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WEEKLY COMMENT: FRIDAY 18 OCTOBER 2013

1. The *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013* ("the Assets Expenditure Tax Act") enacted on 17 July 2013 contains, apart from the GST rules on mixed-assets (to be discussed next week) and the new GST rules to allow certain non-resident businesses to register for GST (discussed last week), a variety of other GST changes.

2. I previously discussed these rules as first introduced in the Tax Bill in *Weekly Comment* 1 February 2013. The rules as enacted, following the review by the Finance and Expenditure Committee, are different in some respects from the rules that were initially proposed. Therefore, this week, I take another look at:

   (a) Making prize competitions subject to GST;

   (b) Allowing a principal and agent to "opt out" of the new agency rules;

   (c) Allowing Inland Revenue-approved data storage providers to hold records outside NZ;

   (d) Restricting non-profit bodies' input tax deductions to non-profit bodies resident in NZ; and

   (e) Changing the accounting basis for certain local authorities to an invoice basis.

Participation in a prize competition is a supply of services

3. Section 5(10) has been amended so that it clearly includes the provision of prize competitions as a supply of services for GST purposes. Section 5(10) (as replaced) provides that an amount of money paid by a person to participate in gambling (including a New Zealand lottery) or in a prize competition is treated as a payment for the supply of services by the following:

   (a) For gambling, by the person, society, licensed promoter, or organiser who under the *Gambling Act 2003* conducts the gambling: or

   (b) For a prize competition, by the person who conducts the prize competition.

4. Section 10(14) has been correspondingly replaced with a new section that refers to both gambling and prize competitions. The consideration under s. 10(14) (as replaced) is the total amounts in money received in relation to the supply by the person who conducts the gambling or the prize competition, less the amount of prizes paid or payable in money in relation to the supply. The consideration for organisers of prize competitions is, therefore, the money received less the prizes paid or payable in money.

5. There is new definition of "prize competition" in s. 2, which is a scheme or competition:

   (a) For which direct or indirect consideration is paid to a person for conducting the scheme or competition; and

   (b) That distributes prizes of money or in which participants seek to win money; and

   (c) For which the result is determined:

      (i) By the performance of the participant of an activity of a kind that may be performed more readily by a participant possessing or exercising some knowledge or skill; or

      (ii) Partly by chance and partly by the performance of an activity as described in (c)(i) above, whether or not it may also be performed successfully by chance.

6. The definition of "prize competition" as initially proposed was amended following a submission. It is stated in the *Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill* ("the Officials' Report") that:

   "Changing the wording of the amendment as suggested above would slightly widen the definition of a prize competition. It would mean that a competition whose organiser receives funding to run that competition from a person other than a participant could meet the definition of a prize competition. This could, for example, happen if funding for the competition was received from advertisers, or sponsors. Officials see no policy reason to deny people in this situation of the benefit of the proposed change."

7. The time of supply for a prize competition under s. 9(2)(e) (as replaced) is aligned with the rule for gambling, and is the date on which the first drawing or determination of the prize competition commences.

8. The amendments apply from 17 July 2013 – the date of assent of the Assets Expenditure Tax Act.

Opt-out provision to the agency rules

9. New s. 60(1B) allows a principal and an agent who are both registered persons to agree in writing that s. 60(1B) applies to a particular supply, or a type of supply, that is then treated as two separate supplies: a supply from the principal to the agent, and a separate supply from the agent to the recipient treating the agent as if they were the principal for the purpose of the supply.

10. This rule when it was initially proposed included a requirement for the principal to account for the tax on the supply to the agent under s. 60(1B) on an invoice basis, so that there is no loss of revenue if the agent defaults on payment. However, officials backed away from this requirement following submissions. It is stated in the Officials' Report that:

    "Although the GST Act does not allow a principal to issue a tax invoice in relation to a supply if the agent has issued a tax invoice in relation to that supply, officials now understand that in practice, multiple invoices are commonly issued in agency situations. This is wider than the problem which prompted this amendment, namely large computer systems automatically issuing invoices when goods are sent out, and therefore technically being in breach of the one-invoice requirement. This situation could equally also arise where smaller taxpayers use agents to sell items for them.

In light of submission received on this amendment, officials are of the view that some of these additional requirements could be impractical for some principals and agents. The requirement for the principal to account for the supply on an invoice basis, and the inability of the principal to claim a bad debt deduction if the customer paid the agent were included in the bill as a GST protection measure. Otherwise a GST liability could be avoided by interposing an agent into a transaction, and then having the agent disappear before meeting their GST obligation."

11. New s. 26(3) denies the principal a bad debt deduction if the agent has been paid for the supply. Officials refused to back down on this requirement, stating that this is "an important protection against taxpayers creating agency relationships in order to take advantage of this section".

12. Other submissions noted that:

    (a) There is currently no definition of an agent in the GST Act. It is uncertain whether this provision will only apply to persons acting as agents in supplying goods and services, or also to those merely acting in the capacity of a paying or collecting agent;

    (b) As currently drafted, the section only applies to parties in a full agency relationship. The provision should be extended to apply to situations where an intermediary facilitates supplies to a third party on behalf of a principal;

    (c) The section should be amended to also include any purchases by the agent to be treated in the same manner for GST purposes.

13. Officials' response was that these matters were not raised during the policy development process, and would need further research and analysis before being implemented.

14. Some submitters also noted that the legislation does not refer to the treatment of a commission derived by the agent, and the provision should include wording to deal with the GST treatment of a commission paid to an agent. However, officials' response was that a commission derived by a NZ resident agent would be subject to GST and there was not a sufficient case for further clarification.

15. The amendments apply from 17 July 2013 – the date of assent of the Assets Expenditure Tax Act.

GST records kept offshore by an Inland Revenue-approved data storage provider

16. New sections 75(3BA), (6) & (7) allow an Inland Revenue-approved data storage provider to hold a registered person's records at places outside New Zealand.

17. This amendment aligns the GST provisions with the corresponding provisions for income tax and certain other records covered by amendments to the *Tax Administration Act 1994* enacted in late 2012.

18. The Commissioner will publish guidelines relating to the administration and implementation of this rule.

19. The amendments apply from 2 November 2012, the date of assent of the corresponding income tax amendments.

Input tax deductions limited to non-profit bodies resident in New Zealand

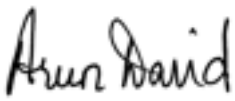
20. Effective from 1 April 2014, the input tax deduction available to non-profit bodies for GST paid on goods and services used other than for making exempt supplies will be limited to non-profit bodies that are resident in New Zealand. This amendment is because non-residents will be able to register and recover GST based on taxable activities outside New Zealand as from that date.

Change of accounting basis for certain local authorities

21. Under new s. 87, from 1 July 2013, a local authority referred to in the *Goods and Services Tax (Local Authorities Accounting on Payments Basis) Order 2009* must account for tax payable on an invoice basis.

22. The tax payable on the change of accounting basis can be spread evenly over a period of 72 months commencing on 1 July 2013.

23. The amendment came into force on 1 April 2013.



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