

SUPPLIES PAID FOR IN FOREIGN CURRENCY—GST TREATMENT

PUBLIC RULING - BR Pub 04/01

Note (not part of ruling): This ruling is essentially the same as public ruling BR Pub 95/12, published in *Tax Information Bulletin* Vol 7, No 7 (January 1996), and public ruling BR Pub 00/04, published in *Tax Information Bulletin* Vol 12, No 6 (June 2000). BR Pub 95/12 applies when the time of supply occurred prior to 1 March 1999, BR Pub 00/04 applies when the time of supply occurred on or after 1 March 1999 until and inclusive of 29 February 2004. This ruling's period of application is from 1 March 2004 for an indefinite period.

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

Taxation Laws

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

This Ruling applies in respect of sections 9(1), 10(2), 14(1)(a), 77, the definition of “money” in section 2(1) and the definition of “financial services” in section 3(1).

The Arrangement to which this Ruling applies

The Arrangement is the acceptance by a registered person of payment in foreign currency for a taxable supply of goods or services made in New Zealand.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The value of the taxable supply is the amount of foreign currency converted to New Zealand currency at the exchange “buy rate” applying at the time of supply.
- The appropriate exchange rate is the “buy-rate” offered by an approved bank or an approved bureau de change at the time of supply.

The period or income year for which this Ruling applies

This Ruling will apply from 1 March 2004 for an indefinite period.

This Ruling is signed by me on the 10th day of March 2004.

Martin Smith

General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 04/01

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 04/01 (“the Ruling”).

The subject matter covered in this Ruling was previously dealt with by BR Pub 95/12 published in *Tax Information Bulletin* Vol 7, No 7 (January 1996), at page 17 and BR Pub 00/04 published in *Tax Information Bulletin* Vol 12, No 6 (June 2000), at page 4. This Ruling applies for the period from 1 March 2004 for an indefinite period.

Background

Public Ruling BR Pub 95/12 dealt with the GST consequences of receiving payment in foreign currency for taxable supplies of goods and services made in New Zealand. A number of registered persons, particularly those involved in tourism, accept foreign currency as payment for supplies of goods and services. Often a registered person will offer the customer an “in-house” exchange rate. This exchange rate is less favourable to the customer than other exchange rates. That is, the customer gets less New Zealand currency for the foreign currency than that obtainable at a bank or a bureau de change.

The registered supplier will exchange the foreign currency at a bank and receive New Zealand currency. Because the bank exchange rate is better than the exchange rate the registered person gave the customer, the registered person will make a profit on the conversion of the foreign currency. The Ruling considers the GST treatment of such a profit. In particular, the Ruling considers whether the profit is consideration for an exempt supply, or whether the profit is part of the consideration for a taxable supply.

Public Ruling BR 00/04 was essentially a re-issue of Public Ruling BR Pub 95/12.

Legislation

Section 2(1) defines “money”:

“Money” includes-

- (a) Bank notes and other currency, being any negotiable instruments used or circulated, or intended for use or circulation, as currency; and
 - (b) Postal notes and money orders; and
 - (c) Promissory notes and bills of exchange,-
- whether of New Zealand or any other country, but does not include a collector’s piece, investment article, or item of numismatic interest.

Section 3(1) defines “financial services”:

For the purposes of this Act, the term “financial services” means any one or more of the following activities:

- (a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise)...

Section 14(1)(a) exempts supplies of financial services from GST.

Section 9 defines the time of supply. Section 9(1) states:

Subject to this Act, for the purposes of this Act a supply of goods and services shall be deemed to take place at the earlier of the time an invoice is issued by the supplier [or the recipient] or the time any payment is received by the supplier, in respect of that supply.

Section 10 is the section providing for the value of supply. Section 10(2) states:

Subject to this section, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of,-

- (a) To the extent that the consideration for the supply is consideration in money, the amount of the money:

Section 77 states:

For the purposes of this Act, all amounts of money shall be expressed in terms of New Zealand currency, and in any case where and to the extent that such amount is consideration in money for a supply, that amount shall be expressed in terms of New Zealand currency as at the time of that supply.

Application of the legislation

Number of supplies

When a registered person sells goods and services to a customer who pays in foreign currency, there is only one supply. That supply is the supply of goods and services.

