Inland Revenue
Te Tari Taake

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA - MŌ TE TĀKUPU ME TE MATAPAKI ANAKE

Deadline for comment | Aukatinga mō te tākupu: **8 September 2025**

Please quote reference | Whakahuatia te tohutoro: **PUB00476**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki public.consultation@ird.govt.nz

Notes | Pitopito kōrero: This is a reconsultation of PUB00476, following on from the external consultation from 24 February 2025 to 18 April 2025. As a result of the number of submissions received on that earlier exposure draft, the additions made to the statement as a result, and particularly the increase in the number of examples, it has been decided to reconsult the item to seek further feedback/comment.

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

GST – taxable activity

Issued | Tukuna: Issue date

IS XX/XX

This interpretation statement considers the meaning of "taxable activity" in s 6 of the Goods and Services Tax Act 1985.

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

REPLACES | WHAKAKAPIA

- GST on disposal of assets used principally in making exempt supplies *Tax Information Bulletin* Vol 1, No 7 (January 1990), 6.
- Whether an activity is a GST taxable activity or a hobby *Tax Information Bulletin Vol 6, No 14* (June 1995), 5.

Contents | Ihirangi

Summary | Whakarāpopoto

1. This interpretation statement sets out the Commissioner's view on the meaning of "taxable activity". The Commissioner has discussed this concept in numerous public items, but generally in a specific context such as subdivisions of land, horse racing or horse breeding. This statement is of more general application.

2. The concept of taxable activity is one of the key building blocks of GST. Among other things it affects the need to charge GST on a supply under section 8 and determines the need to register for GST under section 51. As such, it is considered useful that the Commissioner provide his view of the meaning of "taxable activity".

3. Section 6 defines "taxable activity". The key elements discussed in this interpretation statement are:

   - what constitutes an "activity" (from [12]);
   - when an activity is being "carried on" (from [16]);
   - what "continuously or regularly" means (from [18]);
   - the significance of the words "whether or not for a pecuniary profit" (from [32]);
   - what is meant by the requirement that the activity "involves or is intended to involve, in whole or in part, the supply of goods and services … for a consideration" (from [34]);
   - the reference to the activity being "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club" (from [39]);
   - the inclusion of public authorities, local authorities and public purpose Crown-controlled companies (at [42]);
   - the application of section 6(2) ("anything done in connection with the beginning or ending … of a taxable activity") (from [43]); and
   - the exclusions from the definition of "taxable activity" in section 6(3), particularly the exclusions for any activity carried on essentially as a private recreational pursuit or hobby (sections 6(3)(a) and 6(3)(aa)) (from [66]).

Introduction | Whakataki

4. In most cases it is clear if a person has a taxable activity. The level of activity and manner in which that activity is conducted usually clearly indicates whether the statutory test of "taxable activity" is met. However, there are cases where it is not clear whether the test is met, and this interpretation statement provides guidance for those cases.

5. The meaning of taxable activity (including the exclusions in section 6(3)) has been addressed in many statements including:

   - GST on disposal of assets used principally in making exempt supplies *Tax Information Bulleti*n Vol 1, No 7 (January 1990): 6[1];
   - Whether an activity is a GST taxable activity or a hobby *Tax Information Bulletin* Vol 6 No 14 (June 1995): 5[1];
   - Difference between a taxable activity (GST) and a business activity (income tax) *Tax Information Bulletin* Vol 7 No 3 (September 1995): 8;

[1] This is one of the two statements that will be withdrawn by this interpretation statement.

- QB 17/04: Goods and services tax — whether a racing syndicate can be a registered person (question we've been asked, 19 May 2017);
- QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home? (question we've been asked, 20 May 2019);
- IS 20/04: Goods and services tax – GST treatment of short-stay accommodation *Tax Information Bulletin* Vol 32 No 6 (July 2020): 69;
- IS 21/04: Income tax and GST – deductions for businesses disrupted by the COVID-19 pandemic *Tax Information Bulletin* Vol 33 No 9 (October 2021): 8 ;
- QB 22/07: Income tax and goods and services tax – treatment of bloodstock breeding *Tax Information Bulletin* Vol 34 No 9 (October 2022): 22;
- BR Pub 23/01: Goods and services tax – directors' fees *Tax Information Bulletin* Vol 35 No 3 (April 2023): 15;
- BR Pub 23/02: Goods and services tax – fees of board members not appointed by the Governor General or Governor-General in Council *Tax Information Bulletin* vol 35 No 3 (April 2023): 18;
- BR Pub 23/03: Goods and services tax – fees of board members appointed by the Governor General or Governor-General in Council *Tax Information Bulletin* vol 35 No 3 (April 2023): 21;
- QB 23/07: GST – directors and board members providing their services through a personal services company *Tax Information Bulletin* Vol 35 No 8 (September 2023): 43; and
- QB 24/04: When is a subdivision project a taxable activity for GST purposes? *Tax Information Bulletin* Vol 36 No 7 (August 2024): 42.

6. Where a particular issue relates to one of topics covered in the statements listed above that specific advice should also be referred to.

7. The meaning of taxable activity has also been addressed in a large number of decisions of the Taxation Review Authority (TRA) and New Zealand courts. This interpretation statement refers to many of these cases (and they are listed in the References).

8. As a preliminary point it is worth observing that a GST registered person may have more than one separate taxable activity but will only have one GST registration[2]. On the other hand, a person may have multiple GST registrations for different taxable activities if they are conducted through different legal entities. For example, a natural person may own a company running a retail store, a separate company running a

[2] See, for example, *Case R38* (1994) 16 NZTC 6,212 and section 51(1)(a) which provides a person is liable to register for GST where the value of supplies "in the course of carrying on **all** taxable activities" exceeds $60,000 in a 12-month period.

restaurant, and have a farming operation in their own name. However, a person is not able to artificially split one taxable activity into multiple entities to keep the activity below the GST registration threshold (currently $60,000 per annum).

9. It is also worth observing that the term "taxable activity" is not limited to activity in New Zealand. (But the imposition of GST under section 8, and GST registration in section 51, do relate to supplies made in New Zealand.)

10. It is not possible in an interpretation statement to provide precise guidance for all fact situations that could possibly arise; instead, the statements of legal principle in this statement, together with the examples provided, provide a starting point from which to analyse specific fact situations.

Analysis | Tātari

11. Taxable activity is defined in section 6. Section 6(1) is the principal definition:

> (1) For the purposes of this Act, the term taxable activity means—
>
> (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
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> (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority or public purpose Crown-controlled company.

"Activity"

12. The starting point of the definition of taxable activity is that an "activity" must be carried on by any person. The New Zealand courts and TRA have commented on the meaning of activity on many occasions.[3]

13. In *Case 14/2016* (2016) 27 NZTC 3,036, the TRA summarised the case law on the meaning of activity:

> [63] … Firstly, there must be an activity. The GST Act does not define what an "activity" is. The courts have held that "activity" is a broad concept involving a combination of tasks undertaken, or a course of conduct pursued by the taxpayer. An activity cannot be entirely passive.
>
> [64] In *Newman* v *Commission of Inland Revenue*, Fraser J looked to the dictionary for a definition of activity and stated:

[3] *Case P83* (1992) 14 NZTC 4,553 at 4,558, *Newman v CIR* (1994) 16 NZTC 11,229 (HC) at 11,233, *CIR v Bayly* (1998) 18 NZTC 14,073 (CA) at 14,078, and *Case 14/2016* (2016) 27 NZTC 3,036.

> The New Shorter Oxford English Dictionary 1993 ascribes a number of varying meanings or shades of meaning, none of which is exactly apposite to the word in its context in s 6. The nearest, I think, is "an occupation, a pursuit" and (in the plural) "things that a person, animal or group chooses to do". In its context here I think the word means a course of conduct or series of acts which a person has chosen to undertake or become engaged in.

[65] A similar statement was made by the Court of Appeal in *Commissioner of Inland Revenue* v *Bayly* where Richardson P stated:

> In its standard dictionary usage, "activity" is "the state of being active; the exertion of energy, action" (Oxford English Dictionary). In the context of ss 6 and 8 it points to a combination of tasks undertaken, or course of conduct pursued by the registered person and whether or not it amounted to a business, trade or profession in the ordinary sense.

[66] The Court of Appeal in *CIR* v *Newman* rejected an approach that dissects what is done into a series of sequential steps, and Gault J stated:

> While it is clear that it is the activity which must be continuous rather than the supply of goods, the definition must be construed as a whole bearing in mind also s 6(2) and against the scheme of the Act. Similarly in my view the activity for consideration against the definition must be viewed as a whole, realistically as it is carried on. There is a risk of introducing artificiality by engaging in a dissection of what essentially is a single activity into component acts to assess whether it meets the definition. Such an approach was rejected in a different context in *Dallow Industrial Properties Limited* v *Curd* [1967] 2 All ER 30 at p 33.

