



WEEKLY COMMENT: FRIDAY 27 JUNE 2014

1. On 6 June 2014 the Government released *GST treatment of bodies corporate – A government discussion document* (“the bodies corporate dd”), in relation to which submissions have been invited until 18 July 2014. On 23 June 2014 Inland Revenue released the *Commissioner’s interim operational position for GST and Bodies Corporate* (“the interim operational position”). This week I look at these documents.

Background to the proposed changes

2. The proposed changes contained in the bodies corporate dd follow submissions and discussions relating to the issues paper released in May 2013: *IRRUIP7: Bodies Corporate – GST registration* (“the bodies corporate issues paper”), which I discussed in *Weekly Comment* 5 July 2013. The conclusion in the bodies corporate issues paper was that a body corporate could be considered to carry on a taxable activity and make supplies to their owners in relation to a number of services required by the *Unit Titles Act 2010*.
3. There appears to have been serious opposition to Inland Revenue’s view as expressed in the bodies corporate issues paper, which was also contrary to Inland Revenue’s historical position, which was apparently to not allow bodies corporate to register for GST. Therefore, the Government has decided to change the law so as to prohibit body corporates from registering for GST. The proposed law changes are contained in the bodies corporate dd.
4. The law changes are proposed to take effect from 6 June 2014, however, the law will not actually change until the changes are enacted. Inland Revenue’s interim operational position is designed to help taxpayers cope with the uncertainty relating to the period between the proposed effective date of 6 June 2014 and the date on which the changes are enacted.
5. In Inland Revenue’s view, the views expressed in the bodies corporate issues paper are correct based on the current law. As stated in the interim operational position:
“Inland Revenue’s view is that a body corporate is entitled to register for GST if it receives levies from unit owners. If the body corporate is making taxable supplies of more than \$60,000 per year, it is required to register for GST. Consistent with our previous interim operational position, we will not require any specific body corporate to register.”
6. Inland Revenue also notes that:
“However, it must be recognised that until the law is changed there will inherently be some uncertainty. For example, the detail of the proposed legislation may change. It is strongly recommended that any affected body corporate, or other affected taxpayer, seeks advice from a tax professional.”

Proposed exempt supplies by a body corporate

7. A new s. 14(1)(f) in the Goods and Services Tax Act 1985 (“the GST Act”) is proposed, which will include within supplies of goods and services that are exempt from GST:
“The supply of goods or services by a body corporate, as that term is defined in section 5 of the Unit Titles Act 2010, to the extent to which the goods or services are supplied under a power or duty of the body corporate as set out in section 84 of that Act.”
8. The requirement that the supply must relate to a power or duty of the body corporate as listed in s. 84 of the *Unit Titles Act 2010* ensures that the new exemption does not create incentives for unit owners to arrange for their body corporate to provide them with a broader range of goods or services, such as meals, education or medical care.
9. If a body corporate carries on a separate taxable activity (such as a business venture) that is unconnected to providing goods and services to its unit owners under the Unit Titles Act, it could still register for GST, but the exempt supplies that they provide to their owners under the Unit Titles Act would not be included in their taxable activity. No input tax credits can be claimed for any inputs used in making the exempt supplies.

Proposed application date

10. The rule on exempt supplies will apply from 1 October 1986 (the GST commencement date) to a body corporate that was not GST-registered before 6 June 2014. Such a body corporate will not be required, and will not be allowed, to be GST-registered at any time in relation to the proposed exempt supplies.
11. A body corporate that has been GST-registered before 6 June 2014 would be able to continue applying the existing law for periods before 6 June 2014. Therefore, the new rules would not apply to tax positions taken in GST returns filed before 6 June 2014. From 6 June 2014 onwards, they would commence making exempt supplies under the new rules.

Backdating GST registration for GST-registered body corporates

12. Consistent with its position on the law as it currently stands, Inland Revenue’s view is that bodies corporate that were GST-registered before 6 June 2014 should backdate their GST registration if they were liable to be GST-registered on account of their taxable supplies exceeding the \$60,000 threshold.
13. However, a concession has been proposed for a body corporate that became GST-registered between 1 April 2010 and 6 June 2014, whether because they became liable to be registered and registered under s. 51(2) of the GST Act, or voluntarily registered under s. 51(3). The body corporate may choose to be a registered person from the later of:
 - (a) Its first taxable period that occurs after 1 April 2010; or
 - (b) The day on which it is liable to be registered under s. 51(1).
14. The back-dating concession will not apply to a body corporate that was voluntarily GST-registered and was not liable to be registered between 1 April 2010 and 6 June 2014, because there will be no later day after 1 April 2010 when it became liable to be registered: such a body corporate will be GST-registered from its actual GST registration date up to 6 June 2014.

