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WEEKLY COMMENT: FRIDAY 19 APRIL 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, contains a number of amendments to the Goods and Services Tax Act 1985 ("the GST Act"). This week, I will be looking at the amendments to the GST apportionment rules, including the repeal of the GST mixed-use asset rules, and information disclosure for land, ships and aircraft acquired to make taxable supplies.

Agreeing a method of apportionment with the Commissioner

2. Effective from 1 April 2023, sections 137(11) and (12) of the Platform Economy Amendment Act 2023 replaced sections 20(3E) and 20(3EB) and sections 139(4) and (5) replaced sections 21(4) and 21(4B). These sections allow apportionment and adjustment methods to be agreed with the Commissioner by:

   (a) A supplier of financial services (sections 20(3E) and 21(4)); and

   (b) A registered person (sections 20(3EB) and 21(4B)).

3. The amendments removed the previous requirement for the alternative method to "have regard to the tenor of" the default apportionment rules and formula. Inland Revenue notes in *Tax Information Bulletin* Vol. 35, No. 6, July 2023 ("the Platform Economy Act TIB") that this change accommodates a wider range of methods because:

   "The default apportionment and adjustment rules require a person to apportion deductions based on their intended taxable percentage use or actual use in the current adjustment period, even though their current use may be temporary and incidental to their ultimate use of the goods or services. This requirement prevented the Commissioner from agreeing to some methods that may simplify the apportionment and adjustments required but use a different approach to the default apportionment and adjustment rules."

Principal purpose method for goods acquired for $10,000 or less

4. For goods and services acquired for $10,000, excluding GST, or less, on or after 1 April 2023, s 137(10) of the Platform Economy Amendment Act inserted new sections 20(3CB) to (3CH) which:

   (a) Allow a registered person to deduct input tax in full with no further adjustments required, if the goods and services are acquired for the principal purpose of making taxable supplies; and

(b) Deny an input tax deduction completely, if the goods and services are not acquired for the principal purpose of making taxable supplies.

5. These new rules do not have to be followed. However, a registered person that elects not to apply these rules must opt out for at least 24 months, starting from the date on which a GST return is filed without using the principal purpose method, and the opt out will apply to all goods and services acquired by that registered person during that period. After the 24 months have passed, the person can use the principal purpose method, or can opt out again for another 24 months.

6. Unless a registered person opts out, the new rules must be applied to all goods and services acquired for $10,000 or less (excluding GST). The general apportionment rules will continue to apply for higher value purchases that are used to make both taxable and non-taxable supplies.

7. Inland Revenue notes on page 64 of the Platform Economy Act TIB that "principal purpose" is intended to have the same meaning as in the pre-2011 definition of input tax in the GST Act. "The principal purpose is the main, primary, or fundamental purpose. This does not necessarily equate with more than 50 percent taxable use."

Required number of adjustment periods

8. Effective from 1 April 2023, the number of adjustment periods for goods and services used for both taxable and non-taxable purposes has been amended as follows, based on the value of the goods or services, excluding GST:

   (a) 2 adjustment periods for goods or services valued at more than $10,000 but not more than $20,000;

   (b) 5 adjustment periods for goods or services valued at more than $20,000 but not more than $500,000;

   (c) 10 adjustment periods for land, or goods or services valued at more than $500,000.

9. Note that 10 adjustment periods are required for land, regardless of the value of the land.

10. These are the minimum limits for goods or services acquired for more than $10,000, meaning that a registered person can elect to make a higher number of adjustments, if they wish to do so.

11. As an alternative to the above, a registered person can use the number of adjustment periods equal to the estimated useful life of the asset as set by the Commissioner in the Tax Depreciation Rates Determinations.

12. For goods or services acquired for more than $10,000, the above requirements are a minimum limit, which means the registered person can elect to make annual adjustments for a higher number of adjustment periods, if they would prefer to do so.

13. If the registered person sells the asset in the course or furtherance of their taxable activity or has a deemed disposal because they cease their taxable activity, they may still need to make a final adjustment under s 21F, which provides an additional input tax deduction to account for their non-taxable use of the asset.

Deeming an asset disposal to be a taxable supply

14. Effective for goods and services supplied after 1 April 2023, the previous s 5(16) has been repealed and replaced with new sections 5(16), 5(16B) and 5(16C) under which a disposal of goods or services referred to in s 5(16) or s 5(16B) by a person is deemed, by s 5(16C):

    (a) To be made in the course or furtherance of a taxable activity by the person; or

    (b) To be supplied immediately before the person ceases to be a registered person, if the person ceases to be a registered person.