Accordingly although an activity may comprise a series of acts or a combination of tasks, it is the overall activity which must meet the definition in s 6(1) of the GST Act, not its component parts.

14. As a result, the word activity has a very broad meaning, but a single act cannot be divided into its component parts to assess whether it meets the definition. This warning from the cases on activity is also made in the case law in respect of the meaning of "continuously or regularly" (see discussion from [18]).

15. The case law indicates that establishing whether or not there is an activity is not likely to be a significant issue. It is whether the activity satisfies the requirements of section 6(1) that is generally at issue.

"Carried on"

16. The activity in section 6(1) needs to be "carried on". Richardson J addressed the meaning of carried on in *Newman v CIR* (1995) 17 NZTC 12,097 (CA) at 12,100:

> To come within s 8(1) and s 51 the supply must be in the course or furtherance of a taxable activity carried on by the registered person. **"Carrying on" has been described as "the habitual pursuit of a course of conduct" (*Premier Automatic Ticket Issues Ltd v Federal Commissioner of Taxation* (1933) 50 CLR 268 at p 298); and as implying "a repetition of acts, and excluding the case of an association formed for doing one particular act which is never to be repeated" (*Smith* v *Anderson* (1880) 15 Ch D 247 at pp 277, 278).** In that context and against that statutory scheme which I

> have outlined, s 6 goes on to require that the activity be one that is so carried on "continuously or regularly". The legislation is directed at a course of conduct which can fairly be described as being carried on continuously or regularly. As I see it, it is not a matter of importing any overlay of commercial dealing or of trying to draw a distinction between the divestment of commercial assets and private assets. Rather it is whether the process engaged in, whatever the asset or its location or the occupation of the taxpayer, comes within the statutory language. The application of the test to the particular circumstances will necessarily involve questions of fact and degree.
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> [Emphasis added.]

17. Richardson J's interpretation of carrying on indicates that the activity in question in section 6(1) involves a habitual pursuit and repetition of acts. In this regard, his Honour's interpretation ties in with the next part of the definition, the requirement that the activity be carried on continuously or regularly.

"Continuously or regularly"

18. The requirement that the activity be carried on continuously or regularly is probably the element of section 6 that has given rise to the greatest number of TRA and court decisions.

19. The cases make it clear that the words continuously or regularly relate to the carrying on of the activity and not to the supply of goods and services.[4] Hence, an activity could be continuous or regular even where very few supplies are made or even none. In *Newman*, at both the High Court and Court of Appeal, the example was given of a continuous activity involving the construction and proposed sale of just one commercial building. In *Case 7/2012* (2012) 25 NZTC 15,269, the TRA found a taxable activity existed even though no supplies had yet taken place. If an activity was only going to lead to one or two supplies the supply or supplies would need to be of a large scale to satisfy the "continuously or regularly" test.

20. The cases distinguish between an activity being carried on "continuously" and an activity being carried on "regularly". In *Allen Yacht Charters v CIR* (1994) 16 NZTC 11,270 at 11,274 Tompkins J distinguished between the two terms:

> This indicates that the activity must either be carried on all the time, ie, continuously, or it must be carried on at reasonably short intervals, ie, regularly. An activity that is intermittent or occasional does not qualify.

[4] *Newman* (CA) at 12,102 (per Gault J) and at 12,103 (per McKay J), *Case T40* (1997) 18 NZTC 8,267 8,276.

21. In *Wakelin v CIR* (1997) 18 NZTC 13,182 at 13,185–13,186, Patterson J expressed a similar distinction between the terms:

> The term "carried on continuously or regularly" as used in s 6(1) is to be given its ordinary meaning. An activity is therefore carried on continuously if it is carried on over a period or in a sequence uninterrupted in time or if it is connected. It is carried on regularly if it is carried on in accordance with a definite course or a uniform principle of action or conduct or if there is a proper correspondence between the elements of the activity (see *The New Shorter Oxford English Dictionary*).

22. Perhaps the fullest discussion of what was meant by continuously or regularly is the decision of Judge Bathgate in *Case N27* (1991) 13 NZTC 3,229 at 3,238–3,239:

> "Continuously" does not obviously mean that the physical activity must be continuing all the time; again the analogy of a business is useful. A business can be continuous, although only carried on in defined periods, such as when a shop is open for business. While the proprietor and his staff are at home asleep, on vacation or not working, the business is still being "carried on" and is in that sense a continuous business. **Continuously, in this context means more that the activity has not ceased in a permanent sense, or has not been interrupted in a significant way, so that one could say with some certainty that it was not continuous.** A single person carrying on a business may be seen as carrying on the business, although away on holiday, with or without making arrangements for the business in their absence. It is again a question of fact and degree, as to whether an activity is carried on continuously or not. The object and purpose of any physical break in the activity, whether it be for rest, recreation, health and such like reasons may be of importance in determining whether or not the activity is being carried on continuously.
>
> Whether an activity is carried on '"regularly'", involves similar considerations in which the. character and nature of the activity would be of importance in determining whether the activity carried on day by day, week by week, or month by month, may be said to be carried on regularly. **Regular, in this context, I think means a steadiness or uniformity of action, or occurrence of action so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character**. Whether it is pursued in a firmly definite course or not will depend largely on the nature of the activity and perhaps the subjective qualities of the person carrying it on. It is unlikely that a person could avoid being charged GST merely because on occasions they were of irregular habits, so long as the activity generally, over a period of time of a year, more or less was fairly continuous or regular, and involved the other requirements of the definition of taxable activity.
>
> [Emphasis added.]

23. The courts have made it clear that the required continuity or regularity cannot be achieved by artificially dividing something into smaller steps so as to create an activity that is continuous or regular.[5]

24. Although often an activity will be carried out continuously **and** regularly, it is sufficient if the activity is either continuous **or** regular. Cases have sometimes decided that something is continuous but not regular and vice versa (although it is more often the case that the activity is both continuous **and** regular, or neither continuous **nor** regular).

25. For example, in *Allen Yacht Charters* Tompkins J found that the taxpayer's yacht chartering was not continuous (at 11,276) but was regular (at 11,276). In contrast, in *Case T40,* the TRA found that the activity was carried on continuously but had misgivings as to whether the activity could also be described as regular (at 8,275). In *Case 7/2012*, the TRA also found the activity was continuous but not regular (at [101]).

26. When it comes to applying the continuous or regular test the focus is not so much on the legal tests discussed above, but on the practical application of the test to the particular facts. Each case is a useful example and can be used to predict how a court might determine a case before it. However, in *Newman*, the Court of Appeal made clear that the test can be applied only to the facts before a court and a definitive view on what would satisfy the test was not necessary or desirable. Richardson J expressed it like this (at 12,101):

> It is neither necessary nor desirable to express any view as to what would have to be involved in a particular sub divisional development to bring the activity within s 6. That must depend on an assessment of the circumstances of the particular case. It is sufficient to conclude, as I do, that the limited activity engaged in by the appellant in this case does not come within the statutory test. For the reasons given I would allow the appeal.

27. All three of the Court of Appeal judges saw the application of the test as a matter of fact and degree (Richardson J at 12,101, Gault J at 12,103, and McKay J at 12,104). Gault J described it thus (at 12,103)*:*

> Plainly it is a matter of fact and degree. It is necessary to ascertain on each set of facts whether there can be identified an holistic activity that can be said to be carried on continuously or regularly and which involves the supply of goods or services. It is the activity that must be carried on continuously, not the sequence of individual competent elements of it.

28. This quote also reaffirms the point made above (in relation to the meaning of activity) that it is unhelpful and incorrect to break an activity down into a series of steps to

[5] See *Newman (*CA) per Richardson J at 12,101, Gault J at 12,102–12,103, and McKay J at 12,103.

analyse whether the activity was carried on continuously (and presumably also regularly).

29. The TRA has applied the "fact and degree" test in cases such as *Case S70* (1996) 17 NZTC 4,731, *Case T62* (1998) 18 NZTC 8,468, *Case 7/2012,* and *Case 14/2016*.

30. The Commissioner has provided guidance on whether an activity is continuous or regular in specific contexts such as subdivisions (QB 24/04), horse racing (QB 17/04), horse breeding (QB 22/07) and short-stay accommodation (QB 19/09). Subdivisions have probably been the most common fact situation dealt with in the case law concerning whether an activity is continuous or regular.

