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WEEKLY COMMENT: FRIDAY 21 JUNE 2024

1. The *Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023* (“the Platform Economy Amendment Act 2023”), with a date of assent of 31 March 2023, introduced the GST marketplace rules on supplies of listed services. This week, I complete my review of these rules by looking at the impact of inserting a listing intermediary, facilitation services provided by marketplace operators, income tax implications of the flat-rate credit and various remedial amendments.

GST treatment when a supply of listed services is treated as 3 separate supplies

2. In circumstances where a listing intermediary is interposed between an underlying supplier and the operator of an electronic marketplace, s 60CB(2) provides that:
 - (a) If the underlying supplier is a registered person, the supply by the underlying supplier to the listing intermediary is zero-rated under s 11A(1)(jd); and
 - (b) The supply by the listing intermediary to the operator of the electronic marketplace is zero-rated under s 11A(1)(jd); and
 - (c) The operator is treated as the underlying supplier of the listed services to the recipient.
3. A supply of other services by the listing intermediary to the recipient through the electronic marketplace is treated, under s 60CB(3), as 2 separate supplies:
 - (a) A supply from the listing intermediary to the operator of the electronic marketplace that is zero-rated under s 11A(1)(jd); and
 - (b) A supply by the operator, in the course or furtherance of its taxable activity, to the recipient.
4. A listing intermediary is not required to provide taxable supply information in relation to its supplies to the electronic marketplace operator that are treated as zero-rated supplies. However, in respect of the deemed supplies by the operator to the recipient, for the purposes of the flat-rate credit, the listing intermediary is treated as if they were the operator of the electronic marketplace and must meet all the requirements placed on the operator in relation to the flat-rate credit.
5. A listing intermediary resident in New Zealand is treated as if it were the operator of the electronic marketplace and must meet all requirements placed on the operator, including the flat-rate credit and output GST obligations if the NZ resident listing intermediary:

- (a) Enters into into agreements with more than one operator of an electronic marketplace to list or advertise the listed services provided by an underlying supplier on those marketplaces; and
 - (b) Enables or facilitates the supply of the listed services through the use of an electronic system that can facilitate and manage automatically the bookings made by recipients of the services; and
 - (c) Has agreed with the operator of the electronic marketplace, recording their agreement in a document, that the listing intermediary is liable for the payment of tax in relation to the supplies of listed services on that electronic marketplace.
6. The marketplace operator remains responsible for the provision of taxable supply information and supply correction information to the recipient, and is treated as the supplier for the purposes of the provision of that information.

Facilitation services and commissions related to listed services

7. “Facilitation services” involve connecting underlying suppliers with buyers and marketplace operators typically charge suppliers a fee for the facilitation services, often in the form of a commission on the sale. The GST treatment of the facilitation services depends on whether the supplier of the facilitation services, the marketplace operator, is tax resident in New Zealand, or is a non-resident:
- (a) If the supplier of the facilitation services is tax resident in New Zealand, the facilitation services will be subject to GST at the standard rate, regardless of whether the recipient (the underlying supplier of listed services) is registered for GST or not: for example, if a marketplace operator retains 20% of a \$50 GST-exclusive fare for the provision of facilitation services, the \$10 retained will be treated as a GST-inclusive amount and output GST of \$1.30 must be returned by the marketplace operator;
 - (b) If the supplier of the facilitation services is a non-resident, the GST rules for remote services apply to determine the GST treatment:
 - (i) The supply of facilitation services will be subject to GST at the standard rate if the supply is to a NZ resident who is not GST-registered: similarly to the above example, if a marketplace operator retains 20% of a \$50 GST-exclusive fare for the provision of facilitation services, the \$10 retained will be treated as a GST-inclusive amount and output GST of \$1.30 must be returned by the marketplace operator; and
 - (ii) GST does not normally apply if the recipient of the services is GST-registered (although the marketplace operator can choose to treat the supply as zero-rated): in this case, if a marketplace operator retains 20% of a \$50 GST-exclusive fare for the provision of facilitation services, the facilitation services will be treated as supplied outside New Zealand and there will be no GST obligations in relation to the \$10 retained.
8. In either case, the value of the listed service (\$50) is not reduced by the value of the facilitation services (\$10), and the marketplace operator must return \$7.50 GST as output tax on the listed service (i.e. GST of 15% on the GST-exclusive amount of \$50).

