

## **GST—LOTTERY OPERATORS AND PROMOTERS**

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**Note** (not part of ruling): This ruling is essentially the same as the “GST—lottery operators and promoters” item published in *Tax Information Bulletin* Vol 5, No 11 (April 1994). This updated an earlier item “GST—licensed lottery promoters” which was published in *Tax Information Bulletin* Vol 1, No 3 (September 1989). This ruling updates these items and takes into account the introduction of the Gambling Act 2003 and consequential amendments to the Goods and Services Tax Act 1985.

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### **PUBLIC RULING BR Pub 07/11**

This is a public ruling made under section 91D of the Tax Administration Act 1994.

#### **Taxation Law**

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

This Ruling applies in respect of sections 5(10), 9(2)(e), and 10(14), and the definition of “registered person” in section 2.

#### **The Arrangement to which this Ruling applies**

The Arrangement is the conducting of a lottery by any person, society, or corporate society and/or the promotion of any lottery by a licensed promoter, under the Gambling Act 2003.

#### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- Under section 5(10), where a person pays an amount in money to participate in a lottery, the amount of money paid to participate is payment for the supply of services by the person, society, or corporate society that conducts the lottery, or licensed promoter who promotes the lottery under the Gambling Act.
- Under section 9(2)(e), if a supply is treated as having been made under section 5(10), the time of supply of the service to participate in a lottery is deemed to be when the first drawing or determination of a result commences.
- Under section 10(14), if a supply of services is treated as having been made under section 5(10), the consideration in money for the supply is the portion of the amount in money a person pays to participate in the lottery that represents the total proceeds (after deducting the amount of all prizes paid and payable in money) in respect of the lottery.
- If a lottery is conducted by any person, society, or corporate society that is registered (or required to be registered) for goods and services tax (GST):

- output tax is payable on the amount of money paid to participate in the lottery less the amount of all prizes paid or payable in money; and
- input tax credits can be claimed for expenses (such as purchases of non-cash prizes, fees paid to the promoter, and other expenses such as printing tickets).
- If a lottery is promoted by a licensed promoter who is registered (or required to be registered) for GST:
  - output tax is payable on any fees received; and
  - input tax credits can be claimed for expenses connected with the promotion.

**The period for which this Ruling applies**

This Ruling will apply for the period beginning on 21 December 2007 and ending on 21 December 2012.

This Ruling is signed by me on the 21st day of December 2007.

**Susan Price**  
**Senior Tax Counsel**

## COMMENTARY ON PUBLIC RULING BR Pub 07/11

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 07/11 (the Ruling).

### Background

The subject matter covered in the Ruling was previously dealt with in the “GST–lottery operators and promoters” item published in *Tax Information Bulletin* Vol 5, No 11 (April 1994), which was an updated version of the “GST–licensed lottery promoters” item published in *Tax Information Bulletin* Vol 1, No 3 (September 1989). The Ruling updates these items and takes into account the introduction of the Gambling Act 2003 and consequential amendments to the Goods and Services Tax Act 1985 (GST Act).

The Ruling sets out the goods and service tax implications for lottery operators and promoters who are registered (or required to be registered) for GST. Sections 5(10) and 10(14) of the GST Act provide for the treatment of the supply of and consideration paid for gambling services. Section 9(2)(e) of the Act sets out the time of supply for gambling services made under section 5(10). Sections 5(11) and 10(15) of the Act provide that certain terms are as defined in section 4 of the Gambling Act.

### Legislation

#### *Goods and Services Tax Act 1985*

Sections 5(10) and (11) provide:

- (10) Despite anything in this Act, for the purposes of this Act if a person pays an amount in money to participate in gambling (including a New Zealand lottery), the amount of money paid to participate must be treated as payment for the supply of services by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling.
- (11) For the purposes of subsection (10)—
  - (a) the terms **gambling**, **New Zealand lottery**, **licensed promoter**, and **society** have the meanings set out in section 4(1) of the Gambling Act 2003:
  - (b) the term **organiser** means the New Zealand Lotteries Commission continued by section 236 of the Gambling Act 2003.

Section 9(2)(e) provides :

- (2) Notwithstanding anything in subsection (1) of this section, a supply of goods and services shall be deemed to take place -
  - ...
  - (e) if the supply is treated as having been made under section 5(10) on the date on which the first drawing or determination of a result of the gambling (including a New Zealand lottery) commences, provided that this paragraph does not apply to an instant game that is a **New Zealand lottery** or **gambling** played by means of a gaming machine (as those terms are defined in section 4(1) of the Gambling Act 2003).

Sections 10(14) and (15) provide:

- (14) If a supply of services is treated as having been made under section 5(10), the consideration in money for the supply is the portion of the amount in money a person pays to participate in the gambling (including a New Zealand lottery) that represents the total proceeds (after deducting the amount of all prizes paid and payable in money) in respect of the gambling.
- (15) For the purposes of subsection (14), the terms **gambling** and **New Zealand lottery** have the meanings set out in section 4(1) of the Gambling Act 2003.

### ***Gambling Act 2003***

Section 4 of the Gambling Act defines “corporate society”, “gambling”, “licensed promoter”, “lottery” and “society” as follows:

**corporate society** means 1 society that is–

- (a) incorporated under the Incorporated Societies Act 1908; or
- (b) incorporated as a board under the Charitable Trusts Act 1957; or
- (c) a company incorporated under the Companies Act 1993 that–
  - (i) does not have the capacity or power to make a profit; and
  - (ii) is incorporated and conducted solely for authorised purposes; or
- (d) a working men's club registered under the Friendly Societies and Credit Unions Act 1982

**gambling**

- (a) means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and
- (b) includes a sales promotion scheme; and
- (c) includes bookmaking; and
- (d) includes betting, paying, or staking consideration on the outcome of a sporting event; but
- (e) does not include an act, behaviour, or transaction that is declared not to be gambling by regulations made under section 368

**licensed promoter** means a person who is granted a licence under section 201 to promote a class 3 gambling activity on behalf of a society.