31. Example | Tauira 1 to Example | Tauira 3 illustrate the application of the continuous and regular tests.

Example | Tauira 1 – Activity not carried on continuously or regularly

Ella sets herself up as an animal portrait painter as a side hustle to her full-time occupation as a lift technician. She puts a sign outside her house advising that she is available to accept commissions, and the sign includes her mobile phone number and an example of her work.

In her first year of operation she receives two commissions, one in March and one in August.

Ella's activity in this first year of operation cannot be described as continuous. Her activity is not carried on all the time (*Allen Yacht Charters*) or in a sequence uninterrupted in time (*Wakelin*). Her activity involved putting up a sign and working on two commissions; otherwise, nothing has happened. Her activity cannot be described as regular as it is intermittent (*Allen Yacht Charters)* and is not repeated at fairly fixed times *(Case N27*). She has not satisfied the requirement that her activity be carried on continuously or regularly.

Example | Tauira 2 – Activity carried on continuously

Following on from Example | Tauira 1, Ella's friend Leah (a business adviser) has observed the lack of success of Ella's new undertaking and gives her detailed advice about how to generate more business. As a result of Leah's advice, Ella begins advertising on websites of interest to pet owners, sets up her own website with examples of her work (which she regularly updates), places regular print advertisements in the local newspaper and various pet magazines, has her car vehicle-wrapped with her pet portrait branding, and attends many cat and dog (and other

animal) shows in the wider region where she sets up a stall and displays examples of her work, hands out her business card and chats with potential clients.

As a result of these efforts, business begins to grow and in her second year of operation she paints seven portraits, two in March, two in July, one in September and two in December. By the third year of operating her activity, she is receiving regular word-of-mouth referrals together with great online reviews, and she starts receiving multiple commissions every month and has to reduce her work as a lift technician to part-time hours.

In the second year of operation, Ella's activity is continuous. Although actual commissions were still low and irregular, the continuity relates to the activity and not the supplies of the activity. In year two, Ella advertised continuously, set up a website, had her car vehicle-wrapped, and actively sought business by regularly attending animal shows where she engaged with pet owners about portraits of their pets. The activity was carried on all the time (*Allen Yacht Charters)* and uninterrupted in time *(Wakelin*). This is the case even though the activity was a side hustle to her full-time job.

By year three, Ella's activity is even more clearly continuous in nature as the number of supplies has also become continuous.

Example | Tauira 3 – Activity carried on regularly

Mike owns a monster truck and has set up Mike's Monster Trucks to provide paying customers with the experience of being driven around a circuit in a monster truck. Mike has a full-time job Monday to Friday and operates his monster truck rides only in the weekends and only in the summer months when there is demand for this type of activity.

Mike takes the monster truck to car shows, music festivals and other outdoor community events throughout the lower North Island. In the summer months when he is operating the business, and especially around Christmas and New Year, he is at events every weekend and on public holidays.

Mike's Monster Trucks is not carrying on the activity continuously. It is not carried on all the time (*Allen Yacht Charters)* as it does not operate for nine months of the year, so there is an interruption in operation (*Wakelin*). However, Mike's Monster Trucks is carrying on its activity regularly. Although it is operating for only three months of the year, the activity recurs or is repeated at fixed times every summer (*Case N27*) according to a definite course of action (*Wakelin*). Accordingly, Mike's Monster Trucks satisfies the requirement that the activity is carried on continuously or regularly.

"Whether or not for a pecuniary profit"

32. The words "whether or not for a pecuniary profit" make it clear a taxable activity can exist even when there is not a purpose of deriving a pecuniary profit. In this regard, the definition differs from that of "business" in section YA 1 of the Income Tax Act 2007, which includes any profession, trade, or undertaking **carried on for profit**. In contrast, a taxable activity does not need to be carried on for profit, which widens the scope of the definition. As a result of these words a non-profit body can carry on a taxable activity.

33. This component of section 6(1)(a) has not been a significant issue in the cases, but it has been observed in *Case N27, Allen Yacht Charters, Wakelin* and *Case 7/2012*.

"Involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration"

34. The requirement that the activity "involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration" has been acknowledged in many cases such as *Case N27* at 3,238, *Case P83* at 4,558, *Newman* (HC) at 11,233 and *Case 9/2014* (2014) 26 NZTC 17,072 at [82]. The cases emphasised the point that the requirement of involving supplies for consideration relates to the activity, rather than to the words "continuous or regular". In other words, the activity must involve or be intended to involve the supply of goods and services for a consideration. It is not the case that there must be a continuous or regular supply of goods and services for consideration. As Fraser J said in *Newman* (HC), at 11,233:

> It is to be noted that it is not the supply of goods which is to be carried on continuously or regularly, but the activity which involves or is intended to involve that supply.

35. In *Newman* (HC), Fraser J gave the example (at 11,233) of a person who as a single venture constructs a commercial building with a view to its ultimate sale. Such an activity could be a taxable activity even though there was only one supply of a building. In the Court of Appeal in *Newman,* McKay J agreed that such an activity could be described as a continuous activity (at 12,103) in spite of there being only one supply. (See also *Case N19* (1991) 13 NZTC 3,158 at 3,168.)

36. See also Richardson P in *Bayly* (CA) at 14,078 where his Honour endorsed the view from *Newman* that it is the activity itself, not the supply of goods or services, which is to be carried on continuously or regularly.

37. In terms of testing the intention to supply goods or services, in *Case 14/2016*, Sinclair J said the following[6]:

> [69] Thirdly, a taxable activity must involve, or it must be intended to involve, the supply of goods or services to another person. Where no supplies have been made, but the taxpayer asserts an intention to supply goods or services to another person, that stated intention can be tested against the objective evidence. [footnote omitted]

38. Example | Tauira 4 and Example | Tauira 5 illustrate the requirement for an activity to either involve or be intended to involve the making of supplies for a consideration.

Example | Tauira 4 – Activity intended to involve the supply of goods and services for a consideration

Mark and Mandy set up an activity to provide "space rockets for everyday folks". After extensive researching, testing and prototyping they are ready to sell rockets to the world. Lawson is interested in interstellar travel and signs up to buy an Ark rocket. The rocket will take about 30 months to build and test before delivery. Due to the experimental nature of their product, Mark and Mandy agree to Lawson making full payment on completion of the project and to fund the construction and testing themselves.

For the first 30 months of their activity, Mark and Mandy make no supplies to any customers. However, their activity **is** intended to involve the supply of goods and services (space rockets) to customers. Furthermore, the 30-month construction period involves continuous activity in the rocket factory, including sourcing materials, construction, ongoing research and testing, and customer interactions. Much like the example of constructing a commercial building discussed in *Newman,* this is sufficient to be a continuous activity, and one that is intended to involve supplying goods and services for a consideration.

Example | Tauira 5 – Activity not intended to involve the supply of goods and services for a consideration

The Trafford Surplus Fruit Society is a society made up of local gardeners whose fruit trees produce much more fruit than they could ever consume. Every week the society members collect surplus fruit and set up a stall at the local community centre to give the fruit away to people in need. The society carries on an activity continuously or regularly, and the absence of a purpose of making a pecuniary profit is not relevant to whether there is a taxable activity. However, the society does not intend to make

[6] Relying on *Case N27* at page 3,238.

supplies of goods and services to other persons for consideration. The supplies of fruit are for no consideration. The society does not have a taxable activity.

"Carried on in the form of a business, trade, manufacture, profession, vocation, association, or club"

39. The words "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club" in the definition emphasise how wide the definition is intended to be. It moves from formal, business-like structures through to less formal arrangements such as associations and clubs (which might often be run on a non-profit basis). Tompkins J discussed this in *Allen Yacht Charters* at 11,275:

> While the definition includes an activity in the form of a business, trade, manufacture, profession, vocation, association or club, clearly this list of activities is not intended to be exclusive. Other activities referred to in argument that could be within the definition are a charity or a school. **What is apparent is that the activity can be something less than a business or undertaking. The only essential requirement is that the activity must involve the supply of goods and services for a consideration**.
>
> [Emphasis added.]

40. This finding is subject to the caveat that an activity carried on essentially as a private recreational pursuit or hobby is excluded by virtue of section 6(3)(a) or section 6(3)(aa). Sections 6(3)(a) and 6(3)(aa) are discussed in more detail later in this statement (from [68].

41. It is worth observing that this part of section 6(1)(a) is inclusive. That is, the activity "includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club".

Includes public and local authorities

42. Section 6(1)(b) provides that the definition of taxable activity includes the activities of any public authority, local authority or public purpose Crown-controlled company. All of these terms are defined in section 2(1).

