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# GST – input tax deductions, grants, omitted sale

Decision date | Rā o te Whakatau: 28 March 2025

Issue date | Rā Tuku: 12 June 2025

TDS 25/15

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## Subjects | Kaupapa

GST: input tax deductions, government grants; omitted sale

## Taxation laws | Ture tāke

All legislative references are to the Goods and Service Tax Act 1985 (GSTA) unless otherwise stated.

## Summary of facts | Whakarāpopoto o Meka

1. The Taxpayer in this dispute was a company that was registered for GST.
2. During the disputed period, the Taxpayer filed GST returns claiming input tax deductions for various expenses. The Taxpayer also received COVID-19 Support Payments and a COVID-19 Resurgence Support Payment (COVID-19 Payments) during this period.
3. Customer and Compliance Services (CCS) considered that some of the input tax deductions claimed were not allowable. This was because the Taxpayer had not provided sufficient documentation to support the deductions, or the goods and services acquired were not used or made available for use in making taxable supplies. CCS also considered that the Taxpayer should have returned output tax on the COVID-19 Payments.
4. In addition, CCS found an error in the Taxpayer's working papers which resulted in the omission of a sale from the GST return during the disputed period. CCS proposed to amend the GST assessment to include this sale.

## Issues | Take

5. The main issues considered in this dispute were:
  - whether the input tax deductions claimed by the Taxpayer were allowed;
  - whether output tax should be returned on the COVID-19 Payments; and
  - whether the GST return should be amended to include the omitted sale.
6. There was also a preliminary issue on the onus and standard of proof.

## Decisions | Whakatau

7. The Tax Counsel Office (TCO) concluded that:
  - the input tax deductions claimed by the Taxpayer were not allowed;
  - output tax should be returned on the COVID-19 Payments received by the Taxpayer; and
  - the Taxpayer's GST return should be amended to include the omitted sale.

## Reasons for decisions | Pūnga o ngā whakatau

### Preliminary issue | Take tōmua: onus and standard of proof

8. Except for proceedings relating to evasion or similar act or obstruction, the onus of proof is on the taxpayer to show that an assessment is wrong, why it is wrong, and by how much it is wrong.<sup>1</sup> However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.<sup>2</sup>
9. The standard of proof required is the balance of probabilities.<sup>3</sup>
10. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayer has discharged the onus of proof in the context of the issues raised by the parties in the dispute, based on the documentary evidence put before it.

### Issue 1 | Take tuatahi: Input tax deductions

11. At issue was whether the Taxpayer was entitled to the GST input tax deductions claimed for expenses made in the disputed period. The expenses in dispute included expenses that appeared to be private expenses, cash withdrawals, entertainment

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<sup>1</sup> Section 149A(2) of the Tax Administration Act 1994 (TAA). See also *Case V17* (2002) 20 NZTC 10,192, *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC), and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

<sup>2</sup> Section 138P(1B) of the TAA.

<sup>3</sup> *Yew v CIR* (1984) 6 NZTC 61,710 (CA), *Case Y3* (2007) 23 NZTC 13,028, and *Case X16* (2005) 22 NZTC 12,216.

expenses for business partners and clients and other expenses where no tax invoice had been produced.

12. CCS also proposed an apportionment of the household expenses used for a home office, based on an estimate of the floor area of the house that was used as the home office. The Taxpayer argued that the apportionment should be higher.
13. Further, CCS proposed to disallow input tax deductions from expenditure relating to supplies that were exempt or not subject to GST, such as bank fees, interest and residential rent payments.
14. The calculation of GST payable by a registered person is set out in s 20. The input tax that a registered person has paid when acquiring goods and services may be offset against the GST output tax charged on supplies made by the person in the same period (s 20(3)).
15. The requirements for an input tax deduction are:
  - Input tax can only be claimed by a GST registered person. Registration for GST is dependent on a person carrying on a taxable activity.
  - Goods or services must have been acquired. It is not enough that a payment to a registered person is identified, it must have sufficient connection to the supply of goods and services.<sup>4</sup>
  - The goods or services acquired must have been used for, or available for use in making taxable supplies (s 20(3C)).
  - Tax invoice requirements must be met (s 20(2)(a)). It is not sufficient that a taxpayer merely proves the existence of a supply. The taxpayer must also provide sufficient particulars of the supply.<sup>5</sup>
16. A registered person must estimate the extent to which the goods or services are used for making taxable supplies (s 20(3G)). The extent to which a deduction for input tax is allowed is calculated using the formula: full input tax deduction × percentage intended use (s 20(3H)).
17. Section 14 provides a list of supplies that are exempt from GST. This list includes the supply of financial services (i.e. interest and bank fees) (s 14(1)(a)) and residential rent (s 14(1)(c)).
18. TCO considered that the Taxpayer was not entitled to the input tax deductions claimed because the Taxpayer did not provide sufficient documentation or other evidence to

