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WEEKLY COMMENT: FRIDAY 27 MARCH 2015

1. This week I look at:

   (a) Draft QWB00078: *Goods and Services Tax – Non-profit bodies - Registration, accounting for GST* released on 18 March with a deadline for comments of 24 April 2015; and

   (b) Draft public ruling PU00202: *Goods and Services Tax – Director's Fees* released on 25 March with a deadline for comment of 8 May 2015.

   Non-profit bodies voluntarily registering for GST

2. The draft QB is about the implications of a non-profit body voluntarily registering for GST in circumstances where:

   (a) The main activities involve obtaining and distributing donated goods, and running free assistance programmes for the community and raising funds for that purpose;

   (b) The main assets are two buildings: one acquired in 1975 used for administration and for storing and distributing donated goods, and the other a hall acquired in 1989 used for meetings and for hiring out to members of the community; and

   (c) The total value of supplies relating to hiring out a hall for use by members of the community is around $25,000 per year.

3. In order to register for GST the non-profit body must carry on a taxable activity. There is a discussion on the three requirements for there to be a taxable activity: there must be an activity, that is carried on continuously or regularly by the person, involving supplies to another person for a consideration.

4. The non-profit body in the draft QB meets these requirements in supplying the hall for a consideration. Therefore, the non-profit body is carrying on a taxable activity by making supplies in the form of hiring of the hall for consideration, and it can register for GST.

5. It is noted that in order to remain GST-registered, the non-profit body must continue to carry on a taxable activity. It must continue to make some supplies (other than exempt supplies) of goods and services for a consideration.

6. It is noted that the supply of donated goods and services by a non-profit body is an exempt supply under s. 14(1)(b) of the GST Act. Under s. 6(3)(d), a taxable activity excludes any activity to the extent to which it involves the making of exempt supplies. Consequently, the distribution of donated goods is not part of the taxable activity of the non-profit body.

7. Therefore, if the non-profit body was to cease hiring out the hall, its taxable activity will have ceased even if it continued to distribute donated goods. Under s. 52(3), it must notify the Commissioner within 21 days of its taxable activity having ceased. Alternatively, under s. 52(5), the Commissioner can cancel its GST registration if the Commissioner is satisfied the non-profit body is not carrying on a taxable activity.

Output tax in the course of furtherance of the taxable activity

8. The non-profit body will have to charge GST on the supply of the hall and return output GST. It will not have to charge GST on the distribution of the donated goods, which is an exempt supply.

Input tax on goods and services for making taxable supplies

9. The general rule in s. 20(3C) is that input tax deductions can be claimed to the extent to which goods and services are used for, or available for use in, making taxable supplies. In addition, under s. 21B a registered person may make an adjustment to claim input tax deductions for goods or services acquired before registration, to the extent that those goods or services are used for making taxable supplies and GST has been charged on them.

10. A special rule in s. 20(3K) applies to input tax deductions for non-profit bodies that are resident in New Zealand. They may treat goods or services used, other than to make exempt supplies, as being used for making taxable supplies.

11. In the circumstances of the non-profit body in the QB, input tax deductions may be claimed on all goods and services, other than those used for making exempt supplies. The examples given are goods and services used to refurbish the hall (directly used for making taxable supplies) and goods or services used to organise the free community assistance programmes (used to make supplies other than exempt supplies).

12. No input tax deductions may be claimed on goods or services used to make supplies of the donated goods. The example given is of goods or services used in relation to the administration building that is used for storing and distributing donated goods. Some apportionment will be required of input tax to the extent it relates to the making of exempt supplies (i.e. the extent to which the building is used to store and distribute the donated goods).

13. In addition, providing that GST was charged on the acquisition of the hall in 1989 and a tax invoice is held, the non-profit body can make an adjustment under the apportionment rules, under s. 21B, for the first adjustment period after it becomes GST-registered. The first adjustment period would be treated as starting on the date the hall was acquired and ending on the first balance date after the non-profit body registers for GST.

14. Furthermore, because the hall is not used to make exempt supplies, it is treated as being wholly used to make taxable supplies. Therefore, the "wash-up" calculation in s. 21FB can be performed to claim all input tax on the basis that the use of the hall has changed to solely taxable use.

Output tax on deregistration

15. If the non-profit body ceases having a taxable activity, it must deregister. In that case, any goods or services forming part of the assets of the taxable activity carried on by the non-profit body are deemed to be supplied in the course of that taxable activity immediately before deregistration.