Beginning and ending of a taxable activity

43. Section 6(2) provides that "anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity".

Beginning of a taxable activity

44. Several TRA cases have made it clear that section 6(2) does not mean that preparatory work is sufficient to amount to a taxable activity in its own right. Instead, section 6(2) means that if a taxable activity has been established, work that is preparatory to that establishment can be included in the scope of the taxable activity.

45. In *Case P73* (1992) 14 NZTC 4,489, the TRA considered section 6(2) in the context of a taxpayer who argued it had a taxable activity of yacht chartering. The TRA found the taxpayer did not have a taxable activity, and said the following in relation to section 6(2) (at 4,494):

> In other words, I find that there was no taxable activity but that, even if there had been, the activity would be excluded under sec 6(3)(aa) from the meaning of "taxable activity" defined in sec 6(1)(a). **I appreciate that sec 6(2) deems the inclusion of commencement (and termination) activity into the course of that activity. However, here there was never the establishment of any taxable activity. Commencement work can only be added to such an activity. By itself, it cannot amount to a taxable activity**.
>
> [Emphasis added.]

46. This was endorsed in cases such as *Case 9/2016* (2016) 27 NZTC 17,490 at [25] and in *Case 14/2016* where Judge Sinclair said:

> [72] While s 6(2) of the GST Act treats anything done in connection with the beginning of a taxable activity as being carried out in the course or furtherance of the taxable activity, the provision does not "create" a taxable activity where one would otherwise not exist. Rather, s 6(2) of the GST Act merely "adds" the commencement activity to the taxable activity.

47. It may be that preparatory activities are sufficiently advanced such that the taxable activity has actually commenced even if no supplies have yet been made (see *Case S56* (1996) 17 NZTC 7,361 at 7,367). Similarly, in *Case 7/2012,* the TRA found the taxpayer's activity in relation to a proposed (but ultimately unsuccessful) subdivision had gone well beyond preparatory work (at 15,282). This was even though the subdivision did not come to fruition and no supplies were made pursuant to the subdivision proposal.

48. Each case is very much fact dependent and requires a realistic assessment of the proposed taxable activity. As the TRA said in *Case 9/2016*:

> [38] Looking at the work done overall I agree with the Commissioner that at best the steps taken by each disputant could be described as preparatory steps towards the commencement of a taxable activity. However as discussed in *Case 7/2012* [footnote omitted] such commencement work is not sufficient and does not create or amount to a taxable activity. There still must be an activity to which those steps attach. In the present case there was no activity which either disputant was carrying on continuously or

regularly and which involved or was intended to involve the making of supplies to other persons for a consideration. Instead Mr Smith and XY Limited had a rudimentary proposal for an ambitious development which they did not advance to any extent (and would likely never be able to do so).

49. A non-registered person holding land while trying to secure finance or a resource consent or while waiting for market conditions to improve before beginning development of that land may still be in the preparatory stage of their activity and not have begun a taxable activity.

50. In some circumstances where the activity has not yet satisfied the requirements to be a taxable activity the input tax incurred by the person may be able to be claimed later under section 21B if a taxable activity commences and the person registers for GST.

Ending of a taxable activity

51. Section 6(2) makes it clear that anything done in connection with the ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity. This means it is not open to a registered person ending their taxable activity, including prematurely, to argue that the supplies on cessation are not in the course or furtherance of their taxable activity.

52. As long as there is a taxable activity, any sales of taxable activity assets on the ending of that taxable activity are covered by section 6(2). The person remains a registered person while those sales are taking place.

53. Things done "in connection with" the ending of a taxable activity may include:

- The disposal of assets used in the taxable activity[7];
- Things done over a reasonable period after the making of taxable supplies had ceased to tidy up the affairs of the taxable activity and wind it up[8], including things done during the process of the receivership of a company[9].
- Defending and attempting to settle legal proceedings for misrepresentation and breach of fiduciary duties following the sale of a business[10].
- The pursuing of trade debts after the cessation of trading[11].

54. If a person ceases to be registered for GST as a result of the ending of their taxable activity, and they have retained goods and services forming part of the assets of the

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[7] *Bayly* (CA) at 14,075, *Thompson v CIR* (2012) 25 NZTC ¶2-125 at [48] (SC).

[8] *Case U29* (2000) 19 NZTC 9,273.

[9] *Case Q43* (1993) 15 NZTC 5,208.

[10] *Case T30* (1997) 18 NZTC 8,216.

[11] *Case 4/2011* [2010] NZTRA 13, (2011) 25 NZTC 1-004.

taxable activity, those goods and services are deemed to be supplied in the course of that taxable activity immediately before the cessation of registration: section 5(3).

55. The circumstances in which section 6(2) operates to ensure GST is charged and the circumstances in which section 5(3) imposes GST can be summarised as follows.

56. When a taxable activity comes to an end, section 6(2) provides that anything done in connection with the end of the taxable activity is treated as being carried out in the course or furtherance of the taxable activity. As a result, sales of assets on the ending of the taxable activity are treated as a part of the taxable activity and would be subject to GST in the usual way, assuming the registered person remains registered.

57. However, if the provisions of section 52 are satisfied the person may deregister voluntarily or be deregistered by the Commissioner, and if that occurs then section 5(3) will operate. Section 52(1) provides that if the registered person's supplies in the next 12 months will not exceed $60,000 then the person ceases to be liable to register for GST. Section 52(2) provides that the registered person in such circumstances may request the Commissioner to cancel the person's GST registration.

58. Section 52(3) provides that if the person ceases to carry on a taxable activity they must notify the Commissioner within 21 days of the cessation, and the Commissioner shall cancel their GST registration. However, things done in connection with the ending of a taxable activity are treated as being carried out in the course or furtherance of the taxable activity, such that the taxable activity has not ceased.

59. Section 5(3) provides that where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by the person shall be deemed to be supplied by that person in the course of that taxable activity at a time immediately before they ceased to be a registered person. Section 10(7A) provides that in the case of such a deemed supply the consideration in money for the supply is treated as being the open market value of the supply.

60. The Supreme Court in *Thompson* considered the issue of whether a person could deregister from GST. They found that sales of assets of the person's taxable activity in connection with the termination of that taxable activity are taxable supplies. Those taxable supplies were to be taken into account when determining if the person had come within section 52(1) – that is, in determining whether their anticipated supplies for the next 12 months were below the registration threshold.

61. The Supreme Court said that to satisfy the Commissioner that supplies made will be below the registration threshold probably requires the taxpayer to show a settled intention that such "transactions" will not take place. If transactions in excess of the registration threshold are being implemented or are planned to occur (or

contemplated as likely to occur), in the next 12 months then deregistration cannot occur[12].

62. If a taxpayer has ceased their taxable activity, deregistered for GST, and accounted for any GST under section 5(3) on the deemed supplies of retained assets, then neither the taxpayer nor an agent like a liquidator can re-register for activities related to ending the former taxable activity. This is because that activity has ceased and there will not be any more taxable supplies from the activity, such that the definition of "taxable activity" cannot be satisfied.

63. For example, a company that has ceased its taxable activity, deregistered, and returned GST on its retained assets under section 5(3) cannot be re-registered by a liquidator. The liquidator cannot claim GST on expenses paid during the liquidation. Once the company has ceased its taxable activity and accounted for all retained assets, it will make no further taxable supplies. Therefore, it cannot meet the requirements to have a taxable activity.

64. The Commissioner discussed the issue of whether a taxable activity has ceased or ended or is in a temporary hiatus in IS 21/04. The discussion and examples in that interpretation statement provide useful guidance as to whether a taxable activity has ceased or not.

65. Example | Tauira 6 to Example | Tauira 11 illustrate how section 6(2) applies to the beginning or ending of a taxable activity.

Example | Tauira 6 – Preparatory work and not a taxable activity

Don the Dreamer is tired of his office job and decides to chuck it in and set up an activity of teaching music appreciation to household pets. He undertakes extensive internet research into animals and their musical preferences, develops an array of musical playlists for the discerning domesticated animal, and undertakes lengthy field research with his guinea pigs.

After 12 months of exhaustive preparation and after the urgent promptings of his bank, Don determines he will be unable to make a go of his proposed activity and returns to an office job.

The activities Don carried out in the 12 months are not sufficient to be a taxable activity. They were only ever preparatory to a proposed taxable activity. Although Don was occupied for a full 12 months all he actually did was search the Internet for articles on pets, create music playlists, and subject his pet guinea pigs to a variety of different music on his Bluetooth speaker. He prepared no business plans or projections,

[12] *Thompson* (SC) at [51].

undertook no advertising, did not devise a business name or logo, and did not have a strategy as to how he would deliver musical appreciation to pets in a way that would lead to him making supplies for consideration. In the absence of an actual taxable activity, his preparatory activities are insufficient to be a taxable activity.

