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WEEKLY COMMENT: FRIDAY 27 MAY 2016

1. The *Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill* (“the Bill”) was introduced on 3 May. It includes the GST law changes proposed in *GST – Current issues – An officials’ issues paper* (the “GST Issues Paper”) released by Inland Revenue last September.
2. I commenced looking at the proposed GST law changes 4 weeks ago. This fourth week I complete my review of the GST law changes by looking at numerous smaller GST amendments:
 - (a) GST on prizes received by GST-registered horse owners;
 - (b) Making a debtor liable for the GST when incorrect information is provided upon a repossession;
 - (c) Clarifying that the deemed supply of financial assets upon deregistration is a financial service;
 - (d) Clarifying that the supply of financial option will be a supply of financial services;
 - (e) Clarifying that the de minimis apportionment exemption for exempt supplies does not apply to private use;
 - (f) Clarifying that a GST adjustment by a purchaser of zero-rated land is treated as output tax;
 - (g) Making GST on entertainment expenses 15% of the non-deductible amount;
 - (h) Ensuring that changes in the prices of secondhand goods are reflected in GST adjustments;
 - (i) Clarifying that a departed member of a GST group remains liable for unpaid tax;
 - (j) Clarifying the rules relating to 6-monthly taxable periods;
 - (k) Making notification that a refund is being withheld refer to the date of notification by the Commissioner rather than the date the taxpayer receives the notification;
 - (l) Extending the refund period when GST is overpaid due to a clear mistake or oversight; and
 - (m) Extending the saving provision for deducting input tax on body corporate expenses.

Horse racing and prizes

3. Effective from 1 April 2012, new s. 5(11CB) in cl. 306 of the Bill will result in a prize received by a GST-registered horse owner being treated as consideration for a supply of

services provide to the racing club. It is noted in the *Commentary on the Bill* (“the Commentary”) that this change is not intended to alter the treatment of other persons, including causing an activity (which is not a taxable activity) carried on by a person to become a taxable activity.

4. The proposed arrangement will be GST-neutral, as when the winner is a registered person and enters the race in the course of their taxable activity, they would charge GST and issue the racing club a tax invoice. The racing club would then claim a deduction based on this invoice. This will allow the prize to be increased by the GST payable, so that the same position is reached as if there was no GST.
5. It is also proposed that s. 10(14) be amended as provided in cl. 309 of the Bill, so that a supply under new s. 5(11CB) does not change the calculation of the consideration for a prize competition under the formula in s. 10(14). The formula determines the consideration for a prize competition, based on the amounts received less the prizes paid in money. Where the prize paid includes GST, the “prizes paid” amount is decreased by the input tax deductible by the organiser.

Debtor liable for GST if incorrect statement provided to creditor for sales under a security interest

6. Under existing law, when goods are sold by a person exercising a security interest over the goods, they are deemed to be supplies in the course or furtherance of a taxable activity carried on by the debtor unless:
 - (a) The exclusion in s. 5(2)(a) applies because the debtor has provided a statement in writing stating fully the reasons why the supply would not be a taxable supply; or
 - (b) The exclusion in s. 5(2)(b) applies because the person exercising the security has been unable to obtain a written statement but determines based on reasonable information held that the supply would not be a taxable supply if made by the debtor.
7. This rule is being corrected, effective from the date of enactment, to clarify that if the debtor furnishes an incorrect statement, the debtor is liable to return GST on the supply, consistent with the Court of Appeal’s judgment in *Commissioner of Inland Revenue v Edgewater Motel Ltd* [2003] 1 NZLR 425, as follows:
 - (a) Section 5(2)(a) is to be amended by cl. 306(1) to require the written statement by the debtor to state “fully and correctly” the reasons why the supply would not be a taxable supply; and
 - (b) Section 51B(1)(b) is to be amended by cl. 323 to make the person whose goods are sold a registered person if the requirements of section 5(2)(a) and (b) are not met (without the Commissioner having to consider the written statement is incorrect).