A possible alternative view is that there are two supplies in these circumstances: the first supply being a supply of goods and services from the registered person to the customer, the second supply being an exempt supply (under section 3(1)(a) and section 14(1)(a)) of the exchange of currency, also from the registered person to the customer. However, as already stated that is not the position where a sale of goods and services occurs with the customer paying in foreign currency – there is only one supply in this situation.

The position is different if a customer, having already completed an exchange of foreign currency for New Zealand currency with a registered person, in a separate transaction then chooses to use that New Zealand currency to purchase goods and services from the same registered person.

It will be a question of fact in each case whether there are one or two supplies. In the ordinary commercial situation there can be no reconstruction of the transaction to recharacterise two supplies as one or vice versa, nor is it appropriate to apply principles of economic equivalence to achieve similar results between one supply and two supply situations.

When a registered person accepts foreign currency in payment for supplies, there is no exempt supply of the exchange of currency. To be an exchange of currency under section 3(1)(a) one currency must be exchanged for another. Section 3(1)(a) does not cover the situation when currency is exchanged for goods and services. The fact that

the registered person will later exchange the currency with a bank or bureau de change does not alter this. The transaction between the bank or bureau de change and the registered person involves an exempt supply of the exchange of currency by the bank or bureau de change to the registered person. There is no such exempt supply from the registered person to the customer paying with foreign currency.

In situations where there is only one supply, a supply of goods and services, the value of supply is important, particularly since the registered person usually makes a profit from the low exchange rate.

Value of supply

When a registered person sells goods and services to a customer, the value of supply is determined using the rules in section 10. Under section 10(2)(a), when consideration for the supply is an amount of money, the value of supply is the amount of money. “Money” is defined in section 2(1) and includes foreign currency.

Therefore, when a customer tenders foreign currency as consideration for a supply, the value of supply is the amount of foreign currency. However, section 77 requires all amounts of money tendered in consideration of a supply to be “expressed in terms of New Zealand currency as at the time of that supply”.

“Expressed in terms of New Zealand currency”

Three interpretations of the phrase “all amounts of money shall be expressed in terms of New Zealand currency” are possible. It could mean that:

- The parties must state their transaction, or document it, in New Zealand currency and the supplier returns that amount for GST purposes; or
- The supplier must convert foreign currency to New Zealand currency at the current market exchange rate and return that amount for GST purposes; or
- The supplier may convert foreign currency to New Zealand currency at the rate agreed between the parties and returns that amount for GST purposes.

The first interpretation does not require any type of conversion, whereas the second and third do.

Section 20(1) of the Australian Income Tax Assessment Act 1936 refers to income being “expressed in terms of Australian currency”. Section 77 is expressed in the same terms for New Zealand currency. Section 20(1) had been accepted as embodying the decision of the Privy Council in *Payne v Deputy FCT* [1936] 2 All ER 793 (see, for example, Dixon J in *Adelaide Electric Supply Co Ltd v FCT* (1949) 78 CLR 557). In the *Payne* decision, Lord Russell said at page 796 of the judgment:

...the assessable income of the taxpayer must, whatever be the currency in which he derives it, all be **expressed in terms of Australian currency; in other words** if any portion of his assessable income is derived by him in French or Belgian currency, **it must before he can be properly assessed to Australian income tax be converted into its equivalent, at the time it was derived, in Australian**

currency. In exactly the same way, any income derived by him in British currency must be converted into its equivalent in Australian currency. In short when an Australian statute tells the taxpayer to state his derived income in order that a fraction thereof (i.e., so many pence in the pound of derived income) may be taken as tax, this can only mean that his derived income is to be stated and dealt with in terms of Australian currency. From this it would accordingly follow that the commissioner was right in including the amount of £1,097 in the appellant's assessment. [Emphasis added.]

Lord Russell interpreted the words subsequently adopted in section 20(1) to mean that the foreign currency must be converted to the currency of the taxing country at the current market exchange rate. This is considered to be the preferred approach. That is, the phrase "expressed in terms of New Zealand currency" in section 77 requires the amount of foreign currency tendered as consideration for a supply to be converted into an amount of New Zealand currency at the exchange rate applying at the time of supply.