Example | Tauira 7 – Preparatory work and not a taxable activity

D'Shon Limited purchases a piece of land from an unregistered vendor and seeks to register for GST and claim a second-hand goods input tax deduction. D'Shon Limited's intentions for the land are somewhat vague and unformed. In such circumstances the Commissioner would be very unlikely to accept that D'Shon Limited has a taxable activity. D'Shon Limited would have a difficult task establishing that any of the key requirements of a taxable activity are satisfied on the facts ("activity", "continuously or regularly", "involves…the supply of goods and services…for a consideration").

Variation

D'Shon Limited is a subsidiary of a property development company, Largie Limited, which has undertaken 20 previous property developments over the past 10 years; usually through a new subsidiary for each development. D'Shon Limited is the latest of these subsidiaries to be set up and to acquire land for a development which Largie Limited has planned. Even though in such circumstances D'Shon Limited may also have a low level of activity, the Commissioner would have more confidence, based on the evidence of how the group's companies have previously operated, and Largie Limited's clear plans for the development, that D'Shon Limited is beginning to carry out a taxable activity.

Example | Tauira 8 – Preparatory work or the beginning of a taxable activity

Horace wants to be a property developer. He already owns a block of land that he inherited. He buys a popular "how to" book on property development and makes a list of the services he will need to engage to be able to develop his land. He makes appointments with his lawyer, accountant, and bank to discuss what he will need to do to begin his property development.

At this point Horace has not begun a taxable activity. Although he owns some land, and has sought some advice, he has not progressed beyond the preparatory stage. The property development is in its very early stages and has not progressed beyond a rudimentary proposal (to adopt the language of *Case 9/2016*).

Further activity

Following on from receiving legal and accounting advice, and talking to his bank, Horace decides that the development is potentially viable and contacts a builder, a project manager, a quantity surveyor, an engineer, and a planning expert to get further advice on the viability of a property development on the site.

Horace has still not begun a taxable activity at this point. Although he is now seeking advice from relevant industry experts he has not taken any concrete steps to progress to an activity that is carried on continuously or regularly that will involve making supplies to people for consideration. The activity to date is still preparatory.

However, if Horace had already decided to proceed with the development and was engaging experts to get a team together to plan the carrying out of the project then that would have been sufficient to be more than just preparatory work.

Yet further activity

Horace receives positive advice from all the experts and proceeds to undertake some preliminary work on the land (required for council approval of the development), seeks finance for the project, lodges a resource consent, and engages an architect, amongst other steps.

At this stage Horace is carrying on a taxable activity. His plan has moved beyond merely preparatory work. Although there have not been any supplies yet, and the core construction activity has not started, the level of activity is sufficient to be more than preparatory, and to be the beginning of a taxable activity (*Case 7/2012)*.

Example | Tauira 9 – Has a taxable activity ended or just been temporarily paused?

Rene's Café is a registered person with a taxable activity of hospitality. However, Rene wants to refresh his café to keep ahead of his competitors. He decides to temporarily close the café over winter to allow renovations to the café including new décor, some structural changes to the premises to allow better flow between the kitchen and dining area, and to open the front of the café to allow al fresco dining. Rene's Café reopens in time for spring.

Rene's Café has not ceased carrying on its taxable activity over the three months it was closed. It still had an activity being carried on continuously or regularly involving or intending to involve the making of supplies of goods and services for a consideration.

Variation of the facts

Rene decides to refresh his café to keep ahead of his competitors. He decides to travel the world to seek out the latest trends in café culture. The café is closed for two years while he travels the world exploring what is "on trend".

In such circumstances Rene's Café has ceased carrying on a taxable activity. There is no longer an activity carried on continuously or regularly. This is more a case of a taxable activity ceasing with the possibility of a recommencement at some later time.

Example | Tauira 10 – Supplies on ending of a taxable activity treated as being in the course or furtherance of a taxable activity

Fran starts a business, Fran's Flares, importing specialised flares for use at sporting occasions. The flares are of the type she has seen used overseas at leading sporting events. Fran's business takes off and is enormously popular as New Zealand sporting crowds become obsessed with celebrating their teams' successes by letting off flares. Fran quickly has to upscale her business and acquires a small warehouse, a fleet of specialised vans to deliver the flares to retail outlets, and starts selling associated safety gear such as helmets, visors and flare-resistant gloves.

Unfortunately, the enormous success of the flares means sporting events are regularly disrupted as clouds of colourful smoke cover the sporting grounds bringing games to a halt and obscuring the view of spectators. Parliament urgently passes a law immediately banning the sale, possession and use of such flares and Fran's business grinds to an abrupt halt. She is able to export the unused stocks of flares to an Australian supplier shortly afterwards. The vans are sold at a car auctioneers 3 months after the activity is closed down. Over the next 6 months, she sells all the protective gear through army surplus stores. The warehouse is sold 18 months after flares were outlawed. Fran's Flares remains GST registered throughout this process of selling off the assets of the taxable activity.

The sales that occurred after the business was closed down are all treated as being carried out in the course or furtherance of a taxable activity. This is even though the supplies were made as a result of an unplanned and premature ending of the taxable activity and even though the assets were sold over an 18-month period after the ending of that taxable activity. (If Fran had instead ceased to be a registered person because of the cessation of her flare business, section 5(3) may have operated to impose GST on her taxable activity assets ahead of their actual sale.)

Variation of the facts

Alternatively, assume when Parliament banned such flares Fran held on to all her assets (except the sporting flares which she sold to an Australian supplier) as she investigated the possibility of pivoting into the supply of flares for civil defence, maritime, search and rescue, and military purposes.

During this period where Fran is investigating pivoting her activity, there is a question as to whether Fran's taxable activity has ceased. If it has ceased, Fran is obliged to notify the Commissioner under section 52(3) and the Commissioner can cancel her registration. However, the Commissioner cannot cancel Fran's registration under that section if the Commissioner is of the view that Fran will carry on a taxable activity within the next 12 months. This will be a question of fact in each case, but the longer the period of inactivity, the more likely it is that the Commissioner will consider that the taxable activity has ceased.

Example | Tauira 11 – Things done in connection with the ending of a taxable activity treated as being in the course or furtherance of a taxable activity

Gazinium Limited operates a gazinium refining business at an industrial site. Due to the hazardous nature of the product Gazinium Limited is required to conduct continuous testing and monitoring of the entire site for contamination. The terms of the applicable resource consent require that the company continue to monitor and test the site for a period of four years after the cessation of refining.

Gazinium Limited ceases to operate the refinery business and hence ends its taxable activity. However, it continues to monitor and test for contamination for another four years – as required by the resource consent.

The ongoing monitoring and testing are done in connection with the ending of a taxable activity, and as such are treated as being carried out in the course or furtherance of the taxable activity.

Exclusions from the definition of "taxable activity"

66. Section 6(3) provides exclusions from the definition of "taxable activity" in the six paragraphs from section 6(3)(a) to section 6(3)(e).

Scope of this discussion

67. This interpretation statement primarily considers the exclusions in paragraphs (a) and (aa). The other four exclusions have been dealt with by the Commissioner in public items (paragraphs (b), (c)[13] and (e)[14]) or is such a significant topic that it would take up a disproportionate part of this statement to cover it (paragraph (d [15]) fully. However, Example | Tauira 12 illustrates how the exclusion of exempt supplies from the definition of "taxable activity" works in practice. It is worth observing that the exclusion operates "to the extent to which the activity involves the making of exempt supplies".

Example | Tauira 12 – Exclusion from "taxable activity" for exempt supplies

Jackie, a landlord who already owns four rental properties, purchases two blocks of units (Block A and Block B) situated on two adjacent pieces of land. Jackie is not GST-registered as all of the existing properties she owns are rented out long-term (and are exempt supplies of residential accommodation).

Jackie's new properties are in a central suburb close to a stadium. Jackie's friend tells her there is a lot of demand for short-term accommodation for tourists visiting this area. Jackie is somewhat sceptical; however, she decides to put this theory to the test by advertising Block A as short-stay accommodation. For Block B, she decides to stick to what she knows and finds long-term residential tenants.

This arrangement works well for Jackie. There is indeed strong demand for short-term accommodation, and her long-term residential tenants give her peace of mind and income security. She continues with this arrangement.

