

## **Standard Practice Statement**

**SPS 18/03**

### **Effective date of GST registrations**

#### **INTRODUCTION**

All references are to the Goods and Services Tax Act 1985 (the Act). Section 51 is set out in the appendix to this statement.

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts. This Statement sets out the effective date from which the Commissioner will register a person for GST.

There are two types of GST registration. One is where the person is required to register from a specific date and the other where the person requests that the Commissioner register them voluntarily under either ss 51(3) or 54B.

Registration under s 54B is not covered in this Statement. Information on s 54B is set out in Tax Information Bulletin Vol 25, No 9, (Oct 2013)<sup>1</sup> and can be viewed on Inland Revenue's website<sup>2</sup>.

#### **APPLICATION**

This Statement will apply from 19 July 2018.

#### **STANDARD PRACTICE**

##### **Summary**

1. GST registrations under s 51 fall into two categories. Those where a person is required by the legislation to register and those where registration is not required but is applied for on a voluntary basis.
2. In respect of required registrations, these will generally be effective from the date the person becomes liable to be registered.
3. However, in respect of a required registration where the person did not make application to register (as required under the s 51(1)), the Commissioner has discretion to make a registration effective from such later date which, under the

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<sup>1</sup> At page 33.

<sup>2</sup> <http://www.ird.govt.nz/resources/a/2/a289daf8-41a5-4fe8-9243-ddf077d1814f/tib-vol25-no9.pdf>

circumstances, the Commissioner considers is equitable. This discretion is rarely applied.

4. In respect of a voluntary GST registration, the Commissioner has complete discretion as to the effective date of that registration. She will generally make the effective date a prospective one from the date that the person applied to be registered for GST. The entitlement to register voluntarily for GST is detailed below at paragraphs 10 onwards.
5. In very limited circumstances, the Commissioner may agree that a person may be registered with effect from an earlier (retrospective) date. The factors that the Commissioner will consider for such a request are set out and discussed below at paragraphs 12 onwards.

## **Detailed Discussion**

### **Effect of registration date**

6. The effect of a GST registration date is that a person is deemed to be a registered person for all purposes of the GST legislation from that date. This means that any supplies made by a person from that date may need to be accounted for in the appropriate GST returns. This applies regardless of whether they have represented GST as being charged on those supplies or not.
7. As stated above, there are two types of GST registration, a required registration and a voluntary registration. The GST legislation provides for the Commissioner to set the effective dates for each.

### **Required registrations**

8. Where a person is liable to be registered for GST because the value of the taxable supplies that person makes is expected to exceed the registration threshold<sup>3</sup> and the person makes an application as required by s 51(2), the Commissioner has complete discretion as to the effective date of that registration. Generally, the Commissioner will make the date effective from when the person first became liable to register for GST.
9. However, where a person fails to make such an application, the Commissioner must generally register the person from the date that the person first became liable to be registered. However, the proviso to s 51(4)(b) gives the Commissioner the discretion to register a person from such later date as is considered equitable, having regard to the circumstances of the case. Although this allows the Commissioner to determine a date of registration that is later than the date the person became liable to be registered, in practice, this discretion is rarely exercised.

### **Voluntary registrations**

10. Where the value of taxable supplies made is less than the threshold in s 51(1)(a), a person is entitled to register voluntarily for GST under s 51(3). Although the Commissioner has complete discretion as to the effective date of that registration, that date will generally be from the date on which the Commissioner became satisfied that the person was able to be registered for GST or from such other date which is considered appropriate. For example, an applicant may request that an effective date be the first day of the month of that application. Provided the applicant has records and systems in place to accurately establish the correct tax

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<sup>3</sup> Currently \$60,000 (s. 51(1)(a) refers.)

payable, and it does not impact any other person, then the Commissioner is likely to approve that date. A date of the beginning of the month of application will not be treated as a request for a retrospective date.