**Lottery**

- (a) means a scheme or device involving multiple participants for which–
  - (i) a person pays consideration to participate, directly or indirectly; and
  - (ii) prizes of money are distributed according to a draw that takes place after all participants have entered; and
- (b) includes lotto, raffles, and sweepstakes

**society** means an association of persons established and conducted entirely for purposes other than commercial purposes

Section 5 defines “conducting gambling” as follows:

#### **Meaning of conducting gambling**

In this Act, conducting gambling includes any of the following activities:

- (a) organising, using, managing, supervising, and operating (but not playing) gambling or gambling equipment:
- (b) distributing the turnover of gambling (for example, by paying prizes, meeting costs, or making grants):
- (c) selling tickets to participate in gambling:
- (d) promoting gambling:
- (e) assisting in activities described in paragraphs (a) to (d).

## **Application of the legislation**

The running of a lottery is controlled by the Gambling Act 2003. Sections 20 to 31 of the Gambling Act set out four classes of gambling and who may conduct gambling in each class. The key features of these classes are as follows:

- Class 1 gambling may be conducted by a “society” or a “corporate society” provided the society or corporate society conducts no more than 1 session of gambling per day, the total value of prizes and potential turnover involved in 1 session of the gambling activity does not exceed \$500 and the net proceeds are applied to an authorised purpose.
- Class 1 gambling may also be conducted by a person (this includes individuals, and companies and other commercial entities). However, the criteria in respect of the proceeds differ from those for a “society” or “corporate society”. When gambling is conducted by a person, the proceeds must be applied to reward the winners of the gambling or to actual expenses directly incurred in conducting the gambling activity. Therefore, a person may not retain any proceeds for any other purpose.
- Class 2 gambling may be conducted by a “society” or “corporate society”. The total value of prizes in 1 session must not exceed \$5,000, no more than 1 session of gambling may be conducted per week, and the potential turnover (in 1 session) must not exceed \$25,000. The net proceeds must be applied to an authorised purpose.
- Class 3 gambling is where the total value of prizes (in 1 session) exceeds \$5,000 (section 27 of the Gambling Act) and the net proceeds are applied to an authorised purpose. Class 3 gambling that is not conducted regularly may be conducted by a “society” or “corporate society”. However, Class 3 gambling which is conducted regularly may be conducted only by a “corporate society”.
- Class 4 gambling may be conducted only by a “corporate society”. Class 4 gambling is gambling that is not gambling of another class. Currently that means gambling involving a gaming machine. The net proceeds must be applied to an authorised purpose.
- In addition to the requirements set out above, all classes of gambling must satisfy the relevant regulations and game rules, and the gambling must not utilise or involve a gaming machine (except where the gambling is Class 4 gambling). There are also certain restrictions surrounding the payment of commission or remuneration to a person who conducts gambling.

Although the Gambling Act does not expressly state that the meaning of “gambling” includes a “lottery”, both the definition of gambling and the scheme of the Act support the view that conducting a lottery is a form of gambling. This is consistent with the scope and purpose of the Act, which are to regulate all forms of gambling. Therefore, anyone who is permitted to conduct one of the classes of “gambling” in terms of the Gambling Act can similarly conduct a “lottery” that comes within that class.

### ***Licensed promoter***

When a society conducts a “lottery”, it may be promoted by a “licensed promoter”. The “licensed promoter” is a person who is granted a licence to promote a class 3 gambling activity that is not conducted regularly, on behalf of a “society” or “corporate society”, and who promotes the lottery for a reward.

Both sections 5(10) of the GST Act (which refers to a licensed promoter conducting gambling) and section 5(d) of the Gambling Act (which includes “promoting gambling” in the definition of “conducting gambling”) might give the impression that a “licensed promoter” can conduct gambling under the Gambling Act. However, in terms of sections 28(3), 189, 203(2)(c) of the Gambling Act and the definition of “licensed promoter”, a “licensed promoter” may promote class 3 gambling only on behalf of a “society” or “corporate society”. In other words, apart from “promoting gambling”, they cannot conduct gambling in terms of the Gambling Act. Therefore, under the Gambling Act it is the “society” or “corporate society” that conducts the lottery, not the “licensed promoter”.

### **GST implications**

#### ***Person, society, and corporate society***

The GST implications for a person, a society, and a corporate society are as follows.

If a lottery is conducted by any person, society, or corporate society that is registered (or required to be registered) for GST:

- the time of supply of the service to participate in the lottery is deemed to be when the first drawing or determination of a result commences (under section 9(2)(e) of the GST Act);
- if a supply of services is treated as having been made under section 5(10), output tax is payable on the amount of money paid to participate in the lottery that represents the total proceeds (after deducting the amount of all prizes paid or payable in money) in respect of the lottery (section 10(14)); and
- input tax credits may be claimed for expenses such as purchases of non-cash prizes, fees paid to the promoter, and other expenses such as printing tickets.

#### ***Promoter***

The GST implications for a promoter are as follows.

If a lottery is promoted by a licensed promoter who is registered (or required to be registered) for GST:

- output tax is payable on any fees received for promoting the lottery; and
- input tax credits may be claimed for expenses connected with the promotion.