Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

GST – amalgamation

Decision date | Rā o te Whakatau: 31 March 2026

Issue date | Rā Tuku: 14 August 2026

TDS 26/10

Subjects | Kaupapa

This item summarises a private ruling that considered the GST consequences of a company amalgamation.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Arrangement is the amalgamation of several companies. Each company is directly or indirectly wholly owned by a parent company.
2. The Applicants stated that the commercial or private purposes of the amalgamation are to simplify the group structure by reducing the number of companies and saving on compliance costs.
3. Prior to the amalgamation:
   - An amalgamating company (Company A) was registered for GST.
   - Some of the amalgamating companies, as members of an unincorporated body (member companies), held interests in land. The unincorporated body was registered for GST.
   - The amalgamating companies registered as a GST group with Company A as the representative member.
   - In a 12-month period, including the time of the GST grouping until amalgamation, the GST group made at least 75% taxable supplies (as a percentage by value of their taxable and other supplies) to persons outside the group. For this purpose, "taxable supplies" includes supplies that would be taxable supplies if made by a registered person.
4. The amalgamation will occur on the last day in a taxable period of both the unincorporated body and the GST group.
5. Following the amalgamation, the amalgamated company will own all the assets and continue carrying on the taxable activities of the amalgamating companies.

Issues | Take

6. The main issues considered in this ruling were whether:

- the amalgamating companies are eligible to be a GST group with Company A as the representative member;
- the goods and services deemed to be supplied by the unincorporated body immediately before it ceases to be registered will be treated as being supplied to the member companies and that supply is deemed to be supplied to Company A as the representative member of the GST group and zero-rated;
- any GST liability will arise as a result of any supplies made by the amalgamating companies to the amalgamated company; and
- s 76 applies to the Arrangement.

Decisions | Whakatau

7. The Tax Counsel Office (TCO) concluded that:

- the amalgamating companies are eligible to be a GST group with Company A as the representative member;
- the goods and services deemed to be supplied by the unincorporated body immediately before it ceases to be registered will be treated by s 57(2)(db) as being supplied to the member companies and that supply is deemed to be supplied to Company A as the representative member of the GST group by s 55(1AG) and zero-rated under s 11(1)(mb);
- no GST liability will arise as a result of any supplies made by the amalgamating companies to the amalgamated company; and
- s 76 does not apply to the Arrangement.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Eligibility for GST grouping

8. Section 55 provides for the eligibility requirements for forming a GST group. The requirements relevant to this Arrangement are as follows:

   - The companies are a group of persons (the eligibility group) that is part of a group of companies under s IC 3 of the Income Tax Act 2007 (ITA) (s 55(1)(a)(ii)).
   - The eligibility group, in a 12-month period that includes the time of the GST grouping, makes at least 75% taxable supplies to persons outside the eligibility group. For this purpose, "taxable supplies" include supplies that would be taxable supplies if made by a registered person (s 55(1)(b)(ii)).

9. TCO considered the requirements for forming a GST group were met for the reasons set out below.

10. Section IC 3 of the ITA relevantly states that a group of companies means two or more companies, in relation to which a group of persons hold common voting interests and common market value interests that add up to at least 66%.

11. "Common voting interests" and "common market value interests" are measured in accordance with s IC 3(3) and (4) of the ITA, respectively. A person's "common" voting or market interest in relevant companies is "the percentage of their [voting or market value] interests … in each of the companies".

12. Section IC 3(3) and (4) of the ITA refers to ss YC 2 to YC 5 and YC 6 of the ITA, which set out the rules for determining voting and market value interests. These provisions provide that:

   - a person's voting or market value interest is the percentage held by that person of voting interests carried by, or market value interests of, shares and options held by the person (ss YC 2 and YC 3 of the ITA); and
   - voting or market value interests are to be determined on a look-through basis when shares in a company are held by another company (s YC 4 of the ITA).

13. Given the amalgamating companies are directly or indirectly wholly owned by the parent company, it follows that the same group of persons hold 100% of the voting and market value interests in each of the amalgamating companies. Therefore, the requirement in s 55(1)(a)(ii) that the eligibility group is a group of companies is met.

14. Further, given that in a 12-month period, including the time of the GST grouping until amalgamation, the GST group makes at least 75% taxable supplies to persons outside the group, the requirement in s 55(1)(b)(ii) is also met.