11. In exceptional circumstances, the Commissioner may agree to a voluntary registration having a retrospective effective date. It is not uncommon for persons to apply for retrospective registration dates to facilitate input tax claims, notwithstanding that these are generally available using the adjustment provisions at the first adjustment period following their registration date.
12. The following are factors that will be considered to determine whether a retrospective GST registration would be approved:
  - The reason why the applicant did not voluntarily register earlier. The person must have been carrying on a taxable activity at that earlier date and have intended to register from that date, but circumstances prevented registration. Persuasive circumstances include absence overseas, illness, or personal tragedy.
  - Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered. For example, the person's business activity was thought to be an exempt activity, but later discovered that it was a taxable activity; or the person did not register in the mistaken belief that they were not able to register until they reached the turnover threshold.
  - Whether the applicant proceeded in business in the reasonable belief that the registration is automatic. Evidence of this belief might be demonstrated by the applicant mistakenly charging GST on the goods and services supplied.
  - The applicant's ability to verify the amount of output tax payable on the supplies made during that period. The applicant must have sufficient accounting records that establish the supplies made over the period.
  - The compliance cost difference between allowing a retrospective date and allowing a current date. This applies for both the applicant and the Commissioner. Note that a retrospective registration in order to facilitate an input tax claim instead of making an input claim using the adjustment provisions is not in itself a sufficient reason.
  - The amount of time between the date of application and the requested registration date. The longer the time between the application date and the requested registration date, the less likely that the Commissioner will exercise the discretion. Ignorance of obligations, or failure to register over a long period of time would not be persuasive reasons.
  - The effect that a backdated registration would have on the administration of the Act. This includes consideration of the effect the backdated registration is likely to have on other persons, including suppliers and recipients.
13. This last point is particularly important in respect of land transactions involving another GST registered party. The Commissioner would need to be satisfied that both parties to a land transaction were treating that transaction consistently in terms of the zero-rating provisions in s 11(1)(mb). In the case of a land transaction, where the recipient has applied for retrospective GST registration, they must have complied with s 78F, usually in the agreement for sale and purchase. Their statement under that section must be consistent with such a retrospective GST registration. In other words, they must have disclosed to the supplier of the land that they believed that they were registered for GST (or that they would be) at the time of settlement. Land transactions are discussed further below.
14. The list of factors set out above is not exhaustive. There may be other factors particular to the applicant's circumstances that are relevant and may influence the decision to allow the GST registration to be back-dated. Note that no one factor is

determinative. In applying her discretion, the Commissioner will be careful that the person is not trying to use a legislative provision to their advantage.

### ***Voluntary registrations - section 51(3) explained***

15. At times there is confusion over when a person is entitled to register for GST voluntarily under s 51(3). That section provides for voluntary registration under two separate criteria.
16. Firstly, s 51(3)(a) provides for when a taxable activity is actually being carried on at the time the registration is applied for. A taxable activity need not actually be making taxable supplies at the time of applying to become registered. However, if a taxable activity has not actually commenced then registration is not provided for under this criteria. For example, an orchardist who is growing fruit for future sales has commenced their taxable activity despite not initially making taxable supplies.
17. Secondly however, s 51(3)(b) provides for a voluntary GST registration where a taxable activity has not actually commenced but it is intended that a taxable activity will commence from a specified date. The Commissioner will accept a registration under s 51(3)(b) where the taxpayer is able to show that their taxable activity will commence from a specified date. This is an objective test and should be supported by evidence. For example, a motor car or van acquired with the intention of conducting a taxi or courier business from a specific date could be said to be part of a taxable activity and the person be able to register from that point. The evidence to support this intention from a specific date could be in the form of an agreement setting out exactly when the business will commence. On the other hand, an application for registration of a taxable activity that may start from some vague or undisclosed date in the future will not be accepted.

### ***Land transactions***

18. Land transactions are particularly problematic in the case of a retrospective GST registration. The problem is the effect that GST registration has on the compulsory zero-rating (CZR) rules. Looking at various scenarios:

#### *Land transactions where vendor's status changes*

19. A non-registered vendor would not have initially charged any GST on a land transaction. In other words the CZR rules could not apply. However, if that vendor subsequently applied for, and is allowed GST registration back-dated to a date that is prior to the settlement of a land transaction, GST will retrospectively apply to the transaction. This means that a vendor will then be liable to account for GST either at 0% or 15%, depending on whether the CZR rules apply. And of course, this will depend on the purchaser's circumstances at the time of settlement. Economically, the cost of any GST would be borne by the vendor where the consideration in the agreement for sale and purchase is expressed as being "inclusive of GST". In the case where the agreement for sale and purchase expresses the consideration as "plus GST", then the vendor will have the practical issue of charging and obtaining that GST from the purchaser. There may be some resistance on the part of a purchaser where that purchaser has entered into a transaction assuming that there was no further amount to pay where the vendor warranted that they were not registered for GST.
20. In practice, this issue would most likely arise in the case of required GST registrations. As discussed above, a required GST registration would generally be effective from the date that the person became liable to be registered. For the

reasons stated in the preceding paragraph, it would be unlikely that a vendor would apply for a voluntary GST registration where this would impact on a past land transaction.

