

CASE SUMMARY

Taxpayer required to pay GST on insurance sum

Decision date: 07 September 2026

CSUM 26/12

CASE

Mainzeal Property & Construction Limited (in liq) v CIR [2026] NZHC 2715

LEGISLATIVE REFERENCES

Goods and Services Act 1985 s 5(13)

Legislation Act 2019 s 10

Law Reform Act 1936

CASES REFERRED TO

CIR v Roberts [2019] NZCA 654, (2019) NZTC 24-026

Pegasus Group Ltd v QBE Insurance (International) Ltd HC Auckland CIV-2006-404-6941, 24 September 2010.

Southland Indoor Leisure Centre Charitable Trust v Invercargill City Council [2015] NZHC 1983.

LEGAL TERMS

"under a contract of insurance"

"whether or not the person is a party to the contract"

"relates to a loss incurred in the course or furtherance of the registered person's taxable activity"

Summary

Mainzeal [MZ] received funds from an insurer [QBE] for damage caused by four of MZ's directors. The CIR considered the payment was subject to GST under s 5(13) GSTA because it was paid in relation "to a loss incurred in the course or furtherance of [MZ's] taxable activity". MZ argued it was not because the payment was not received "under a contract of insurance".

The High Court considered the legislative history of s 5(13) GSTA to conclude MZ did receive the payment in relation "to a loss incurred in the course or furtherance of [MZ's] taxable activity" and that it was subject to GST.

Impact

Historically, s 5(13) GSTA has been a difficult sub-section to formulate, interpret and apply. It has been often amended and its legislative history helped the Court understand what Parliament's purpose was for the subsection. This decision should settle the interpretation of the sub section and exactly how and when the GSTA will apply to insurance proceeds.

Facts

MZ was paid by QBE after four of MZ's former directors were found to have breached their duties to MZ. The payment (\$19,956,930.78) was made by QBE to MZ on behalf of the directors, under a Directors and Officers Liability and Company Reimbursement Insurance.

MZ initially returned the payment in a GST return but then commenced a dispute seeking the GST return be adjusted to remove the payment.

In summary, each party argued:

[19] The liquidators argue in summary:

- (a) The words "under a contract of insurance" should be construed as referring to the insured loss to which the insurance payment responded, which here is the loss suffered by the four directors.
- (b) It was the four directors who were entitled "under" the contract of insurance to the insurance payment.
- (c) The words "whether or not the person is a party to the contract" do not inform the interpretation because a person may still be contractually entitled to receive a payment "under" a contract of insurance even if not a party to the contract.

(d) The meaning of “relates to a loss incurred” is contextual. The context critically includes the requirement that the payment is made “under” the contract of insurance.

(e) The fact that Mainzeal is a party to the Policy does not determine one way or the other whether s 5(13) applies. What matters is whether it was Mainzeal that had suffered the insured loss to which the payment responded and whether the payment is one Mainzeal was entitled to “under” the contract.

(f) As the answer to both questions in (e) is ‘no’, s 5(13) does not apply.

[20] The Commissioner’s position is that the “loss” to which the payment must relate need not be a loss insured under the contract of insurance but must relate to a loss incurred in the course or furtherance of the registered person’s taxable activity. It says the plain reading of s 5(13) deems a payment to be consideration for a supply of services where:

(a) A registered person receives a payment.

(b) The payment is made under a contract of insurance.

(c) The payment relates to a loss incurred in the course or furtherance of the registered person’s taxable activity.

[21] The Commissioner argues that “under” a contract of insurance merely requires the payment to be sourced from a contract of insurance. He further argues that the registered person who incurs a loss in relation to which a payment under a contract of insurance is received does not need to be a party to the contract. The recipient of such a payment can be an insured party with rights or entitlements under the contract or an injured third party with no rights or entitlements under the contract. The tax liability follows the money, not the contractual relationship.

Issues

Does s 5(13) GSTA apply to the insurance payment received by MZ from QBE?

Decision

Justice Tracey Walker found in favour of the CIR.

Her Honour applied the legal principles of statutory interpretation (set out at [22] to [32]). Notably she accepted that extrinsic aids to interpretation could be used where these found part of the Parliamentary record (at [32] and [65]). She acknowledged the Court of Appeal’s

caution about using guidance material produced by the CIR outside the Parliamentary record at [31] and declined to place any weight on CS 20/01 (at [68]).

Justice Tracey Walker then reviewed the legislative history of s 5(13) and referred to various reports making up part of the Parliament record. She also considered two earlier decisions regarding s 5(13) which were not precisely on point but indicative of the proper treatment (see at [43] to [56]).

At [57] Her Honour states:

[57] Broken down into its constituent parts, s 5(13) deems a payment to be consideration for the supply of services where all three criteria are met:

- (a) A registered person receives a payment.
- (b) The payment is received under a contract of insurance.
- (c) The payment relates to a loss incurred in the course or furtherance of the registered person's taxable activity.

[58] Additionally, it expressly does not matter whether the recipient of the payment is a party to the contract or not.

She then states:

[65] It is clear from the legislative history however, **that the purpose of the amendment was always to ensure some GST incidence provided there is a loss incurred in the furtherance of the relevant registered person's taxable activity.** In this instance, I do not accept [MZ's] submission that the various commentaries and reports including the Select Committee's report are of no assistance to interpretation.

...

[73] As s 5(13) was amended to ensure that payments made to registered third parties are subject to output tax in the hands of the third party, I am not persuaded that "loss" is confined to the insured's loss to which the payment responds. It must include the loss of the third party where that loss is incurred in the furtherance of their taxable activity.

She was unprepared to read s 5(13) as MZ sought as it would make the phrase "whether or not the person is a party to the contract" in the sub-section redundant (at [75]) and considered the phrase was intended to deal with situations payments by insurers to third parties. (at [80]).

Her Honour concluded:

[81] The internally inconsistent language in the section leads to an ambiguity. That elevates the need to understand the provenance of the section and its purpose. **I conclude that s 5(13), as the Commissioner argues, imposes a GST liability on the actual recipient of a payment made under a contract of insurance. The loss to which the payment relates in this case is the loss of Mainzeal as an injured third party and it was incurred in the course of furtherance of Mainzeal's taxable activity.**

About this document

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