Inland Revenue
Te Tari Taake

CASE SUMMARY

High Court holds s 19(3B) of the GST Act overrides s 19A(2); and whether registered person ceased to satisfy s 19A(1) requirements is determined at date of notification

Decision date: 24 September 2026

CSUM 26/13

CASE

DD4 Infrastructure Limited (in liq) & others v Commissioner of Inland Revenue [2026] NZHC 2922

LEGISLATIVE REFERENCES

Goods and Services Tax Act 1985, s 19, 19A, 53(1)(cb) and 75B

Tax Administration Act 1994, s 6, 6A, 138G

LEGAL TERMS

Change in accounting basis; payments basis; invoice basis; liquidation; prohibition on liquidators; has ceased to satisfy the conditions; notification or application.

Summary

The plaintiff companies challenged the Commissioner's decision not to direct them to account for GST on the invoice accounting basis under s 19A(2) of the Goods and Services Tax Act 1985 (GSTA).

The liquidator said he was required, under s 53(1)(cb) of the GSTA, to notify the Commissioner that the plaintiff companies had ceased to satisfy the requirements for payments basis and the Commissioner must therefore direct the companies to account for GST on an invoice basis.

The High Court held that s 19(3B) of the GSTA overrides or precludes the Commissioner from being required to give a direction under s 19A(2) and that the Commissioner must be satisfied at the time of notification that a registered person has ceased to satisfy the conditions in s 19A(1).

Impact

The decision confirms that a liquidator is prohibited from applying for a registered person to be changed from the payments accounting basis to the invoice accounting basis and that a liquidator is unable to rely on s 53(1)(cb) to circumvent s 19(3B). Furthermore, a registered person must cease to satisfy the conditions in s 19A(1) at the time the Commissioner is notified and not have ceased sometime in the past.

Facts

The plaintiff companies — DD4 Infrastructure Limited (**DD4**), DL Diggers Limited (**DL**), and Innovate Civil and Construction Limited (**Innovate**) — were approved by the Commissioner to account for GST on a payments basis under s 19(2) of the GSTA. When the Commissioner approved each company to account for GST on a payments basis their taxable supplies did not exceed $2,000,000.

DD4 first exceeded the $2,000,000 threshold in the 12-month period ending 31 July 2021, DL in the period ending 31 May 2021, and Innovate in the period ending 31 July 2021. Each plaintiff company failed to make any notification of the change to the Commissioner as was required under s 53(1)(cb) of the GSTA. The plaintiff companies continued to file their GST returns on a payments basis.

The plaintiff companies ceased trading on 28 April 2023 (DD4), 1 June 2023 (DL), and 1 January 2022 (Innovate). They subsequently went into liquidation on 28 April 2023, 1 June 2023, and 17 May 2023, respectively.

DD4 taxable sales did not exceed $2,000,000 in the preceding period of 12 months ending 31 May 2023 or 31 July 2023. DL's sales last achieved $2,000,000 in the 12 months preceding 31 May 2023. The last date Innovate achieved $2,000,000 was in the period ending 31 May 2022.

The liquidator notified the Commissioner on 2 August 2023 of the fact that each company no longer satisfied the conditions for accounting on a payments basis. The letter read as follows:

> …pursuant to sections 53(1)(cb) and 19A(2) of the Goods and Services Tax Act 1985 ("the Act") that the company no longer satisfies the conditions to register on a payments basis. As a result, the Commissioner MUST correct the basis and register the company on an invoice basis.

The letter went on to state that the communication was not an application to change the GST basis under s 19(2) of the GSTA, but rather was to notify the Commissioner that:

> …the requirements to register on a payment's basis are not met and we expect the Commission [sic] to direct the company to account for GST on an invoice basis, with the adjustment to take place in the next return.

On 7 August 2023 the Commissioner refused to direct that each plaintiff company account for GST on an invoice basis and said that s 19(3B) of the GSTA overrode s 19A(2). Section 19(3B) prohibits a liquidator of a registered person who accounts on a payments basis from applying under the GSTA to change to an invoice basis.

On 19 May 2025 the Commissioner issued notices of final decision confirming his original decisions and advising that the Commissioner was not required to make a direction under s 19A(2) for each plaintiff company to account for GST on an invoice basis. In his letter conveying the final decision the Commissioner summarised the basis for his decision as follows:

- Section 19(3B)…does not override s 19A(2).
- …under s 19A(2) the Taxpayer was no longer a person who "has ceased to satisfy the conditions" in s 19A(1)(a) to (c) for returning GST on the payments basis at the time notification was made.
- …although the Taxpayer had previously filed GST returns that collectively showed the Taxpayer's taxable supplies exceeded $2 million…this was insufficient for the Commissioner to be satisfied that the Taxpayer had ceased to satisfy the conditions in s 19A(1)(a) to (c).

