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WEEKLY COMMENT: FRIDAY 7 OCTOBER 2022

1. The *Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022* ("the March 2022 Tax Act"), which received the Royal assent on 30 March 2022, contains a number of amendments to the Goods and Services Tax Act 1985 ("the GST Act"). This week I complete looking at the GST amendments in the March 2022 Tax Act.

Disposal of assets with a mix of taxable and non-taxable use

2. Effective from 24 February 2020, s 21F, which concerns the final input tax apportionment adjustment upon disposal of an asset, has been amended so that:

   (a) Input tax claimed on sale of an asset reflects the proportion of non -taxable use without being capped at the input tax paid on acquisition; and

   (b) The input tax remains capped at the input tax paid on acquisition by property developers.

3. Section 21 F(2) and (3) have been repealed, so that there is only a single formula – the formula in s 21F(4) which applies.

4. However, the application of s 21F(4) is limited by new s 21F(6) which states that if the disposal is of land that the person uses in the course or furtherance of a taxable activity of developing land or dividing land into lots, the final adjustment is capped at:

   (a) The output GST adjustment made on acquisition under s 20(3J) for any non-taxable use, in the case where the acquisition was zero-rated; or

   (b) The total input tax paid on acquisition.

5. The formula in s 21F provides for an input tax deduction equal to the proportion of output tax on disposal that relates to the non-taxable use of the asset (for which GST output tax should not be payable).

6. Inland Revenue notes in the Commentary on the tax bill that:

   (a) The policy underlying retention of the cap on input tax for a property developer is that their taxable activity is about improving the value of land so any appreciation in value of the land is directly connected to their taxable activity;

   (b) If, instead, the registered person uses the land to conduct another type of taxable activity, such as short-term commercial accommodation or a home-based business, and the land would not have been a taxable supply in the absence of that other type of

taxable activity, new s 21F(6) would not apply and the formula in s 21F(4) would allow an uncapped input tax deduction that reflects the percentage of non-taxable use of the land.

Secondhand goods input tax credits: associated persons supplies

7. Two related amendments have been made to the secondhand goods input tax credit rules to permit the tax fraction of secondhand goods to be claimed for an acquisition from an associated person, based on the most recent acquisition of those goods from a non-associated person, providing that acquisition occurred after the introduction of the GST rules.

8. The amendments apply for a supply of secondhand goods:

   (a) Made in a taxable period starting on or after 30 March 2022; or

   (b) Made under an agreement entered after 8 September 2021 and paid for on or after the first taxable period starting on or after 30 March 2022.

9. Inland Revenue noted in the Commentary on the tax bill that:

   (a) If a good was acquired for a taxable activity from a non-associated person after the introduction of GST, a secondhand goods input tax credit could be claimed by the recipient;

   (b) Therefore, if such a good was not used in a taxable activity by the recipient but, instead, was supplied to an associated person to use in their taxable activity, a secondhand goods input tax credit should be available to the associated person.

10. The amendments achieve this outcome as follows:

   (a) New s 3A(2)(ab) contains a new additional requirement for a secondhand goods input tax credit – being that the goods:

      (i) Were not acquired before the commencement of GST on 1 October 1986 by the registered person or a person who was associated at the time of acquisition with the registered person; and

      (ii) Have not been owned by some other non-associated person at some time since 1 October 1986;

   (b) The requirement in s 3A(3)(a)(i) that input tax not exceed "the tax included in the original cost of the goods to the supplier" has been replaced by the following requirements in s 3A(3)(a)(i) and (ib) respectively:

      (i) For goods received by the supplier from a person who, at the time of the receipt, is not an associated person, the tax fraction of the purchase price for the supplier; and

      (ii) For goods received by the supplier from a person who, at the time of the receipt, is an associated person, the tax fraction of the purchase price for the most recent acquisition of the supply by a person who, at the time of the acquisition, is an associated person from a person who, at the time of the acquisition, is not an associated person.