There are two separate activities being undertaken, one taxable and one exempt. The Block A property is a taxable activity of short-stay accommodation. The Block B

[13] Section 6(3)(b) and (c), (4) and (5) is covered in BR Pub 23/01, BR Pub 23/02, BR Pub 23/03, and QB 23/07.

[14] Section 6(3)(e) was added to the Act by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023. The effect of the provision is discussed in GST apportionment and adjustment rules *Tax Information Bulletin* Vol 35, No 6 (July 2023): 62 at 66–71.

[15] Section 6(3)(d) excludes exempt supplies from the taxable activity definition. Exempt supplies cover the supply of financial services (section 14(1)(a), the supply by a non-profit body of any donated goods or services (section 14(1)(b)), certain supplies of accommodation and related supplies (section 14(1)(c) to (d)) and the supply of any fine metal (section 14(1)(e)).

property is used independently to undertake a separate activity, specifically making exempt supplies. Block B's activity does not form part of Jackie's taxable activity.

Jackie must register for GST if her short-term accommodation income exceeds the GST registration threshold. (Income below this threshold may be subject to the platform economy rules.)

Variation: Sale of the rental properties

Several years later, the stadium closes, and the Block B tenants indicate that they wish to move overseas in the near future. Rather than find new tenants, Jackie decides to sell both properties. Jackie is now GST registered as the income from the short-term accommodation in the past twelve months exceeded $60,000. When the properties are sold, their GST treatment will differ as Jackie's business involved both taxable and exempt activities. The GST treatment of Block A will depend on the purchaser's characteristics and intention but may be subject to GST at either 15% or 0%. As Block B was used to make exempt supplies, any future sale will not form part of Jackie's taxable activity, will not be subject to GST, and there will be no deemed taxable supply on sale. This is the case for Block B, even if the property was rented out for long-term residential accommodation for less than 5 years.

"Private recreational pursuit or hobby"

68. Paragraphs (a) and (aa) provide as follows:

> (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—
>
> (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
>
> (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; …

69. Paragraph (aa) extends the exclusion for private recreational pursuits and hobbies to corporates and other non-natural persons who would otherwise not be covered as they cannot have a private recreational pursuit or hobby. The concept of a **private** recreational pursuit or hobby is relevant only to a natural person. A company, for example, cannot undertake private pursuits. Paragraph (aa) ensures there is a wider exclusion for activities carried on essentially as private recreational pursuits or hobbies.

70. It is worth briefly considering the dictionary definitions of the words in the phrase "private recreational pursuit or hobby" ahead of considering the case law.

71. The constituent words of the phrase private recreational pursuit are defined in *The Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011):

> **private** adj **1**. For or belonging to one particular person or group only … **2**. (of a person) having no official or public position ▪ not connected with one's work or official position.
>
> **recreational** adj relating to recreation …
>
> **recreation** n. enjoyable leisure activity
>
> **pursuit** n **2.** A recreational or sporting activity

72. Hobby is defined in the same dictionary:

> **hobby** n **1.** An activity done regularly for pleasure

73. The dictionary definitions indicate that "private recreational pursuit or hobby" refers to an activity that is undertaken primarily for personal enjoyment rather than in relation to one's work or business. The case law discussed below is largely consistent with these dictionary definitions.

74. The wider wording in section 6(3)(a) and (aa) is "any activity carried on essentially as a private recreational pursuit or hobby". The most comprehensive analysis of these words was by Judge Bathgate in *Case N27* at 3,240. His Honour considered the meaning of "essentially" and the significance of the word "private". He did not give a comprehensive definition of "private recreational pursuit or hobby" but indicated factors to consider. Although it is long, the following quote (from 3,240) is worth setting out because it is the best example of a New Zealand court or tribunal attempting to define the exclusion:

> **The word "essentially" in the phrase mentioned, I think emphasises the necessity for the activity being clearly a private recreational pursuit or hobby**. "Essentially" derives its meaning from the word "essential". The *Shorter Oxford English Dictionary* defines "essential" as:
>
> > "Of or pertaining to the essence of anything.
> >
> > Of or pertaining to a specific thing, or intrinsic nature.
> >
> > Constituting, or forming part of, the essence of anything; necessarily implied in its definition.
> >
> > Indispensably requisite."
>
> "Essence" is defined in the same dictionary as:
>
> > "Being viewed as a fact or as a property of something.
> >
> > Something that is; an entity.
> >
> > Specific being, `what a thing is'; nature, character."
>
> For an activity to be carried on essentially, as a private recreational pursuit or hobby, that activity must be in essence of such a nature, in the context of sec 6, so that although an activity may have some of the appearances or some of the attributes of such an activity, **it will not be exempt from the definition of "taxable activity" unless it is in essence a private recreational pursuit or hobby**. An activity that might also seem to be a business would not, to my mind, be one that was "carried on *essentially* as a private recreational pursuit or hobby".

> "Private recreational pursuit or hobby", is a phrase that contains five words, each of which must be given emphasis and meaning in the context in which they appear. "**Private" in the context I think means, for a natural person, an activity that is peculiar to oneself, a singular or individual recreational pursuit or hobby**, although it may be enjoyed by a person in the company, of, or in participation with others of a like interest. In the context of sec 6(3)(aa) it is obviously an activity that can be carried on by more than one person. **However, the word "private" would exclude an activity being carried on by, for instance, the holder of an office or a person in some official position**. In *C of IR v Haenga* (1985) 7 NZTC 5,198 at p 5,207; [1986] 1 NZLR 119 at p 128, *Richardson* J, in considering the meaning of sec 106(1)(j) of the *Income Tax Act* 1976, in relation to expenditure or loss of a private or domestic nature, said:
>
> > "An outgoing is of a private nature if it is exclusively referable to living as an individual member of society ..."
>
> I do not attempt to give an all-embracing or exclusive definition of the phrase "... essentially as a private recreational pursuit or hobby", **but observe that would seem to require, in essence, a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person (or persons) concerned**. In the context of the Act it is not an activity of a business, organised in some coherent fashion to achieve a pecuniary profit. Whether an activity is essentially that of a private recreational pursuit or hobby, or not, is a question of fact in each case. It depends on the totality of the evidence ...
>
> [Emphasis added.]

75. Judge Bathgate observes the importance of the word "essentially" in the exclusions and concludes that these mean the activity must **clearly** be a private recreational pursuit or hobby. As his Honour said, it is not enough that an activity may have some of the appearance or attributes of a private recreational pursuit or hobby or is enjoyed by the person. It will not be excluded unless it is **in essence** a private recreational pursuit or hobby.

76. Judge Bathgate also analysed the meaning of "private" in the phrase "private recreational pursuit or hobby" and suggested that, for a natural person, it means an activity peculiar to oneself, although it may be enjoyed by a person in the company of others.

77. Overall, his Honour thought the term referred to a private pastime or pursuit carried on for the personal refreshment, pleasure or recreation of the person concerned. It is not an activity organised in a coherent fashion to achieve a pecuniary profit. Importantly, it is a question of fact in each case.

78. In *Case N27,* the TRA found there was a taxable activity of the racing and sale of a racehorse. The TRA found the exclusion in section 6(3)(aa) did not apply observing (at 3,241):

> I find that was a taxable activity under sec 6(1)(a) of the Act and was not excluded from that by virtue of the activity, if carried on by a natural person, would be carried on by that person essentially as a private recreational pursuit or hobby. **Some of the individual members of the partnership may have derived, and probably did derive, private and personal enjoyment from the undertaking. However, that did not detract in any significant way from the coherent organisation and purpose of the objector to achieve the profit expected and intended when the expenditure was incurred and**

> **the supplies made to it**. The purpose of those supplies to it was for the objector to make a supply in the course of its taxable activity by the sale of A.
>
> [Emphasis added.]

79. The expression private recreational pursuit or hobby has not been considered in detail in other New Zealand case law. The meaning of "recreation" has been considered in Australia and the United Kingdom.

80. In *A-G v Cooma Municipal Council* [1962] NSWR 663 Jacobs J in the New South Wales Supreme Court considered the meaning of "recreation". He found that recreation can include physical and sporting pursuits, but also includes cultural, artistic and intellectual pursuits.

81. In *R (on the application of Muir) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) Lang J also had to consider the meaning of recreation. Her Honour adopted the definition from *Cooma,* and concluded that recreation included recreation of the mind, such as libraries and art galleries, and was not limited to physical or sporting activities. Her Honour concluded (at [99]):

> All these illustrations of recreational activities are consistent with the dictionary definition of recreation which is a means of refreshing or enlivening the mind or spirits by some pleasant occupation, pastime or amusement. The word originates from the Latin verb *recreare* meaning to refresh, restore, make anew, revive, invigorate.