Income tax implications of the flat-rate credit

9. The flat-rate credit is treated as excluded income for income tax purposes under s CX 1(c) of the Income Tax Act 2007 (“the ITA”). In this way it is treated the same as way as input tax payable under the GST Act to a GST-registered person.
10. Section DB 2(2B) of the ITA treats a person that is not registered for GST as if they were registered for GST for the purposes of determining deductions for income tax. This applies to the extent that the person would have a deduction for expenditure that is attributable to supplies of listed services that are made through an electronic marketplace. This means that:
 - (a) Only GST-exclusive amounts will be deductible for expenditure attributable to deriving income exclusively through an electronic marketplace (as the flat-rate credit is a proxy for input tax deductions on such expenditure);
 - (b) GST-inclusive amounts will be deductible for expenditure related to income derived from other activities;
 - (c) For expenditure with a mixed purpose of partly deriving income through an electronic marketplace and partly deriving income through other means, a GST-inclusive deduction will only be available for expenditure attributable to income derived from activities no conducted through an electronic marketplace.
11. Inland Revenue has stated in *Tax Information Bulletin* Vol. 35, No. 6, July 2023 (“the Platform Economy TIB Item”) that a person who has mixed purpose expenditure should undertake the following process to determine their total annual deduction for income tax purposes (this follows Example 20 on page 32 of the Platform Economy TIB Item):
 - (a) Identify the GST-inclusive and GST-exclusive amount of mixed purpose expenditure for the income year, for example: if total GST-inclusive mixed-purpose expenditure is \$5,300, the GST-exclusive portion will be \$4,608.69;
 - (b) Determine what proportion of expenditure must be taken on a GST-exclusive basis: for example, if GST-exclusive sales through an electronic marketplace are \$20,000, and sales by other means are \$8,000, the proportion of expenditure that would need to be deducted on a GST-exclusive basis will be $\$20,000/\$28,000 = 71.43\%$ (being the percentage of total sales made through the electronic marketplace);
 - (c) Determine the amount of expenditure that must be deducted on a GST-exclusive basis: continuing the above example, the GST-exclusive deduction will be 71.43% of the GST-exclusive expenditure of $\$4,608.69 = \$3,291.99$;
 - (d) Determine the amount of expenditure that can be deducted on a GST-inclusive basis: continuing the example, this will be $(100\% - 71.43\%)$ of the GST-inclusive expenditure of $\$5,300 = \$1,514.21$;
 - (e) Add any GST-exclusive deductions relating only to sales made through the electronic marketplace: for example, if the marketplace commission charged is \$4,000, the GST-exclusive deduction will be \$3,478.26 (because the flat-rate credit is treated as if it is an input tax deduction, therefore only the GST-exclusive deduction is allowed on expenditure relating exclusively to the electronic marketplace);

(f) The total annual deduction will be: \$1,514.21 of GST-inclusive expenditure, plus \$6,770.25 of GST-exclusive expenditure (= mixed purpose GST exclusive expenditure of \$3,291.99, plus electronic marketplace GST-exclusive expenditure of \$3,478.26).

12. Inland Revenue notes that for persons not registered for GST, the value of depreciable property for depreciation purposes will continue to be calculated on a GST-inclusive basis (if GST applies).

13. Inland Revenue notes that:

- (a) If a person becomes registered for GST, for the period prior to GST registration, assets that they used to make supplies of listed services will be treated as having a non-taxable use for the purposes of the apportionment and adjustment rules;
- (b) Once registered for GST, the person may choose to perform an adjustment at the end of their adjustment period (their balance date) which reflects the new percentage of use that relates to making taxable supplies – if this new percentage is a permanent change which is likely to be maintained for the foreseeable future.

GST registration

14. The rules for listed services require marketplace operators to register for, and return, GST on supplies of listed services that are performed, provided, or received in New Zealand if the value of these supplies exceeds, or is expected to exceed, \$60,000 in a 12-month period.