11. Inland Revenue notes that the amendment allows an input tax credit for secondhand goods acquired from an associated person as follows:

    (a) If the associated supplier has purchased the secondhand goods from a non-associated person, an input tax deduction allowed would be equal to the tax fraction of that earlier purchase price from the non-associated person, or

    (b) If the associated supplier has purchased the second-hand goods from an associated person, an input tax deduction would be allowed only if an earlier supply with a non-associated person can be identified after 1 October 1986, in which case, the input tax deduction allowed would be equal to the tax fraction of that earlier purchase price from the non-associated person.

Compulsory zero-rating of land rules

12. A registered person may claim a secondhand goods input tax deduction when they purchase land from a non-associated person who has not made a taxable supply. If, subsequent to the supply of land, it is found that the supply should have been zero-rated under section 11(1)(mb), the recipient of the supply is required to make an output tax adjustment for the underpaid GST.

13. Effective from the first taxable period starting on or after 30 March 2022, a change has been made in s 25AB(2) so that the output tax liability to correct the error arises in the taxable period in which the error is found (as opposed to the period in which the error was made).

14. The events giving rise to the error are also now specified in s 25AB(1)(a) as follows:

    (a) A cancellation of the supply;

    (b) A return to the supplier, of all or part of the supply;

    (c) An incorrect description of the supply;

    (d) An incorrect rate of tax;

    (e) An incorrect amount of tax charged; and

    (f) A change to the previously agreed consideration for the supply.

15. Amendments have also been made to s 5(23), which applies if a transaction has been incorrectly zero-rated under s 11(1)(mb). Effective from 30 March 2022:

    (a) The recipient is treated as the supplier and has to pay output tax for the taxable period in which the error is found (as opposed to the date of settlement); and

    (b) Section 5(23) now only applies to a "taxable supply of goods", meaning that if a transaction has been zero-rated when it is a non-taxable supply, the recipient is able to claim a secondhand goods input tax deduction, which was not previously available, as s 5(23) treats the recipient as the supplier and previously applied to "a supply of goods".

Amendments to the GST apportionment rules

16. Section 20(3J), which applies to require a purchaser of zero-rated land to identify the nominal tax and pay output GST relating to non-taxable use, now applies to a purchaser of a going concern and requires the same adjustment to be made.

17. Effective from 30 March 2022, s 20(3J) applies to a supply to which s 11(1)(m) applies, being the supply of a taxable activity as a going concern. The purchaser must, on acquisition:

    (a) Identify the nominal GST component that would be chargeable treating the consideration as the value of the supply; and

    (b) Determine the percentage of any non-taxable use; and

    (c) Determine the proportion of the nominal GST component corresponding to the percentage non-taxable use; and

    (d) Treat the non-taxable proportion of the nominal GST component as output tax attributed to the relevant taxable period under s 20(4).

18. Inland Revenue notes in the Commentary on the tax bill that:

    (a) The amendment would require the registered person to determine if they have any non-taxable use of the goods (such as private use or use of the goods to make exempt supplies) and return output tax in respect of 15% of the consideration they paid to acquire the goods multiplied by their percentage of non-taxable use;

    (b) This would ensure consistency with the zero-rating of land rules, which do require the purchaser to determine the nominal amount of GST that would have applied if the supply was standard rated and return output tax on the apportioned amount.

19. Effective from 30 March 2022, new s 21(2)(ac) provides that no GST apportionment adjustment is to be made if a "wash-up" adjustment has been made under s 21FB for a complete change to a taxable or non-taxable use and there has been no change in the use of the goods or services since that change.

Ability to agree an apportionment method with Inland Revenue

20. Effective from 30 March 2022:

    (a) Section 20(3EB)(b)(i) provides that a registered person may agree a fair and reasonable method of apportionment with the Commissioner (the previous requirement limiting this option to registered persons with annual taxable supplies of more than $24m has been removed); and

    (b) Section 21(4B)(b)(i) provides that a registered person may agree a fair and reasonable method of calculating adjustments for adjustment periods with the Commissioner (the previous requirement limiting this option to registered persons with annual taxable supplies of more than $24m has been removed).