The above interpretation is also consistent with the use of the same phrase by the New Zealand legislature in the now repealed section KF 2(5) (definition of "effective rate of domestic income tax"). The relevant part of the former section KF 2(5) stated:

"Effective rate of domestic income tax", in relation to a company that is not resident in New Zealand and to an accounting year of that company, means the rate ascertained in accordance with the following formula:

$$\frac{a}{b}$$

where-

- a is the total income tax (**expressed in terms of New Zealand currency** at the rate of exchange in force on the last day of that accounting year) payable by that company in the country or territory in which it is resident, in respect of the total income derived by it in that accounting year, being the total income upon which the total income tax is levied; and
- b is that total income (**expressed in terms of New Zealand currency** at the rate of exchange in force on the last day of that accounting year): [Emphasis added.]

This definition is an equivalent use of the phrase in section 77, and supports the interpretation that the phrase requires some type of conversion. As already outlined, the decision in *Payne* supports the interpretation of the phrase in section 77 as requiring the conversion of the foreign currency (tendered as consideration for a supply) at the exchange rate applying at the time of supply.

Exchange rate applying at the time of supply

Section 77 requires the amount of money that is consideration for a supply to be expressed in terms of New Zealand currency "as at the time of that supply".

Section 9 determines the time at which any supply takes place. Section 9(1) states the general rule, i.e. that a supply shall be deemed to take place at the earlier of the time an invoice is issued or the time any payment is received by the supplier. Generally, in the circumstances to which the Ruling applies, the time of supply is the time of payment. Accordingly, it is the exchange rate applying at the time of payment that is to be used to convert the foreign currency to New Zealand dollars for GST purposes and not an exchange rate applying at the date the registered person converts the foreign currency to New Zealand dollars. Nor is the rate of exchange actually

obtained on the conversion of the foreign currency to be used if this differs from the exchange rate applying at the time of payment. Where an invoice is issued before a payment is made, the exchange rate applicable on the date of issue of the invoice is the correct date to be used to convert the foreign currency to New Zealand dollars for GST purposes.

The Commissioner will accept the exchange rates offered by an approved bank or an approved bureau de change.

In this connection, all registered banks in New Zealand are approved. American Express and Travelex Australasia Group, which includes Thomas Cook, are approved bureaux de change.

The value of supply is not the value of foreign currency tendered as consideration exchanged at the registered person's low exchange rate. Instead, it is the value of foreign currency tendered as consideration converted at the exchange rate determined by the approved banks and bureaux de change operating in the foreign exchange markets at the time of supply (payment). The applicable exchange rate in all cases is the "buy-rate".

Examples

Example 1

Hotel Guest wishes to exchange some foreign currency for New Zealand currency. Hotel offers him a low exchange rate, which he accepts. Hotel exchanges the foreign currency at a bank and makes a profit.

The profit is consideration for an exempt supply, being the exempt supply of an exchange of currency. Hotel has exchanged New Zealand currency for foreign currency. The consideration for the supply is the difference between the exchange rate Hotel receives from the bank, and the exchange rate Hotel gave Hotel Guest.

For example:

Approved exchange buy rate: NZ\$1=Foreign\$3 or Foreign\$1=NZ\$0.33

Hotel exchange rate: NZ\$1=Foreign\$4 or Foreign\$1=NZ\$0.25

Hotel Guest exchanges Foreign\$300 at Hotel exchange rate, and receives NZ\$75. Hotel exchanges the Foreign\$300 at the bank for the approved exchange buy rate and receives NZ\$100. The NZ\$25 profit is consideration for an exempt supply and does not have to be returned for GST purposes.

Example 2

Hotel Guest checks out of Hotel and settles his bill using foreign currency. Again Hotel offers him a low exchange rate which he accepts. Hotel exchanges the money at a bank and makes a profit.

The profit on the currency exchange at the bank is part of the consideration for the taxable supply of goods and services by Hotel to Hotel Guest. The value of supply is the amount of foreign currency tendered in consideration for the supply. As the amount of money is foreign currency, it needs to be expressed in amounts of New Zealand currency. That change to New Zealand currency should take place at the approved exchange buy rate at the time of supply. That means the profit on the currency exchange is part of the consideration for the taxable supply Hotel makes.

For example:

Exchange rates as above. Bill of NZ\$1,000. Hotel Guest tenders Foreign\$4,000 to pay the bill. Hotel accepts the Foreign\$4,000 in full payment of the bill, at Hotel's exchange rate. Hotel then exchanges the Foreign\$4,000 at the bank for the approved exchange buy rate and receives NZ\$1,333, making a profit of \$333 on the currency. This profit is part of the consideration for a taxable supply and should be returned as such for GST purposes. The entire \$1,333 is the consideration for the supply.