15. Inland Revenue notes that:

- (a) Under s 51, non-resident marketplace operators can use a fair and reasonable method of converting foreign currency amounts to New Zealand dollars to determine whether they have exceeded the GST registration threshold;
- (b) For non-resident suppliers of listed services, an IRD Number can be allocated without having to provide a New Zealand bank account number if the only reason for obtaining a tax file number is so they can comply with their GST obligations.

Taxable periods

16. A non-resident marketplace operator that is treated as a supplier of listed services will, under s 15(6), have a quarterly taxable period based on a first quarter ending on 31 March. This means that a non-resident marketplace operator that supplies listed services will have the following taxable periods and due dates:

- (a) For the taxable period from 1 January to 31 March: the GST return and payment due date will be 7 May;
- (b) For the taxable period from 1 April to 30 June: the GST return and payment due date will be 28 July;
- (c) For the taxable period from 1 July to 30 September: the GST return and payment due date will be 28 October;
- (d) For the taxable period from 1 October to 31 December: the GST return and payment due date will be 28 January.

17. A New Zealand resident marketplace operator will be subject to the ordinary rules for taxable periods.

Bad debt deductions

18. A marketplace operator may collect and retain GST and sales commission directly from a recipient of listed services, or the recipient may pay the underlying supplier, in which case, the marketplace operator would have to collect the GST and commission from the underlying supplier.

19. In the latter case, the underlying supplier may fail to pass on the GST. In such circumstances, s 26AA allows the marketplace operator to:

- (a) Claim a bad debt deduction if the operator has written off all amounts owed as a bad debt, including any fee or commission on the sale; and
- (b) Deduct input tax equal to the GST charged on the supply.

20. The requirements for this bad debt deduction are as follows:

- (a) The marketplace operator and the underlying supplier must not be associated persons under s 2A; and
- (b) The marketplace operator must charge the underlying supplier a fee for making the supply through the marketplace and account for the GST on the supply and provide a GST return for the taxable period in which the supply was made; and
- (c) The marketplace operator must have an agreement with the underlying supplier requiring the underlying supplier to pay, from the consideration received from the recipient, the marketplace operator an amount that includes the GST on the supply; and
- (d) The marketplace operator must write off as a bad debt the entire amount the underlying supplier is required to pay, including the marketplace's fee.

21. If the marketplace operator recovers an amount of the bad debt that was written off in an earlier taxable period, s 26AA(3) requires the marketplace operator to account for an amount of output tax that is a fraction of the amount of the input tax deduction taken earlier. This fraction is calculated by dividing the amount recovered by the total amount written off.

Vouchers

22. The issue or sale of a token, stamp or voucher with a face value is treated as a supply of goods and services by the issuer or seller. However, if the supplier of the token, stamp or voucher treats the supply as arising on redemption, the person who redeems the token, stamp or voucher for goods and services is treated as making the supply at the time of redemption, rather than at the time the voucher was issued.

23. An amendment to s 5(11G)(a) means that a seller of a face value voucher for listed services can treat GST as applying on the redemption of the voucher.

Discounts

24. As previously noted in last week's *Weekly Comment*, a special valuation rule in s 10(7D) provides that where a marketplace operator is deemed to make a supply to a recipient who accepts an offer of a discount funded by the operator, the supply is for the discounted price.
25. This reduces the GST that must be returned by the operator to 3/23 of the discounted price paid by the recipient.

Record-keeping, foreign currency and agents

26. Section 75(3F) permits non-resident suppliers of listed services to keep records outside New Zealand and store them in a language other than English without the need for approval from the Commissioner.
27. Section 77(2) permits non-resident marketplace operators to account for GST on supplies of listed services in a foreign currency at the time of supply (overriding the general rule requiring amounts to be expressed in NZ currency at the time of supply).
28. If a non-resident supplier of listed services enters into an agency agreement with a New Zealand resident agent, the NZ agent is treated by s 60(1AB) as supplying listed services in the course or furtherance of the agent's taxable activity.



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