15. What the above means for a body corporate that became GST-registered between 1 April 2010 and 6 June 2014 is that:
- (a) If the body corporate was not liable to be GST-registered (i.e. did not make taxable supplies exceeding \$60,000 per annum) at any time in that period, the GST registration date would be the date on which it became actually GST-registered.
 - (b) If the body corporate was liable to be GST-registered before 1 April 2010, but actually became GST-registered after 1 April 2010, it could choose to have its GST registration backdated to 1 April 2010.
 - (c) If the body corporate became liable to be GST-registered after 1 April 2010, and became GST-registered after it became liable to be registered, it could choose to have its GST registration backdated to the date on which it became liable to be registered.
 - (d) If the body corporate became liable to be GST-registered after 1 April 2010, and became GST-registered at or before the time at which it became liable to be registered, its GST registration could not be backdated.

Look-through rule to allow underlying owners to claim GST input tax

16. A new look-through rule is proposed to allow the underlying owners to claim GST input tax deductions on goods and services supplied through the body corporate which the owner uses to make taxable supplies:
- (a) The goods and services supplied to a body corporate are treated as being supplied directly to the owners of the units and common property administered by the body corporate; and
 - (b) In proportion to each unit owner's ownership interest in the body corporate.
17. The look-through rule is to apply to supplies made on or after 6 June 2014. The terms "body corporate", "common property", "owner", "ownership interest" and "unit" have the meanings given in s. 5 of the *Unit Titles Act 2010*.

Inland Revenue's interim operational position

18. Inland Revenue's interim operational position contains a number of questions and answers regarding the GST treatment of bodies corporate until the new legislation is enacted. Inland Revenue states that it will apply the current law until it is amended, but it will act consistently with the proposed law where doing so is not inconsistent with the current law.
19. A body corporate that is currently GST-registered and continues to be registered must keep filing GST returns. If it is currently registered because it is liable to be GST-registered it cannot be deregistered until the law is changed. A body corporate that is not currently GST-registered does not have to register if it is liable to be registered. However, GST registration applications made before 6 June 2014 will continue to be processed. In addition, apparently Inland Revenue will continue to accept applications for GST registration until the new laws are enacted.
20. If a body corporate is voluntarily registered, it could apply to be deregistered. Inland Revenue cautions, however, "tax consequences may arise from deregistering, so advice should be sought from a tax professional". In particular, deregistration could result in common property and other goods that the body corporate has acquired and still holds being deemed to be provided to the body corporate and subject to output GST. This will not include

individual units or flats, as they are property owned by the members of the body corporate and not by the body corporate itself. The government is seeking comment on this potential output tax liability.

21. GST refunds can continue to be claimed, but once the new legislation is enacted, refunds relating to periods after the deregistration date of 6 June 2014 will have to be repaid to Inland Revenue. Use-of-money interest will be charged, but Inland Revenue is likely to favourably consider requests for remission under s. 183D of the Tax Administration Act 1994, particularly if a body corporate is unable to be deregistered until the law is changed. Late payment penalties will not apply providing that the refund is repaid within the time allowed, which is at least 30 days.
22. Inland Revenue will alter its normal practice and refund GST output tax relating to periods after the GST deregistration date of 6 June 2014. While technically the GST will have been charged by an unregistered person and Inland Revenue's normal practice is to retain such GST, Inland Revenue recognises that in the case of a body corporate the output tax is being returned to the persons who actually paid the tax – the underlying owners of the body corporate. Inland Revenue will pay use-of-money interest on overpayments. Whether a body corporate actually returns the output GST refunded by Inland Revenue to the owners is a matter between the body corporate and the owners.
23. Inland Revenue proposes to apply the GST backdating rule now (refer to paragraph 12 onwards above). This means an eligible body corporate can apply now to have its GST registration backdated consistent with the backdating rule. A body corporate that registers for GST after 6 June 2014 cannot apply to have its GST registration backdated (and this is consistent with the backdating rule).
24. Inland Revenue will not apply the look-through rule until the legislation is enacted. This means that a GST-registered owner cannot claim input tax at present on goods and services acquired through a body corporate that is not GST-registered. Once the law is changed, Inland Revenue will provide guidance on amending GST returns if sufficient supporting information is obtained from the body corporate.

What will happen once the law is changed

25. Once the law is changed:
 - (a) A body corporate that has been making supplies that will be exempt under the new rules will have to contact Inland Revenue to be deregistered.
 - (b) A body corporate that has also been making other supplies that will not be exempt under the new rules, such as renting car parks to third parties, may remain liable to be registered or may remain voluntarily GST-registered, in which case sufficient information will need to be provided to Inland Revenue to amend past returns for exempt supplies made from 6 June 2014 onwards.
 - (c) Interest and late payment penalties will apply in accordance with the current rules.
 - (d) Deregistration could result in output GST being payable by the body corporate as a result of the retention of assets (refer to paragraph 20 above).
26. A GST-registered owner who has been claiming GST input tax deductions on GST charged by a body corporate will, strictly speaking, have claimed GST input tax in circumstances where no GST was payable. However, Inland Revenue will not require a GST-registered owner to

amend GST returns for the period between 6 June 2014 and when the body corporate is deregistered on the basis that the owner would be able to claim inputs deductions on their share of the underlying GST paid by the body corporate.

A handwritten signature in black ink that reads "Arun David". The signature is written in a cursive, slightly slanted style.

Arun David, Director
DavidCo Limited