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WEEKLY COMMENT: FRIDAY 28 SEPTEMBER 2012

1. The *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill* ("the Bill") introduced on 13 September contained new GST rules to allow certain non-resident businesses to register for GST and claim input tax deductions for GST incurred on approximately the same basis as a resident registered person. The rules are to come into force on 1 April 2014.

2. This week I look at:
   - The new GST registration requirements for non-residents;
   - The new rules for cancellation of GST registration;
   - The new rules for non-residents claiming deductions;
   - The new GST grouping rules;
   - The GST accounting basis for non-residents; and
   - The zero-rating of certain goods supplied to an unregistered non-resident.

The new GST registration requirements for non-residents

3. The most important point is that the new GST registration requirements for non-residents effectively apply from 13 September 2012 – the date of introduction of the Bill. New s. 54C(4) allows the Commissioner to cancel the registration of a non-resident who registers between 13 September 2012 and 1 April 2014 if the new registration requirements in new s. 54B are not met.

4. The current GST registration threshold is $60,000 and every person who carries on a taxable activity and is not registered, becomes liable to be registered under s. 51(1) of the GST Act:

   (a) At the end of any month where the total value of supplies made in New Zealand in that month and the preceding 11 months in the course of carrying on all taxable activities has exceeded $60,000 (unless the total value of supplies in the immediately following 12 months will not exceed $60,000).

   (b) At the beginning of any month where there are reasonable grounds for believing that the total value of supplies to be made in New Zealand in that month and the following 11 months will exceed $60,000, unless the $60,000 threshold is going to be exceeded only because of:

      (i) The ending, or substantial and permanent reduction in size or scale of any taxable activity; or

      (ii) The replacement of any plant or other capital asset; or

(iii) The supply to non-residents who are physically present in New Zealand of telecommunications services supplied by a non-resident supplier that are treated as being supplied in New Zealand either because persons physically in New Zealand initiated the supply (s. 8(6)) or because the services are invoiced to a physical address in New Zealand (s. 8A).

5. Regardless of whether a person is liable to be registered, s. 51(3) allows any person to voluntarily register if the person is carrying on a taxable activity or intends to carry on a taxable activity. This currently applies equally to residents and non-residents.

6. The new rules for GST registration of non-residents are contained in s. 54B, and restrict the ability of non-residents to voluntarily register unless the Commissioner is satisfied that:

   (a) The non-resident is registered for a GST-type tax in their country of residence, or if that country does not have a GST-type tax, the non-resident would be liable to register in New Zealand under s. 51(1) if they were carrying on the taxable activity in New Zealand because the value of their supplies would exceed the registration threshold; and

   (b) The amount of the non-resident's input tax for the first taxable period after the date of registration in New Zealand is likely to be more than $500; and

   (c) The non-resident's taxable activity does not involve a supply of services in relation to which it is reasonably foreseeable that the services will be received in New Zealand by a person who is not GST-registered.

7. The example to explain the last requirement contained in the *Commentary on the Bill* is:

   "… tourism, where tourism products (such as coach tours and accommodation) are received in New Zealand by individual non-residents who are not themselves registered for GST. Given that these products are ultimately enjoyed in New Zealand by individuals, the policy is that GST applies to them. Although allowing registration would require the non-resident business to charge GST to the tourist, this would be difficult to enforce."

8. For compliance purposes, a clear dividing line is drawn between non-residents and residents. When a person becomes resident or non-resident:

   (a) The day on which the person becomes resident is treated as the end of a taxable period; and

   (b) The day on which the person becomes non-resident is treated as the end of a taxable period.

The new rules for cancellation of GST registration

9. The rules for cancellation of registration are contained in s. 52. Under s. 52(1), a registered person ceases to be liable to be registered *at any time* where the Commissioner is satisfied that in the 12 months beginning from that time taxable supplies will not exceed the registration threshold. [s. 52(1)].

10. When a registered person ceases to carry on all taxable activities:

    (a) The Commissioner must be informed within 21 days and the Commissioner will cancel the person's registration from the last day of the taxable period in which all taxable activities ceased [s. 52(3)]; or

    (b) The Commissioner may, even if not notified, cancel the person's registration:

(i) From the last day of the taxable period in which he is satisfied that all taxable activities have ceased [s. 52(5)]; or

(ii) From the date of the person's registration if he is satisfied that no taxable activities were in fact carried on [s. 52(5A)].

11. For non-residents, s. 52(7) stipulated that the 'taxable activities' referred to in s. 52(5) and 52(5A) were taxable activities carried on in New Zealand. Section 52(7) is to be repealed under the new rules, so that non-residents will no longer be required to de-register if taxable activities are not carried on in New Zealand.

