & s. 20(3)(d)(vi) inserted by s. 214(1) of the *Annual Rates Tax Act* effective from 1 January 2005 under s. 2(7)]

(c) Late Payment Fees Subject to GST

34. New sections 5(25) & (26) provide that an amount charged for the late payment of an account is treated as being consideration for a supply of services in the course or furtherance of a taxable activity, whether it is described as a fee, penalty, or other charge.

35. However, this rule does not apply to penalty or default interest, or a charge in the nature of penalty or default interest, imposed under a contract for the supply of goods and services, or under an enactment.

36. This rule generally applies for taxable periods ending on or after 1 April 2003. However, it does not apply to late payment fees charged on or before 31 December 2012 if, before 14 September 2011 – the date of introduction of the *Annual Rates Tax Bill* – a regular practice had been adopted of not charging GST on late payment fees.

[New s. 5(25) & (26) inserted by s. 209(2) & (3) of the *Annual Rates Tax Act* effective from 1 April 2003]

(d) Liquidators and Receivers Cannot Change From Payments to Invoice Basis

37. New s. 19(3B) will prevent a liquidator, receiver, or administrator of a registered person who accounts for tax payable on a payments basis to change to an invoice basis so as to claim input tax credits for supplies received for which no payment has been made.

38. The amendment applies to applications for a change to a registered person's accounting basis received on or after 2 November 2012, the date of assent.

[New s. 19(3B) inserted by s. 213 of the *Annual Rates Tax Act* applying to applications for a change in registration status received on or after 2 November 2012]

(e) LTCs can be part of a GST group

39. The grouping rules have been amended so as to include company groups that contain one or more LTCs.

[Amendment to s. 55(1)(a)(iii) by s. 223(1) of the *Annual Rates Tax Act* effective from 1 April 2011]



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