Deemed supply of financial products upon deregistration

8. Upon cessation of registration, goods and services are deemed to be supplied immediately before cessation, by s. 5(3) and s. 5(3B). When such deemed supplies include financial assets – such as, for example, accounts receivable, it is not currently clear that the transfer of ownership (i.e. the deemed supply) would constitute an exempt supply.
9. Proposed new s. 5(3C), to be inserted by cl. 306(2) of the Bill, provides that, for the purposes of s. 5(3) or s. 5(3B), if a transfer of ownership of the asset would be a financial service, the person is deemed to make a supply of the asset by a transfer of ownership.
10. This clarification applies from 1 October 1986, as this was the intended position all along.

Financial services and options

11. Proposed amendments to section 3(1)(kaa) and 3(1)(ka), contained in cl. 305 of the Bill, will clarify that the following are treated as supplies of exempt financial services:
 - (a) The transfer of ownership of a financial option (amendment to s. 3(1)(kaa)); and
 - (b) The payment or collection of an amount arising under a financial option (amendment to s. 3(1)(ka)).
12. The amendments will come into force on the date of enactment.

No de minimis exemption for private use

13. Section 20(3D) provides the de minimis exemption from making adjustments under the apportionment rules when a registered person makes both taxable and exempt supplies and has reasonable grounds for believing that the total value of exempt supplies in the adjustment period will not exceed the lesser of:
 - (a) \$90,000; and
 - (b) 5% of the total consideration of all taxable and exempt supplies in the adjustment period.
14. Officials have identified that the current wording potentially permits the de minimis exemption to apply to private use. Consequently, effective from the date of enactment, the wording in s. 20(3D) is to be amended by cl. 314(2) of the Bill so that it is clear that the de minimis exemption exempts a person from apportioning input tax between taxable and exempt supplies when the exemption applies.

Output tax by purchaser who acquires zero-rated land

15. An amendment to s. 20(3)(a)(iii), contained in cl. 314(6) of the Bill clarifies that a purchaser of zero-rated land is required to treat as output tax, for attribution to a taxable period under s. 20(4), an amount that is the same proportion of the nominal GST component as the proportion of the use of the goods and services that is non-taxable use.
16. The amendment is to come into force on the date of enactment.

GST on entertainment expenses

17. A long-standing apparent concession is being removed, in the sense that the GST on entertainment expenses is to be calculated at 15% of the non-deductible expenditure, as opposed to 2/23 of the non-deductible expenditure.
18. This is to be effected by an amendment to s. 21I(4)(a), contained in cl. 318 of the Bill, which will substitute the word "value" (meaning a GST-exclusive amount) for a "consideration in money" (being a GST-inclusive amount) in the reference to the non-deductible entertainment expenditure in the section.
19. The amendment is to come into force from the date of enactment.

Secondhand goods and variation of price

20. Officials are concerned that changes to the price of secondhand goods – i.e. a purchase price refund subsequently received by a purchaser – may not be correctly treated as giving rise to GST output tax where the input tax deduction was based on the full initial purchase price.

21. Proposed new s. 25AB, contained in cl. 319, clarifies that a change in the price of a secondhand good must be reflected as output tax in the GST return for the taxable period in which the change occurs where:
- (a) There has been a change in the supply of secondhand goods similar to the changes for taxable supplies listed in s. 25(1)(a) to (c) that would give rise to credit or debit notes being issued; and
 - (b) The change has resulted in the input tax claimed being higher than it should have been.
22. The amendment is to come into force from the date of enactment.

GST group filing – liability for departing member for unpaid tax

23. Under s. 57(3), a member of an unincorporated body is jointly and severally liable with other members for all tax payable by the unincorporated body during the taxable periods, or part of taxable periods as the case may be, the person is a member of the body, even if the person is no longer a member of the body.
24. The equivalent rule for companies in s. 55(7)(g) is not as clear, as it does not specify that a member remains liable after leaving the group. A proposed amendment to s. 55(7)(g), contained in cl. 325(1) of the Bill, aligns the wording in s. 55(7)(g) with the wording in s. 57(3).
25. The amendment is to come into force from the date of enactment.