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<sup>4</sup> *CIR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 at 13,193.

<sup>5</sup> *Case 1/2012* (2012) 25 NZTC 1,013

show the expenses in dispute were related to goods and services that were used or available for use in making taxable supplies.

19. In relation to the apportionment of household expenses, in the absence of any documentation to support a higher apportionment, TCO accepted CCS's proposed apportionment. The Taxpayer had not discharged its burden of proof that CCS's calculation was wrong and by how much.
20. Further, the supply of financial services such as interest and bank fees and residential rent are exempt supplies under s 14. As no GST was charged on these expenses, no input tax deductions can be claimed in relation to the expenses.

## Issue 2 | Take tuarua: COVID-19 Payments

21. The COVID-19 Support Payment was a government grant that was made available to businesses that experienced a decline in revenue because of COVID-19. Similarly, the COVID-19 Resurgence Support Payment was a government grant or subsidy that was given to businesses which experienced a 30% drop in revenue due to an increase in the COVID-19 alert level.
22. Section 5(6D) provides that where any payment in the nature of a grant or subsidy is made on behalf of the Crown to a person in relation to or in respect of that person's taxable activity, the payment is deemed to be consideration for a supply of goods and services made by the person in the course of their taxable activity.
23. There are 3 exclusions from the term "payment in the nature of a grant or subsidy" (s 5(6E)(b)). The exclusions cover social welfare benefits, payments made to a person for their personal use and benefit, and payments declared by an Order in Council not to be a taxable grant or subsidy.
24. The ordinary meaning of "grant" and case law<sup>6</sup> suggest a grant has the following characteristics:
  - The Crown or another public body pays it gratuitously (without obligation) out of public funds.
  - The payment is often made to public, charitable or private bodies so that third parties can benefit.
  - The focus is on the character or quality of what the payer pays and of the consideration they give, rather than what the payee receives in their hands.

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<sup>6</sup> *Director-General of Social Welfare v De Morgan and another* (1996) 17 NZTC 12,636 (CA), *Kena Kena Properties Ltd v Attorney-General* (2002) 20 NZTC 17,433 (PC)

- The objective of the payment is to promote or encourage an industry or enterprise.
  - The words “in the nature of” extend the coverage of s 5(6D) so even if a payment is not technically a grant or subsidy, the subsection will apply if the payment is within the nature of a grant or subsidy.
25. TCO concluded that the COVID-19 Payments were grants under s 5(6D) because:
- The COVID-19 Payments came within the ordinary meaning of “grant” and had the characteristics of a grant.
  - The payments were made by Inland Revenue, on behalf of the Crown, to support businesses suffering a loss of revenue from the effects of COVID-19.
  - The Taxpayer was registered for GST and carried on a taxable activity and the payments were made in relation to that taxable activity.
  - None of the exclusions in s 5(6E)(b) applied.
26. Therefore, the COVID-19 Payments were deemed to be consideration for a supply of goods and services and output tax was required to be returned on the payments.

### Issue 3 | Take tuatoru: Omitted sale

27. A GST registered person must provide a return setting out the tax payable by them for a GST period (s 16 and s 23). The tax payable includes the output tax attributable to the period. “Output tax” is the GST charged, pursuant to s 8(1), on supplies made by the registered person.
28. TCO confirmed that there was an error in the Taxpayer’s working papers and concluded that, given the omitted sale was attributable to the disputed period, the GST return should be amended to include the output tax on the omitted sale.