Issues

1. Whether s 19(3B) of the GSTA overrides or precludes the Commissioner from being required to give a direction under s 19A(2) that the plaintiff companies account for GST on an invoice basis.

2. Alternatively, whether each of the plaintiff companies "*has ceased to satisfy the conditions*" within the meaning of s 19A(2) of the GST Act as at 2 August 2023, when the liquidator notified the Commissioner under s 53(1)(cb) that each plaintiff company no longer satisfied the conditions in s 19A(1) to be registered on a payments accounting basis.

Decision

Section 19(3B) of the GSTA overrides or precludes the Commissioner from being required to give a direction under s 19A(2) that the plaintiff companies account for GST on an invoice basis.

The proximity of s 19(3B) to s 19(2), the fact it is a particular provision relating to liquidators, and the fact that it was enacted later than s 19(2) all support the interpretation advanced for the Commissioner in the proceedings. This interpretation is consistent with the cannon of statutory construction that a specific enactment overrides a general provision.

Section 19(3B) was inserted to prevent liquidators from taking advantage of changing to the GST accounting basis in order to more easily obtain input tax credits in circumstances where there is or may be no realistic prospect that the debt to which the credit relates would be paid.

Allowing a liquidator to obtain the change to the invoice accounting basis by claiming he had only made a notification, rather than an application for the relevant change, circumvents and is internally inconsistent with the prohibition in s 19(3B). Any difference between applying and notifying is rendered negatory when the claimed notification is by the liquidator.

None of the plaintiff companies "has ceased to satisfy the conditions" within the meaning of s 19A(2) of the GSTA as at 2 August 2023, when the liquidator notified the Commissioner under s 53(1)(cb) that each plaintiff company no longer satisfied the conditions in s 19A(1) to be registered on a payments accounting basis.

Section 19A(2) provides that the Commissioner must be satisfied at the time of notification ("is satisfied") that the registered person "has ceased" to satisfy the prerequisite conditions. On the plain meaning this contemplates that the registered person is not satisfying the prerequisite condition at the time of notification. There is no need to resort to minute analysis of grammatical tenses. In this case that does not assist in ascertaining the ordinary meaning of the words.

"Has ceased" in s 19A(2) indicates that the Commissioner must be satisfied that the cessation is current *at the time of the notification*, regardless of whether the registered person had ceased to satisfy the conditions in the past. I do not agree with the liquidator that it is sufficient that, at some time in the past, the registered person ceased to satisfy the conditions, irrespective of whether or not they fulfilled the conditions at the time of notification.

Section 19A(2) does not allow for a discretion once the Commissioner is satisfied that the registered person is not presently meeting the prerequisite conditions. However, each case will turn on the facts and whether the Commissioner is so satisfied.

That a registered person is in liquidation is a factor that the Commissioner may properly take into account to be satisfied in terms of s 19A(2). Attaching weight to that factor is consistent with the purpose for which s 19(3B) was inserted. The fact that the companies were insolvent, had been put into liquidation, each already owed various amounts of GST and/or had failed to file returns are all relevant factors.

In the present proceedings, as the notification came at a time when the companies did in fact satisfy the conditions in s 19A(1)(b) to account on a payments basis, the Commissioner was not required to direct that the companies account for GST on an invoice basis.

The filing of returns (without more) does not amount to notification, nor does it "otherwise" bring the matter to the Commissioner's attention. The Commissioner is not required to undertake an exercise of going through the GST returns to ascertain the position. Notice on the Commissioner was not effected by the filing of relevant GST returns.

In the course of the hearing, the counsel for the plaintiffs pointed to the Commissioner being required under ss 6 and 6A of the TAA to administer tax laws with integrity and impartiality. Counsel argued that s 19A(2) of the GSTA afforded the Commissioner no discretion to refuse to apply it where the outcome may be financially unfavourable to the IRD. This issue was raised for the first time in the liquidator's submissions, therefore s 138G of the TAA precluded it being now raised. The Court accepted the Commissioner's submissions that:

> Section 6 does not create enforceable rights and obligations similar to those created under the New Zealand Bill of Rights Act 1990. Further, the Commissioner does not accept that his decision not to direct the Plaintiff Companies to account for GST on an invoice basis under s 19A(2) usurps a statutory duty and submits that the Plaintiff Companies cannot establish otherwise.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.