12. The new rules for cancellation of a non-resident's registration are contained in s. 54C and expand on the Commissioner's powers to cancel registration under s. 52(5) and 52(5A). The Commissioner may cancel a non-resident's registration if:

(a) The Commissioner is satisfied that the non-resident no longer meets the requirement in s. 54B(1)(a) to be registered for a GST-type tax in their home country or the alternative requirement to be liable to be registered if New Zealand was their home country; or

(b) The non-resident has not filed a return or has filed late returns for 3 consecutive taxable periods, in which case:

(i) The cancellation date is the first day of the third taxable period; and

(ii) The non-resident and associated persons will be barred from becoming GST-registered again for at least 5 years from the date of cancellation.

(c) The non-resident registers for GST between 13 September 2012 – the date of introduction of the Bill – and 1 April 2014 and from 1 April 2014 the requirements of s. 54B(1), as set out in paragraph 6 above, are not met.

(d) The non-resident is a registered New Zealand person who has become non-resident and does not meet the requirements of s. 54B(1) after becoming non-resident.

13. When a non-resident ceases to be a registered person, new s. 5(3B) states that:

(a) Goods that are part of the assets of the non-resident's taxable activity, that are present in New Zealand at the time the non-resident ceases to be registered, are treated as supplied by the non-resident in the course of the taxable activity immediately before the cessation of registration; and

(b) Services that would be supplied in New Zealand as part of the non-resident's taxable activity, at the time the non-resident ceases to be registered, are treated as supplied by the non-resident in the course of the taxable activity immediately before the cessation of registration.

The new rules for non-residents claiming deductions

14. Under new s. 20(3L), a non-resident may deduct input tax to the extent to which the goods or services are used for, or are available for use in, making taxable supplies, *treating all supplies made by the person as if they were made and received in New Zealand*.

15. This rule means that if a non-resident makes supplies that would be exempt supplies if made in New Zealand, input tax cannot be deducted to the extent that such supplies are made. The *Commentary on the Bill* contains, at page 45, the following example:

"Bank Co is a financial services and insurance provider that is registered for GST in Australia and is looking ot expand into New Zealand. It registers for GST in New Zealand and incurs GST on professional services fees it receives from a New Zealand provider. Its Australian business comprises 50% household mortgages, 25% life insurance and 25% health and contents insurance.

Both the mortgage provider and life insurance components of its business would be exempt if they were made and received in New Zealand on the basis that they are financial services. Bank Co can therefore claim 25% of the GST incurred as a deduction in its New Zealand return."

The new GST grouping rules

16. New s. 55(1B) states that a GST group cannot have both resident and non-resident members. In addition, new sections 55(9) and (10) contain a transitional measure that states that if a group of companies formed after 13 September 2012 (the date of introduction of the Bill) has a registered non-resident member:

    (a) The representative member must apply for an alteration to either exclude the non-resident member, or exclude a resident member, so that the group does not have both resident and non-resident members; or

    (b) If an alteration is not applied for, the Commissioner may treat the group as consisting only of resident members and notify the representative member that the membership of the non-resident member is terminated from a specified date.

17. It is noted on page 44 of the *Commentary on the Bill* that:

    "This is a departure from the current rules, but is considered necessary as a base protection measure… A tax advantage could be provided through offsetting input claims of a non-resident with the output liabilities of resident group members, which would be more apparent for non-residents with no economic activity in New Zealand. It would be preferable from a tax administration perspective to have some visibility on the level of input deductions being claimed by non-residents so that any tax base risk can be more readily identified. Having this change apply only from the date of introduction will save existing groups from having to separate."

The GST accounting basis for non-residents

18. New s. 19(1B) states that a non-resident registered person must account for tax payable on a payments basis. New s. 19A(1)(iv) requires the Commissioner to direct a non-resident person to account for tax payable on a payments basis.

19. It is stated on page 45 of the *Commentary on the Bill* that:

    "The provision is designed to limit the possibility of a non-resident claiming a refund on the basis of invoices provided by registered residents on which no payment is made and, therefore, no GST is paid. This is a tax base protection measure."

20. New s. 46(1B) extends the period from 15 days to 90 days after a non-resident's GST return was received by the Commissioner for the purposes of:

    (a) Refunds to be paid by the Commissioner;

    (b) The period within which the Commissioner must give a request for information concerning a return; and

(c) The period within which the Commissioner must give notice of an intention to investigate the return or withhold payment.

21. A related change to s. 120C of the Tax Administration Act 1994 will mean that use of money interest on GST refunds to a non-resident will not start from 15 days after a non-resident provides a GST return.

22. There are no special rules for taxable periods for non-residents, so the usual rules will apply.

Zero-rating of certain goods supplied to an unregistered non-resident

23. New s. 11(1)(p) provides for goods supplied to an unregistered non-resident recipient to be zero-rated if those goods are: jigs, patterns, templates, dies, punches, and similar machine tools to be used in New Zealand solely to manufacture goods that will be for export from New Zealand.

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