21. Inland Revenue notes in the Commentary on the bill that removing the threshold would reduce compliance costs by allowing all registered persons to apply to the Commissioner to agree to an apportionment method.

Domestic transport services supplied as part of the international transport of goods

22. Effective from 30 March 2022, s 11A(1)(c) has been amended to allow domestic transport sub-contractors of transport services supplied to a primary transport supplier (usually a

non-resident/international transporter) to zero-rate domestic transport services where they relate to the international transport of goods.

23. Inland Revenue notes in the Commentary on the bill, in relation to goods transported into NZ:

    (a) Consistent with the existing policy intent of section 11A(1)(a), it is proposed that if the international transport supplier is contracted to deliver goods from point A outside New Zealand to point B in New Zealand, then the transporter can zero-rate the entire supply;

    (b) Any domestic transport services contractually supplied to the international primary transport supplier to move goods within New Zealand, in order to fulfil the whole transport service to the customer, would also be zero-rated.

24. Inland Revenue notes in the Commentary on the bill, in relation to goods transported out of NZ that, likewise, if the international primary transport supplier is contracted to transport goods from point A in New Zealand to point B outside New Zealand, then they can zero-rate this entire supply. Any domestic transport services contractually supplied to the international transport supplier between point A and point B would also be zero-rated.

25. In relation to evidence to determine the origin or destination of the goods, Inland Revenue notes that:

    (a) To support the GST treatment of a particular supply of transport services and whether a particular good is being exported/imported as part of an international transport service, taxpayers and transporters should rely on existing documentation that usually accompanies a particular shipment, including intermodal freight transport, such as Bill of lading (shipping lines) or Airway Bills (airlines), or other relevant transport documents including "track and trace" and other digital-based shipping documentation tools, many of which, are required for Customs purposes; and

    (b) Given the widespread use of "track and trace" and other digital-based shipping documentation tools, it should make it relatively straightforward to identify shipments that are intended for international transportation.

Input tax recovery for non-resident businesses

26. Effective from 30 March 2022, the scope of s 20(3L), which allows deductions for certain non-resident businesses, has been expanded, so that it applies to all GST-registered non-residents.

27. New s 20(3L) states that for the purposes of deducting input tax, a registered person who is a non-resident can deduct input tax charged on goods and services, or the tax fraction of secondhand goods, to the extent to which they are used or available for use in making taxable supplies, treating all supplies made as if they were made in New Zealand.

28. Sections 20(3LB) and (3LC) have been replaced and allow input tax deductions for GST on imported goods paid to Customs as follows:

    (a) Section 20(3LB) allows an input tax deduction for GST paid to Customs on imported goods, subject to s 20(3LC);

    (b) Section 20(3LC) prohibits an input tax deduction if the imported goods are:

(i) Supplied to a recipient who is not GST-registered, or to a registered person if the goods are not for us in their taxable activity; and

(ii) Outside NZ at the time of supply.

29. Inland Revenue notes that the amendment will allow a GST registered non-resident business that sends goods to NZ for work to be done to recover GST charged without having to establish a fixed or permanent place in NZ.

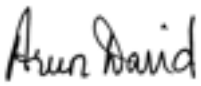
Other GST amendments

30. Other GST amendments have been enacted as follows, effective from 30 March 2022:

(a) Section 11(1)(eb) has been amended to allow a supplier to zero-rate a supply of goods to a recipient who then exports those unaltered goods from New Zealand;

(b) Section 5(8A) has been amended to deem a GST registered unit title body corporate to not be making taxable supplies to its members for any portion of a levy charged by the body corporate for supplies which would be exempt supplies if they were provided directly to the member;

(c) Section 43(2AA) will allow deduction notices to be used to recover outstanding GST debt from members of unincorporated bodies, and from persons who are no longer registered for GST.



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