82. Her Honour concluded (at [104]) that the provision of education and childcare at a private nursery was not recreation notwithstanding that children would play in the course of their day at the nursery. The decision was upheld in the Court of Appeal (*Wandsworth Borough Council v R (on the application of Muir)* [2018] EWCA Civ 105).

83. The *Wandsworth Borough Council* case, as well as endorsing the *Cooma* decision, also made it clear that in interpreting the meaning of recreation it is important to focus on the substance of the activity rather than incidental elements of it.

84. It is also worth considering some of the TRA decisions that considered the exclusion from the definition of taxable activity for a private recreational pursuit or hobby.

85. In *Case M131* (1990) 12 NZTC 2,850 a company carried on business as a builder in a town with an extensive horse racing activity. The company claimed an input tax deduction for promotional expenses connected with racing a horse. Judge Bathgate found the expenditure was not incurred on an essentially private recreational pursuit or hobby; instead, the expenditure was promotional expenditure incurred in carrying on the company's taxable activity.

86. In *Case P73,* the taxpayer company owned a yacht and argued it had a taxable activity of boat chartering. The owner of the company was advised to race the yacht to obtain publicity and a reputation on which to base the chartering promotion.

87. The TRA found that no chartering activity was ever achieved on a sufficiently continuous or regular basis to be a taxable activity. Even if there were a taxable activity, the TRA concluded it would be excluded on the basis of section 6(3)(aa). The TRA said (at 4,495):

> **It may well be that a reason for the racing activity was promotion of the proposed chartering activity, but the dominant reason was as a private recreational pursuit or hobby**. The chartering activity was never much more than a proposal and, certainly, was never continuous or regular as required by sec 6(l)(a). I can understand that an incidental reason for racing the vessel was to promote it as a vessel to be chartered, rather than to promote the name of the objector as the proprietor of the proposed chartering business.
>
> [Emphasis added.]

88. This conclusion is consistent with Judge Bathgate's comments in *Case N27* about the meaning of the word "essentially" in section 6(3)(a) and 6(3)(aa).

89. *Case U10* (1999) 19 NZTC 9090 is one of the TRA cases with the most extensive discussion of an activity being a private recreational pursuit or hobby. The taxpayer was a company with an activity of providing cleaning and catering services to an airport facility. Among other things it claimed input tax deductions for expenses related to horse-breeding activities. (It also undertook certain horse-racing activities, but it treated those as a hobby and did not claim input tax deductions in respect of them.)

90. The TRA found against the taxpayer in regard to the input tax deductions for horse-breeding activities – in part because it was actually a shareholder–employee of the company that carried out that activity rather than the taxpayer. But despite that, the TRA went on to consider whether the horse-breeding activity amounted to a taxable activity or was excluded by virtue of being a private recreational pursuit or hobby.

91. The TRA came to its conclusion on the status of the horse-breeding activity:

> 46. It seems to me that, in terms of the definition of "taxable activity" in s 6(1)(a) of the Act, the horse breeding activities might have been carried on continuously or regularly, although that is arguable, and were intended to involve supplies of goods in the sense of horses for sale. I doubt whether the level of activity would achieve the level necessary for there to be a "business" but it may well have achieved the level of a "taxable activity". **However, my overall assessment of the evidence is that there was no real distinction between [the taxpayer's] GT's horse breeding and horse racing activities. These were very intertwined and were part of his passion for horses and their attributes. His interest in his horses was very much a recreational and personal relaxation pursuit and, looked at objectively, is a hobby**. Indeed GT's own evidence supports that conclusion. I find that there were not separate activities of breeding and racing and that GT's total pursuit of horse breeding and horse racing is excluded from the term "taxable activity" by s 6(3)(a) "being a natural person, any activity carried on essentially as a private recreational pursuit or hobby" or rather, in this case,

> any horse breeding (or racing) activities of the objector company would, in terms of s 6(3)(aa), be a hobby if carried on by a natural person. **The fact that this activity was pursued out of business times does not mean that it is a recreational pursuit. It is, of course, quite possible for a person to spend time free from a main business pursuit in pursuing some other business activity. However, the issue is a relevant one in taking an overall perspective of the situation**.
>
> [Emphasis added.]

92. The TRA considered (at [48]) factors that led to the conclusion that horse breeding was a private recreational pursuit or hobby. These factors included:

- the activity had no sale of thoroughbred horses, instead there were only sales of "hacks";
- there were no separate accounts between horse breeding and horse racing (and the taxpayer accepted horse racing was a hobby);
- there was no business plan or budget for the horse-breeding activity (although the TRA accepted this was not determinative);
- the activity had all the hallmarks of a hobby; and
- there was no delineation between horse racing and horse breeding (for example, expenses for grazing expenses were not apportioned between breeding and racing).

93. In a good number of TRA cases there was no real need to analyse the "private recreational pursuit or hobby" test as the decision was clear that the activity was a:

- private recreational pursuit or hobby (see, for example, *Case V16* (2002) 20 NZTC 10,182); or
- taxable activity and was not excluded as a private recreational pursuit or hobby (see, for example, *Case R38* (1994) 16 NZTC 6,212, *Case S34* (1995) 17 NZTC 7,228 and *Case S36* (1995) 17 NZTC 7,237).

94. Therefore, the cases indicate that in deciding whether something is essentially a private recreational pursuit or hobby it is necessary to consider:

- whether the activity is clearly a private recreational pursuit or hobby (*Case N27* and *Case P73)*;
- whether the activity is a private pastime carried on for personal refreshment, pleasure or recreation (*Case N27* and *Case U10*);
- the degree of coherent organisation and purpose to achieve a profit (*Case N27*);
- that "private recreational pursuit or hobby" covers physical, sporting, intellectual, cultural, and artistic pursuits (*Cooma* and *Wandsworth Borough Council*);

- whether the activity is closely linked to supporting an existing taxable activity (*Case M131*) or does not have such a link (*Case V16*);
- the careful preparation of accounts and apportionment of expenses between different activities which may or may not be taxable activities (*Case U10*); and
- the amount of time spent on the activity and whether it was pursued during normal working hours or not (*Case U10*).

95. Example | Tauira 13 to Example | Tauira 18 illustrate the exclusion from taxable activity for being a private recreational pursuit or hobby.

Example | Tauira 13 – Activity a private recreational pursuit or hobby

Philip and Winnie own an eight-hectare lifestyle block. Both Philip and Winnie are in full-time paid employment. The lifestyle block has a small number of sheep (for maintaining the grass in some of the paddocks), horses, some chickens, a number of fruit trees, and an area of regenerating native bush. Occasionally Philip and Winnie sell some excess eggs or fruit within the local community. Philip's passion is raising show horses on a large paddock on the lifestyle block, and he enters some of these horses into competitions. Occasionally he breeds from his horses and may sell a foal depending on his own requirements. On average he sells a foal every two or three years. Winnie is not interested in horses but enjoys the country lifestyle and is passionate about helping to restore the native bush on the property by eliminating pests, planting trees, and restoring a small wetland area.

Philip does not have a detailed business plan for his horse activity, and nor does he have precise financial information about the costs of the activity. He spends between 20 to 30 hours a week on the horse activity including grooming, feeding and watering, training the horses, and attending horse shows.

While the activities carried out on the lifestyle block, including Philip's horse activity, are carried on continuously or regularly they are excluded from the definition of taxable activity as they are private recreational pursuits or hobbies. The activities:

- Are carried on for the personal pleasure or recreation of Philip and Winnie;
- Are not carried on with a degree of coherent organisation to achieve a profit (*Case N27)*;
- Do not support an existing taxable activity;
- Have no evidence of the careful preparation of accounts; and
- Occur outside of their normal working hours as both Philip and Winnie are in full-time employment (although the time spent on the horse activity by Philip and the time spent by both of them on maintaining the lifestyle block is significant).

Variation on the facts

Under this variation, assume Philip and Winnie had a sheep and beef farm run by a farm manager not far from the lifestyle block. The issue is whether that would make any difference to this answer. The Commissioner's view is that the answer would not change. While the farm would be a taxable activity, the lifestyle block, including the show horse activity, remains a hobby. This means it remains a non-taxable activity and would not be amalgamated into the farming activity. However, variations on the facts of this example could lead to different answers.

Further variation on the facts

Under this variation, Philip and Winnie's lifestyle block is held in a family trust. The interposing of a family trust does not change the outcome. Section 6(3)(aa) provides that the exclusion from taxable activity for an activity carried on essentially as a private recreational pursuit or hobby extends to the situation where a non-natural person is carrying on the activity. Case law has established that non-natural persons like partnerships, trusts, and companies can be carrying on activities that, if carried on by a natural person, would be a private recreational pursuit or hobby.