15. Therefore, TCO confirmed the amalgamating companies were eligible to form a GST group.

Issue 2 | Take tuarua: Deemed supply by the unincorporated body

16. The unincorporated body is registered for GST as an "unincorporated body of persons" (definition of "unincorporated body" in s 2).

17. In relation to the GST consequences for the unincorporated body on amalgamation, TCO considered the following:

    - As the member companies will amalgamate and continue as one company, they will cease to be separate persons and will no longer be an unincorporated body of persons carrying on a taxable activity. Therefore, the unincorporated body's GST registration must cease.
    - As the amalgamation will occur on the last day in a taxable period of the unincorporated body, its registration will cease at the end of the taxable period in which the amalgamation occurs or such other date as the Commissioner determines (s 52(2), (3) or (5)).
    - Any goods and services forming part of the assets of a taxable activity carried on by the unincorporated body will be treated as being supplied to its members (that is, the member companies) in the course of that taxable activity immediately before it ceases to be registered (ss 5(3) and 57(2)(db)).
    - As the member companies are part of a GST group, the deemed supply by the unincorporated body immediately before its registration is cancelled will be treated as a supply to Company A as a registered person (s 55(1AG)).
    - Given the assets the unincorporated body deems to supply to Company A will include land, and that the land is not intended to be used as a principal place of residence of the recipient (because this does not apply to companies), that deemed supply will be zero-rated (s 11(1)(mb)).

18. Therefore, TCO concluded that the goods and services deemed to be supplied by the unincorporated body immediately before it ceases to be registered will be treated by s 57(2)(db) as being supplied to the member companies. This supply is deemed to be

supplied to Company A as the representative member of the GST group under s 55(1AG) and zero-rated in accordance with s 11(1)(mb).

Issue 3 | Take tuatoru: GST liability arising from supply by amalgamating companies

19. An amalgamation may involve the supply of goods or services (for example, transferring an amalgamating company's assets to the amalgamated company).

20. Section 61A sets out specific rules for GST on amalgamation. Relevantly, s 61A(2) deems there to be no supply of goods and services by the amalgamating company and the amalgamated company is deemed not to have paid or provided any consideration for the acquisition of those goods and services, provided the amalgamated company is a registered person immediately after the amalgamation.

21. The amalgamated company is part of the GST group with Company A as the representative member and is not registered in its own right. It is, therefore, relevant to consider when the GST group ends and when the amalgamated company becomes a registered person. In this regard, TCO considered the following:

   - The amalgamation will result in there being only one company in the GST group, and it is not a company that is registered for GST or the representative member.
   - Following the amalgamation, all members of the group will cease to be eligible to be a member of the GST group. If the Commissioner is satisfied of this, the Commissioner will give notice and terminate the membership (s 55(5)). While no date is specified in the legislation, it is reasonable that the group will be terminated when the companies cease to be eligible to form a group. If the representative member notifies the Commissioner the GST group is no longer a GST group under s 55(4), the application is granted from the beginning of a taxable period as determined by the Commissioner.
   - Given the amalgamation will occur on the last day of the GST group's taxable period, that is the last day of the GST group's registration, and it will be cancelled from the following day, being the beginning of the next taxable period.
   - Following the amalgamation, the amalgamated company will have all the assets and continue carrying on the taxable activities of the amalgamating companies. Accordingly, it is reasonable to conclude that the amalgamated company meets the requirements for GST registration (that is, the supplies to be made by the amalgamated company in the following 12 months will exceed $60,000). As the amalgamation occurs on the last day of the GST group's taxable period, the

amalgamated company will be liable to be registered from the beginning of the following taxable period (that is, the next day).

22. Given the conclusion that the amalgamated company will be a registered person immediately after the amalgamation, TCO concluded that s 61A(2) applies to deem there to be no supply of goods and services by the amalgamating company and the amalgamated company is deemed not to have paid or provided any consideration for the acquisition of those goods and services. Therefore, no GST liability arises as a result of the amalgamation.

Issue 4 | Take tuawhā: Section 76 GST – tax avoidance

23. Section 76 is the general anti-avoidance provision of the GSTA. Section 76(1) provides that a "tax avoidance arrangement" is void as against the Commissioner for tax purposes. Section 76(3) enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.