15. Under new s 5(16), this rule applies when a person has acquired goods and services and claimed an input tax deduction, or acquired the goods and services zero-rated under s 11(1)(mb) or 11(1)(m), and:

    (a) Has disposed of the goods or ceased to be a registered person; and

    (b) Was not using the goods or services in a taxable activity at the time they were disposed of or deemed to be disposed of; and

    (c) Has not previously returned output tax equal to or greater than the input tax claimed or the nominal GST component under s 20(3J) for goods or services acquired zero-rated.

16. Under s 5(16B), the new rule in s 5(16C) applies if:

    (a) The registered person has disposed of the goods or services, or has ceased to be a registered person; and

    (b) The Commissioner considers that before the disposal, the person increased their non-taxable use of the goods or services, and applied s 21FB (permanent change in percentage of non-taxable use) in anticipation of disposing of the goods or services, or ceasing their taxable activity.

17. Inland Revenue explains that there are two main reasons for these amendments.

18. The first is that it may be unclear whether the disposal of an asset, such as land, is a taxable supply when the registered person is no longer using the asset to make taxable supplies, or when they previously claimed they had a taxable use of the asset but did not in fact use the asset to make any taxable supplies. New s 5(16) clarifies that the disposal of such goods and services are taxable supplies.

19. The second is that s 21FB which applies to a permanent change in percentage taxable use provides a potential opportunity for tax avoidance. A registered persons could try to minimise their output tax liability on assets, such as land, that are used to make taxable supplies but which they plan to sell soon by using s 21FB.

20. This is because the output tax that needs to be returned under section 21FB on a change to non-taxable use is based on the full input tax deduction that could have been claimed for the GST charged on the asset *at the time it was originally acquired*, which means that for appreciating assets, such as land, the output tax liability from claiming a change of use and applying s 21FB may be significantly less than the output tax that would be charged *at the time of disposal* if the asset was sold as a taxable supply.

21. The application of s 5(16B) will mean that a subsequent disposal or deemed disposal (upon cessation of registration, for example) of such goods or services would be a taxable supply.

Expanding the wash-up rule for permanent change in use

22. Section 21FB applies where the person's use of goods or services in making taxable supplies, as a percentage of total use, permanently changes. Before 1 April 2023, it applied only if:

    (a) There was a change to 100% taxable use or 100% non-taxable use; and

    (b) The change remained in place for the whole of the adjustment period following the one in which the change was made.

23. Effective from a registered person's adjustment period starting on or after 1 April 2023, s 143(2) of the Platform Economy Amendment Act replaced s 21FB. The replaced section allows the wash-up rule to apply to any permanent change to a particular fixed percentage use – for example, it can be used for a permanent change to a 50% taxable use.

24. There is also no longer a requirement for the change to have remained in place for the following adjustment period in order for the wash-up to apply. The rule can be applied at the end of the adjustment period in which the change occurs.

25. Replaced s 21FB allows an adjustment to be made, for the adjustment period in which the change occurred, using the formula:

    (Full input tax deduction) x (New intended use percentage) – (previous net deductions)

26. In the formula:

    (a) "Full input tax deduction" is the total amount of input tax on the supply, after taking into account any nominal GST component chargeable under s 20(3J)(a)(i);

    (b) "New intended use percentage" means the extent to which the goods or services are used, determined by the use from the date the permanent change occurred up to the end of the adjustment period in which the change occurred, and intended to be used for the foreseeable future, by the person for making taxable supplies;

    (c) "Previous net deductions" means the input tax deduction claimed by the person on acquisition of the goods or services after taking into account any nominal GST component chargeable under s 20(3J)(a)(i) which has not previously been returned as output tax under s 20(3J)(a)(iv), plus or minus, as the case may be, any previous adjustments made.

27. If the formula results in a positive amount, an additional input tax deduction equal to the amount can be claimed and, if the formula results in a negative amount, output tax must be paid equal to the negative amount.

28. Inland Revenue notes in the Platform Economy Act TIB Item that allowing the wash-up rule to be applied at the end of the adjustment period in which the permanent change in use occurred may be particularly relevant for persons who have acquired assets before registering for GST that they then begin using to make taxable supplies.