16. The value of this supply is generally determined under s. 10(7A) as the open market value of the supply. However, for goods and services acquired before 1 October 1986, the value of the deemed supply is, under s. 10(8), the lesser of the cost of the goods and services to the supplier and the open market value of that supply.

17. The conclusion in the QB is that the non-profit body must pay output GST on both buildings: the hall (on which GST input tax can be claimed) and the administration building (in relation to which no input tax can be claimed).

18. Because the administration building was acquired before 1 October 1986, the value of the deemed supply is the lesser of cost and open market value. The input tax adjustment under s. 21F that is normally available upon deregistration, to compensate for unclaimed input tax, will not apply. No final input tax adjustment can be made under s. 21F because no input tax was charged on acquisition.

19. This is a particularly harsh result and is an issue that will need to be carefully considered by a non-profit body that is considering registering for GST.

GST treatment of directors' fees

20. The revised draft ruling on the GST treatment of directors' fees updates the previous ruling BR Pub 05/13 to take account of the amendments to s. 6 of the GST Act by s. 187 of the *Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act* 2014, effective from 30 June 2014.

21. As discussed in *Weekly Comment* 20 February 2015, the amendments are primarily aimed at correcting the GST treatment of the situation where an employee of a company acts as a director on behalf of the employing company and remits the director's fees received to the company. The employing company will have to account for GST, however, before the amendments effective 30 June 2014, the paying company could not get a corresponding input tax deductions because the payments were apparently to an individual acting as a director and no GST was visibly charged.

22. From 30 June 2014 the director's fees paid by the paying company are treated as a payment for a supply by the company employing the director, and a GST input tax deduction can be claimed.

23. The special GST rules that apply to directors' fees are discussed in the ruling. In order for a director to charge GST they must be registered and be carrying on a taxable activity. The three requirements for there to be a taxable activity are stated in paragraph 3 above. However, acting as a director cannot be a taxable activity by itself because s. 6(3)(b) excludes "any engagement, occupation, or employment under any contract of service or as a director of a company" from being a taxable activity.

24. There are two exceptions to this rule:

    (a) Section 6(5) provides that a person who, in carrying on a taxable activity accepts a position as a director, is treated as supplying their services as a director in the course or furtherance of that taxable activity.

    (b) Section 6(4), which applies from 3 June 2014, provides that if a director is paid a director's fee in circumstances where they are required to account for the fee to their employer, the fee is treated as consideration for a supply of services by the employer to the payer of the fee.

25. The discussion in the draft ruling follows the scheme of s. 6(3) to 6(5) in relation to directors' fees:

    (a) Where a person contracts to be a director of a company and has not accepted the position as part of carrying on a taxable activity, the engagement as a director is excluded from being a taxable activity under s. 6(3)(b) and no GST will be charged and no GST input tax can be claimed by the company that pays the fees;

    (b) Where a person contracts to be a director of a company and has accepted the position as part of carrying on a taxable activity, the exception in s. 6(5) will apply and the services as a director are treated as being supplied in the course of furtherance of the taxable activity, and GST will be charged and GST input tax can be claimed by the company that pays the fees;

    (c) Where a third party contract with a company to supply the services of a director, there may be either a single supply, or two supplies:

        (i) Where the person who is engaged by the third party to be a director of a company has not accepted the position as part of carrying on a taxable activity, the transaction between the director and the third party is not a supply for GST purposes because the engagement as a director is excluded from being a taxable activity under s. 6(3)(b), and there will only be a single supply for GST purposes between the third party and the company: GST will be charged by the third party and GST input tax can be claimed by the company in relation to any fees paid to the third party;

        (ii) Where the person who is engaged by the third party to be a director of a company has accepted the position as part of carrying on a taxable activity, the transaction between the director and the third party is a supply for GST purposes because the exception in s. 6(5) will apply and the services as a director are treated as being supplied in the course of furtherance of the taxable activity, and there will only be two separate supplies for GST purposes: one between the director and the third party in relation to which GST will be charged by the director and input tax can be claimed by the third party, and a second supply between the third party and the company in relation to which GST will be charged by the third party and GST input tax can be claimed by the company;

    (d) Where a person contracts to be a director of a company and has accepted the position in a capacity as an employee of another company, the exception in s. 6(4) will apply and director's fees paid are treated as consideration for a supply of services by the employer company, and the employer company will have to return output GST on the director's fees and GST input tax can be claimed by the company that pays the fees;

(e) Where a persons accepts a position as a director of a company in a capacity as a partner in a partnership, the services are deemed to be supplied by the partnership and not the partner, under s. 57(2)(b), and the partnership will be required to account for GST on the fees received and GST input tax can be claimed by the company that pays the fees.

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