24. In 2000, s 76 was aligned with a predecessor of s BG 1 of the ITA (the income tax general anti-avoidance provision). The Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289 considered it desirable to settle the approach to applying s BG 1. This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.

25. The Supreme Court in *Glenharrow Holdings Ltd v CIR* [2008] NZSC 116, [2009] 2 NZLR 359 considered the application of an earlier version of s 76. The Court held that the same objective test applied to GST avoidance as it does to income tax avoidance under s BG 1. The Court relied on income tax avoidance cases to support its view. Significantly, the Supreme Court delivered its decision in *Glenharrow* on the same day as its income tax avoidance decision in *Ben Nevis*. Four of the five justices who made up the Supreme Court bench in *Ben Nevis* were also on the bench in *Glenharrow*.

26. TCO's approach in making this decision is consistent with Interpretation Statement: IS 23/01 Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01) which states that it is also relevant to s 76. IS 23/01 will not be replicated in this technical decision summary but in summary the steps are as follows:

    - Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.

- Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
  - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.
  - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.
  - Considering the implications of the preceding steps and answering the ultimate question under the parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
- If the arrangement has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the parliamentary contemplation test.

27. Taking into account all of the relevant facts and circumstances (noting that as this is a summary, it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) TCO concluded as follows.

Application to facts

28. The arrangement for s 76 purposes is the amalgamation of the amalgamating companies and the companies choosing to form a GST group before the amalgamation.

29. The Applicants stated that the commercial or private purposes of the Arrangement are to simplify the group structure by reducing the number of companies and, therefore, achieve compliance and cost savings. Given the assets of Company A and the unincorporated body are all directly or indirectly owned by the same company, there is no need to maintain the different companies to hold separate ownership interests in those assets.

30. TCO considered that the Arrangement will give rise to the following GST effects:
    - The amalgamating companies are eligible to be a GST group with Company A as the representative member.
    - Goods and services deemed to be supplied by the unincorporated body before it ceases to be registered will ultimately be treated as being supplied to

Company A as the representative member of the GST group (ss 57(2)(db) and 55(1AG)). This supply will be zero-rated under s 11(1)(mb) because it is a supply that includes land.

- Under s 61A, the amalgamating companies are deemed not to make a supply of goods or services to the amalgamated company, and the amalgamated company is deemed not to pay or provide any consideration for any goods or services it acquires from the amalgamating companies.

31. TCO considered the GST effects are consistent with GST principles and demonstrate the legislation working as intended:

    - The effect of the amalgamation is that taxable activities of the amalgamating companies will continue to be carried out by the amalgamated company. There is no overall change of ultimate ownership, or disposal of any underlying assets or liabilities, or change in what constitutes the taxable activity, in an economic sense.
    - The principle that no GST liability is triggered is clearly demonstrated in various provisions in the GSTA, including provisions zero-rating certain business-to-business transfers.
    - While the Applicants choosing to form a GST group before amalgamation has enabled these outcomes, it does not provide any tax benefits inconsistent with the GSTA. The GST group ensured there is not a deemed intermediate supply to an unregistered person, which would trigger a GST liability. Such an outcome would be inconsistent with the principles of the GSTA given the supply is, in economic and commercial reality, made to the continuing amalgamated company to continue undertaking the taxable activity.

32. In addition, the Arrangement satisfies the stated commercial purpose and objective of simplifying the group structure to save on compliance costs. Maintaining multiple companies, when only one is needed, would result in the companies incurring wasteful administration costs

33. The effect of the amalgamation is that the companies and their assets and liabilities are combined into one, rather than being sold or otherwise realised by way of a change of economic ownership. Parliament intends that such amalgamations, where the amalgamated company is a registered person continuing on with the taxable activities, should be GST neutral as explicitly demonstrated by s 61A and the zero-rating rules.

34. Viewed in a commercially and economically realistic way, the Arrangement merges the assets and liabilities of the amalgamating companies so that they continue as one.

Conclusion

35. TCO concluded that Parliament would likely consider the Arrangement makes use of the relevant provisions in a manner that is consistent with Parliament's purpose of those provisions. Therefore, the Arrangement does not have a tax avoidance purpose or effect.

36. As TCO concluded that there is no tax avoidance purpose or effect, it was not necessary for TCO to go on to consider whether the Arrangement is a "tax avoidance arrangement" or the merely incidental test.

37. Accordingly, TCO concluded that s 76 does not apply to the amalgamation.