Six-monthly taxable periods

26. The eligibility to file six-monthly returns is to be expanded by the insertion of a new s. 15(2)(b), contained in cl. 312 of the Bill, that will allow a person to apply to the Commissioner for a six-monthly period if the person makes most or all of the person's taxable supplies for a 12-month period during a period of 6 months or less that ends with or near the end of the 12-month period.
27. It is stated in the Commentary that this additional eligibility is intended to allow businesses that make almost all their supplies in a single season, and prepare accounts at the end of the season, to file 6-monthly.
28. Note that the requirement suggested in the GST Issues Paper that the registered person must have met their GST obligations to file and pay on time in the past 2 years in order to qualify for this seasonal concession has not been proceeded with.
29. The requirement for the Commissioner to consider various factors in s. 15C(2) in directing a change of taxable period is being removed, and revised s. 15C(1) will allow a person to change to a 6-monthly period if the requirements of s. 15(2) are met.
30. A new s. 15C(2) will require a person to change from a 6-monthly period to a 2-monthly or 1-monthly period if:
- (a) The person's taxable supplies do not meet the existing threshold of being no more or likely to be no more than \$500,000; or
 - (b) The new seasonal requirement in new s. 15(2)(b) is not met.
31. This requirement to change from a 6-monthly taxable period will be overridden by proposed new s. 15C(2B) which will allow a person who has breached the \$500,000 threshold in a 12-month period to continue to file 6-monthly returns if the person:
- (a) Is likely to not exceed the threshold in the following 12-month period; and

(b) Has not already been relieved by s. 15C(2B) from changing from a 6-monthly filing period in the preceding 12-month period.

32. These amendments will come into force on the date of enactment.

Notification that a refund is being withheld

33. The time limits within which the Commissioner must request information concerning a GST return and the notify a taxpayer that a refund is being withheld are being clarified by cl. 322 of the Bill as follows:

(a) The Commissioner must “issue a request” for information under s. 46(4) within 15 working days (currently “give a request”); and

(b) The Commissioner must “issue to the registered person a notice” of the Commissioner’s intention to withhold a refund under s. 46(5) (currently “notify the registered person”).

34. These proposed amendments in cl. 322 of the Bill are meant to overcome the Commissioner’s current problem of having to ensure the taxpayer receives the request or notice within the 15 working days timeframe. The amendments are to come into force on the date of enactment.

35. It is stated in the Commentary that it is not expected that the changes will alter the times by which taxpayers receive refunds, the overwhelming majority of which are released without the legislative processes for undertaking further investigation or seeking information being taken.

Refunds when tax is overpaid due to a clear mistake or oversight

36. The ability of the Commissioner, under s. 45(4) to refund an overpayment of tax after the end of the 4-year period in s. 108A of the Tax Administration Act 1994 is being extended so that it applies to excess tax paid generally that is refundable under s. 45(1).

37. This matches the current treatment when an assessment has been amended or was in a net refund position.

38. It is stated in the Commentary that the amendment applies where the application is received in or before the second four-year period, and the overpayment is due to a clear mistake or simple oversight, and the return.

39. The proposed amendment will come into force on the date of enactment. A transitional rule will allow the amendment to apply to claims received before the date of enactment.

Bodies corporate saving provision

40. An amendment in cl. 317 of the Bill proposes to alter the application date of a “saving” provision that applies to past tax positions taken by members of unregistered bodies corporate, to claim deductions for supplies acquired by the body corporate.

41. The saving provision preserved tax positions taken by GST-registered members of an unregistered body corporate to claim deductions for GST incurred by the body corporate. The saving provision applies to supplies acquired by the body corporate on or before 26 February 2015, and in a taxable period ending on or after 1 November 2010.

42. A small number of businesses have apparently fallen outside the original provision, due to the technical requirements of the provision. The amendment extends the application period of the saving provision to include taxable periods ending before or including 3 November 2015 (the date the savings provision was introduced by SOP) and beginning after 1 November 2010.

43. The amendment will apply on and after 1 October 2011, which is the date of application of the original savings provision.



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