Example | Tauira 14 – Activity a private recreational pursuit or hobby

Martin is a tax lawyer and a connoisseur of marmalade. He becomes increasingly dissatisfied with the variety of marmalades on sale in his local area. He has a large residential section with a good number of citrus trees that are fruiting abundantly. Accordingly, he decides to see whether he can make a better quality marmalade for his own use. Every weekend he experiments with making marmalade. After much trial and error, and even a few tears, he hits on a recipe that he considers exceptional. He shares his marmalade with family and friends who all agree "it's the best".

Martin's children's school is having a fair, and the organising committee have heard how good Martin's marmalade is. The committee asks him if he could make a batch to sell at the fair as part of its fundraising. Martin makes a big batch of marmalade ready to sell at the fair. Sales are brisk, and the marmalade sells out.

Martin's activity of making marmalade is a private recreational pursuit or hobby even though he has now sold some of his products to paying customers. It is essentially undertaken for Martin's own personal pleasure, is conducted in an ad hoc and casual way, and does not involve careful organisation or the keeping of precise accounts. The sales of marmalade were the result of an ad hoc request to help raise funds at the school fair.

Example | Tauira 15 – Activity not a private recreational pursuit or hobby

Following on from Example | Tauira 14, Martin realises demand exists for his marmalade and wonders whether this could be the pathway out of tax law he is looking for. He starts to be more consistent in his marmalade making, making a batch every week to take to the local Sunday market where he sets up a small stall with 25 jars of marmalade. Demand is tremendous, and every week he sells out within an hour.

After six months of testing the market at the Sunday market, Martin resigns from his full-time job, rents a small commercial kitchen, and starts making marmalade full time using fruit he buys in from commercial orchards. He starts supplying speciality food stores and continues with his stall at the Sunday market where he now has considerably more stock available on a weekly basis.

Martin's original activity of running a small stall at the Sunday market would be sufficient to amount to a taxable activity for the purposes of section 6(1) as it was an activity carried on continuously or regularly involving supplies for consideration.

However, what is less clear is whether the exclusion in section 6(3)(a) still applies. It would be necessary to consider further facts such as whether he kept careful business records regarding his income and expenses, whether he organised his stall on a coherent and regular basis, and whether he was trying to achieve a profit or was more interested in socialising and sharing his beautiful marmalade with the world. The small scale of the venture is not determinative, although a small amount of time spent outside of usual working hours does indicate a hobby.

In any case, by the time he has taken on marmalade making as his occupation, he has definitely converted his private recreational pursuit or hobby into a taxable activity (in other words the section 6(3)(a) exclusion no longer applies). Resigning from his full-time job, renting a commercial kitchen, and ordering in supplies of fruit in commercial quantities all indicate his hobby has become a taxable activity.

Example | Tauira 16 – Activity changing from a private recreational pursuit or hobby to a taxable activity

Rachel, a non-GST registered individual, purchases a holiday home to use as a weekend getaway from her accounting job. She works in the city and commutes to her holiday home for the weekend. The holiday home is empty during the week. Rachel does not have a taxable activity.

Variation: Holiday home owned by an individual where a friend stays

Continuing with the facts from above, two years later, Rachel's friend Eva negotiates a work from home arrangement with her employer. Eva loves the city nightlife during the weekend, however sometimes Eva feels like a change of scenery during the week. Every now and then (on no regular basis) Eva stays at Rachel's holiday home for a few weekdays. Eva is a good friend of Rachel's, and Rachel does not ask her for any financial contribution for her stay, nor does Rachel charge Eva any rent or have any sort of formal agreement with her. However, Eva insists on contributing to the property's running costs when she stays and pays a small amount of money to Rachel when she stays.

At this stage, there is still no taxable activity. Rachel's use is private and recreational, and even though Eva pays her some money when she uses the property occasionally, this is in goodwill and is not in the form of a business or trade. The payments Eva makes to Rachel are not a set amount, are made ad-hoc based on when Eva decides to stay, and reflect Eva's good-natured intention to contribute towards the costs of running the holiday home.

Rachel's intention in providing the holiday home to Eva was not to supply short-stay accommodation for consideration, as she never asked Eva for any money – she solely made it available to Eva as a friend, knowing she wasn't using it during these periods anyway. There is no degree of coherent organisation, no business plan, and no precise financial information about the payments made by Eva to Rachel for use of the property. Both Eva and Rachel are using the holiday home to escape from the city. Both Eva and Rachel's use of the property constitutes private recreational use. There continues to be no taxable activity.

Further variation: Holiday home owned by an individual used privately with some commercial rental – now a taxable activity

After several more years of this arrangement, Eva decides to buy her own holiday home. Rachel wonders if she can supplement her accounting income by listing the holiday home on a short-stay accommodation website during the week now that Eva won't be using it at that time. She blocks out the weekend days when she stays there and builds up a steady flow of income from regular bookings during the week.

At this point, Rachel is carrying on a taxable activity. She is running the holiday home rental as a business, advertises for it, and has customers regularly staying during the week. Whether Rachel needs to register for GST will depend on if the income she receives in a twelve month period exceeds the $60,000 GST registration threshold. (Note the platform economy rules are likely to apply to any income earned under this

threshold, provided the accommodation is provided through a third-party booking intermediary.)

Example | Tauira 17 – Activity changing from a private recreational pursuit or hobby to a taxable activity

A non-GST registered trust, Family Trust, purchases a holiday home from an unregistered person for its beneficiaries (family members Ben and Frank, along with their families) to use. Family Trust does not undertake any taxable activities. The beneficiaries use the holiday home on an ad hoc basis, and they do not pay anything to stay. The family usually gather at the holiday home over the major holiday periods. There is no agreement for use of the holiday home and Family Trust spends minimal time and cost in providing the short-stay accommodation to family members, as the beneficiaries clean after their visits, and bring their own linen.

These factors support the conclusion that the beneficiaries' use of the home is not a taxable activity but rather a private recreational pursuit or hobby.

Variation: Holiday home owned by a trust with one-off commercial letting

Family Trust's holiday home is in close proximity to the venue for an annual music festival. The Family Trust trustees have heard that renting out the holiday home at this time can be lucrative, with people prepared to spend up to $500 a night for this type of accommodation. The trustees listed the holiday home on a website set up to provide accommodation for the festival and it was booked for 10 nights. The trustees are considering doing the same again in the future.

One-off or occasional rentals (even though they can be lucrative) will not be a taxable activity as the use of the holiday home is still an activity carried on essentially as a private recreational pursuit or hobby. (In addition one-off or occasional rentals would not satisfy the requirement of being continuous or regular.)

Further Variation: Holiday home owned by a trust with regular commercial letting

Following on from the facts above, after two years of ownership, to cover some of the costs of the holiday home, the Family Trust trustees decide to list the property on an online platform for holiday letting. The only advertising to third parties is the listing on the online platform.

At this point, Family Trust is carrying on a taxable activity. It is running the holiday home rental as a business, advertises for it, and has customers regularly staying during the week. Whether Family Trust needs to register for GST will depend on if the income it receives in a twelve month period exceeds the $60,000 GST registration threshold.

The supplies of accommodation made by the Family Trust to the beneficiaries are "associated supplies" and valued at open market value if the supply is made for no consideration or a consideration less than open market value (section 10(3)).

Example | Tauira 18 – Activity changing from a taxable activity to a private recreational pursuit or hobby

Vino is a winemaker who runs a small vineyard and also makes his own wine. He has a cellar door/tasting room set up in a room of his home (which is on the same vineyard block). He sells wine through his cellar door/tasting room to tourists as he is located in one of New Zealand's tourist hot spots on the route of a Great Ride cycle trail. Vino has a taxable activity. He carries on an activity continuously or regularly which involves supplying goods and services for a consideration.

Eventually Vino becomes fed up with running a vineyard/winery. He is tired of the long hours, variable and uncertain returns, and inebriated tourists leaving their rented bicycles on his front lawn. He decides to close the cellar door/tasting room, convert 75% of his vineyard to a labyrinth for his spiritual reflections, and retain 25% of his vineyard to make wine for his personal consumption (and that of his friends and family) and for the occasional sale of a bottle to old customers who may stop by.

Vino no longer has a taxable activity. While the remaining part of the vineyard involves an activity that is being carried on continuously or regularly and still involves supplying goods and services for a consideration, it is an activity carried on essentially as a private recreational pursuit or hobby.

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