29. Under s 21(2)(ac), once s 21FB has been applied, no further adjustments would be made unless actual use changed from the new percentage taxable use of the goods or services.

30. A couple of remedial adjustments have been made which apply to the wash-up rule in s 21FB:

    (a) The definition of "percentage actual use" in s 21G has been amended to clarify that after the wash-up rule in s 21FB has been applied, percentage actual use is measured from the date the wash-up calculation was performed, rather than the date the asset was acquired;

    (b) The definition of "actual deduction" in the previous s 21FB has been amended to correctly account for land acquired as a zero-rated supply.

Repeal of the GST mixed-use asset rules

31. With effect from a GST-registered person's first adjustment period beginning on or after 1 April 2024, the GST mixed-use asset rules in s 20(3JB) and s 20G are repealed. Inland Revenue notes in the Platform Economy Act TIB Item that:

    "This means that GST input tax deductions and adjustments for mixed-use assets can instead be calculated using the same general apportionment and adjustment rules that apply to other assets.

    These general rules will allow an apportionment percentage to be calculated based on days of taxable use. This is a similar method to the current formula in section 20G, but the calculation is less prescriptive, and it is not limited to the set of "mixed- use assets" described in section DG 3 of the Income Tax Act 2007. Alternatively, the general rules also allow for other ways of calculating the percentage of taxable use, such as based on the value of the taxable supplies as a percentage of the total use, where total use is the value of the taxable supplies plus the open market value of the non-taxable use (i.e., private use by the owner)."

32. Registered persons who have applied the rules in s 20(3JB) and s 20G to a mixed-use asset prior to 1 April 2024 can choose to continue to apply to the mixed-use asset, the method of adjustment which was outlined in the former s 20(3JB) and s 20G for a taxable period that commences on or after 1 April 2024. This is because s 21(4B)(c) allows the Commissioner to publish alternative adjustment methods and persons who can use those methods, and Inland Revenue has stated in the Platform Economy Act TIB Item that the Commissioner will, prior to 1 April 2024, publish approval of the pre-existing method and groups of persons who may use the method. As at the date of this *Weekly Comment*, no alternative adjustment methods have been published.

33. This means that a registered person who has begun an adjustment period for an asset to which s 20G applies can:

    (a) Begin to use the general adjustment rules in s 21 and s 21A, which allow for a wider range of ways to calculate the percentage of taxable use; or

    (b) Choose to continue to apply to the mixed-use asset, the adjustment method outlined in former s 20(3JB) and s 20G.

Information disclosure for land, ships and aircraft acquired to make taxable supplies

34. Section 61B of the *Tax Administration Act 1994* allows the Commissioner to prescribe a new information disclosure to apply when a GST-registered person acquires one of the following assets with the intention of using it to make taxable supplies:

    (a) Land, as defined in s 2 of the GST Act;

    (b) A ship, according to the meaning set out in s 2 of the *Maritime Transport Act 1994*; or

    (c) An aircraft, as defined in s 2 of the *Civil Aviation Act 1990*.

35. Section 61B(1) allows the Commissioner to set (and adjust) what information would be reported and the form and deadlines for the disclosure, including the start date for the first disclosure period. Inland Revenue has stated in the Platform Economy Act TIB that the information to be disclosed could include:

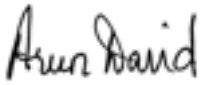
    (a) The GST input tax deducted on purchase (or the nominal GST that would have been charged on a zero-rated purchase of land or a going concern): and

    (b) A statement of how the asset will be used to make taxable supplies.

36. Inland Revenue has stated that it is expected that the earliest possible implementation date to apply the new disclosure rules will be for land, pleasure craft or aircraft acquired on or after 1 April 2024.

37. Section 61B(2) allows the Commissioner to exempt certain types of registered persons from being required to disclose the information if they are considered by the Commissioner to represent a low risk of using the relevant asset for a private or exempt use. Inland Revenue has stated this may include categories of registered persons who have a well-established business of making taxable supplies of land development, commercial leasing, or dealing in aircraft or pleasure craft, whether by themselves or through associated persons.

38. Inland Revenue notes that it will work with GST practitioners and software developers to test the proposed design (including the specific information that would be disclosed, the timing and format of the disclosure and which groups or assets should be exempt as they represent a low risk) to ensure it is well-targeted and practical.



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