*Land transaction where purchaser's status changes*

21. A purchaser who is not GST registered will not have made an input tax claim in respect of a past land acquisition. If a purchaser registers for GST from a date subsequent to a land purchase, they generally do so with the belief that they are entitled to claim for the introduction of land into a taxable activity. This claim is either based on the GST charged by a GST registered vendor or a notional amount of GST in the case of land acquired as secondhand goods from a non-registered vendor and is made using the adjustment provisions of s 21B.
22. Some purchasers will ask for a retrospective GST registration so that their GST registration will be effective from a date that is prior to the settlement of a land transaction. There is a benefit from the timing difference between a claim made at the time of supply for the transaction as opposed to a later claim using the adjustment provisions of s 21B.
23. In the case involving a GST registered vendor, a retrospective GST registration by a purchaser will not have the effect of allowing an input tax claim for the acquisition of land. This is because the land transaction would be zero-rated under s 11(1)(mb).
24. Where the case involves a non-GST registered vendor, the Commissioner will consider the purchaser's application to register for GST based on all the relevant facts. As stated earlier, it would be rare to allow a retrospective effective date in the case of a voluntary GST registration. The timing difference between making an input tax claim at the time of supply, compared to claiming an input tax adjustment at the next adjustment period, is not a factor that the Commissioner would take into account in deciding the effective date of a voluntary registration. The other aspect of this issue that needs to be highlighted is whether there is an entitlement to voluntarily register for GST under s 51(3).

The Standard Practice Statement is signed on 31<sup>st</sup> July 2018.

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## **APPENDIX:**

### **Part 8**

#### **Registration**

##### **51 Persons making supplies in course of taxable activity to be registered**

- (1) Subject to this Act, every person who, on or after 1 October 1986, carries on any taxable activity and is not registered, becomes liable to be registered—
- (a) at the end of any month where the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded \$60,000 (or such larger amount as the Governor-General may, from time to time, by Order in Council declare):
- provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:
- (b) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed the amount specified in paragraph (a):
- provided that any such person shall not become liable where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of—
- (c) any ending of, including a premature ending of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- (d) the replacement of any plant or other capital asset used in any taxable activity carried on by that person; or
- (e) the supply, to persons who are non-residents but are physically present in New Zealand, of telecommunications services that are treated as being supplied in New Zealand under sections 8(6) and 8A.
- (1B) For the purposes of determining under subsection (1) the liability of a unit title body corporate to be registered, the value of a supply of a service made by the body corporate to a member is not included in the total value of supplies made in New Zealand by the body corporate.
- (1C) For the purposes of subsection (1), if the person is a non-resident supplier of remote services to which section 8(3)(c) applies, then in determining whether the person is liable to be registered, the person may use a fair and reasonable method of converting foreign currency amounts into New Zealand currency amounts.

- (2) Every person who, by virtue of subsection (1), becomes liable to be registered shall apply to the Commissioner in the prescribed form for registration under this Act, within 21 days of becoming so liable, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.
- (3) Notwithstanding subsections (1) and (2), every person who satisfies the Commissioner that, on or after 1 October 1986,—
- (a) that person is carrying on any taxable activity; or
  - (b) that person intends to carry on any taxable activity from a specified date,—
- may apply to the Commissioner in the prescribed form for registration under this Act, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.
- (4) Where any person has—
- (a) made application for registration pursuant to subsection (2), (3), or section 54B, and the Commissioner is satisfied that that person is eligible to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Commissioner may determine; or
  - (b) not made application for registration pursuant to subsection (2), and the Commissioner is satisfied that that person is liable to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from the date on which that person first became liable to be registered under this Act: provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Commissioner considers equitable.
- (5) Notwithstanding anything in this Act, where any taxable activity is carried on by any non-profit body in branches or divisions, that non-profit body may apply to the Commissioner for any such branch or division to be a separate person for the purposes of this section, and if each such branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch or division, each such branch or division shall be deemed to be a separate person, and not a part of the non-profit body, and, where any such branch or division is a separate person pursuant to this subsection, any taxable activity carried on by that branch or division shall, to that extent, be deemed not to be carried on by the non-profit body first mentioned in this subsection.
- (5B) A unit title body corporate that is registered under this Act as a result of an application under subsection (3) made on a date (the application date) on or after the date of introduction of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill must be registered with effect from a date after the application date.
- (6) The provisions of this Act relating to the determination of the value of any supply of goods and services shall apply for the purposes of this section, with the modification that no regard shall be had to any tax charged in respect of any such supply.

- (7) An application for registration under this Act purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.