Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

GST liability on deregistration

Decision date | Rā o te Whakatau: 17 April 2026

Issue date | Rā Tuku: 17 September 2026

TDS 26/15

Subjects | Kaupapa

This item summarises an adjudication that considered the GST registration and deregistration of a Taxpayer in the context of property sales.

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 Taxpayer was a partnership formed to subdivide and develop a residential property into four lots.
2. The Taxpayer intended to sell Lots 2 and 3 and to retain Lots 1 and 4 for private purposes.
3. A third-party developer did development work on the Taxpayer's behalf.
4. The Taxpayer registered for GST during the relevant period. It filed one nil GST return. Later it filed a second GST return in which it treated the sale of one lot as a standard-rated supply, while it treated the sale of another lot as a zero-rated supply and paid the resulting GST liability. The details of the sales of those two lots are as follows:
    - It sold Lot 2 to a person associated with the Taxpayer. The sale and purchase agreement recorded the purchase price as inclusive of GST (if any) and provided for a payment on settlement "on account of GST".
    - It sold Lot 3 to the developer. The sale and purchase agreement recorded the purchase price as plus GST (if any), and the Taxpayer issued a tax invoice treating the supply as zero-rated.
5. The Taxpayer issued a notice of proposed adjustment, contending it had never carried on a taxable activity and should be retrospectively deregistered for GST purposes.
6. During the disputes process, Customer and Compliance Services (CCS) accepted that the Taxpayer had not carried on a taxable activity.
7. The remaining dispute concerned the effective date of deregistration and the GST consequences of deregistration, including whether GST remained payable for the sale of Lot 2.

Issues | Take

8. The main issues considered in this dispute were:
   - the date from which the Taxpayer should be deregistered;
   - what tax consequences will apply when the Taxpayer is deregistered; and
   - whether it would be unfair, unjust and a breach of natural justice to impose tax on the sale of Lot 2.
9. There was also a preliminary issue on the onus and standard of proof.

Decisions | Whakatau

10. The Tax Counsel Office (TCO) reached the following conclusions:
    - The Taxpayer should be deregistered for GST purposes with effect from the date on which it was originally registered as it had never carried on a taxable activity.
    - Despite the retrospective deregistration, the Taxpayer was liable under s 51B(2) to pay GST in relation to the sale of Lot 2 because it represented that GST was being charged on that supply. This liability did not apply to the sale of Lot 3 because the Taxpayer represented that this supply was zero-rated. Therefore, tax was payable at the rate of 0%.
    - The Taxation and Charities Review Authority (TCRA) or a court could address any issue about the fairness of the decision. The question of fairness in imposing tax was not something for the Commissioner to decide in this case.

Reasons for decisions | Pūnga o ngā whakatau

Preliminary issue | Take tōmua: Onus of proof

11. Except for proceedings relating to evasion or a 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.[1] However, if the taxpayer proves, on the balance of

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

probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by that specific amount.[2]

12. The standard of proof is the balance of probabilities.[3]

13. It is appropriate to apply the same onus and standard of proof 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 that the parties raised in the dispute, based on the documentary evidence put before it.

Issue 1 | Take tuatahi: What date should the Taxpayer have been de-registered from?

14. The Taxpayer argued it should be deregistered for GST purposes because it did not carry on a taxable activity. During the disputes process, the Commissioner accepted that the Taxpayer did not carry on a taxable activity. Therefore, the issue was when the Taxpayer should be deregistered for GST purposes in accordance with s 52(5).

15. TCO summarised its analysis of s 52(5) as follows:

- Section 52(5) of the Goods and Services Tax Act 1985 allows the Commissioner to cancel a person's GST registration if satisfied the person is not carrying on a taxable activity.
- Under s 52(5A)(b), the Commissioner may retrospectively cancel a registration from the original registration date if satisfied the person did not carry on a taxable activity from that date.

Application

16. TCO considered the Taxpayer's position and found the following:

- TCO accepted that the Taxpayer had never carried on a taxable activity. Therefore, the Taxpayer satisfied the statutory requirements for deregistering retrospectively from the original registration date.
- The Taxpayer contended that it should instead be deregistered from a later date. However, deregistration from the original registration date more appropriately reflected the Taxpayer's actual circumstances – namely that it was not entitled to

[2] Section 138P(1B) of the Tax Administration Act 1994.

[3] *Yew v CIR* (1984) 6 NZTC 61,710 (CA); *Case Y3* (2007) 23 NZTC 13,028; *Case X16* (2005) 22 NZTC 12,216.

be registered in the first instance because it had never carried on a taxable activity.

Conclusion

17. TCO concluded that the Taxpayer should be deregistered with effect from the date on which it had originally registered.

Issue 2 | Take tuarua: What tax consequences would apply if the Taxpayer was deregistered?

18. The issue was whether the Taxpayer was liable to pay GST in relation to either Lot 2 or Lot 3 in accordance with s 51B.

19. TCO summarised its analysis of s 51B as follows:

    - Where a person's GST registration is cancelled with effect from its original registration date under s 52(5), s 51B applies to treat that person as having been registered from the original registration date until the date of cancellation.
    - Section 51B(1)(a) provides that an unregistered person is treated as a registered person if they represent that tax is charged on a supply.
    - Section 51B(2) provides that the person is liable to pay the tax if the person represented tax was being charged on a supply made during a taxable period.

Application

20. The sale and purchase agreement for Lot 2 required a payment to be made "on account of GST", which was a representation that GST was being charged on that supply.

21. The Taxpayer argued that s 51B was not intended to apply to the sale of Lot 2 because the provision was directed at unregistered persons who falsely represented that they were GST-registered and consequently charged GST under false pretences. It also argued that it had not stated that GST was being charged on that supply.

22. However, on analysing the legislation in conjunction with the relevant case law, TCO found that s 51B was not limited to situations involving dishonesty or false pretences.

The section also applies where a person whose registration has been cancelled from its original registration date represented that GST was being charged on a supply.[4]

23. Therefore, TCO found that s 51B was not limited to cases involving dishonesty or false pretences and applied where a person represented that GST was being charged on a supply.

24. The sale and purchase agreement for Lot 3 recorded the price as plus GST (if any), but the Taxpayer represented that the supply was zero-rated. As a result, GST was payable on the supply at 0% meaning there was no GST liability.

Conclusion

25. TCO concluded that the Taxpayer was liable to pay GST in relation to the sale of Lot 2 because it stated that GST was being charged on that supply. The Taxpayer was not liable to pay GST in relation to the sale of Lot 3 because it was zero-rated.

Issue 3 | Take tuatoru: Would it be unfair, unjust and a breach of natural justice to impose tax on the sale of Lot 2?

26. The issue was whether it would be unfair, unjust and a breach of natural justice for the Commissioner to impose tax on the sale of Lot 2.

27. The Taxpayer argued that requiring it to pay GST on the sale would be unfair, unjust and contrary to the principles of natural justice. The Taxpayer did not provide any detailed reasons to support this argument.

Application

28. The Commissioner considered the approach of the courts that the Commissioner is under a duty to charge the correct amount of tax. If a taxpayer is assessed for the correct amount of tax, the taxpayer has no basis for complaining of unfair treatment.[5]

29. Despite being retrospectively deregistered from the date of its original GST registration, the Taxpayer remained liable to pay GST on the sale of Lot 2 under s 51B(2) because it represented that GST was being charged on that supply. This did not apply to the sale of Lot 3 because the Taxpayer specified that the supply was zero-rated.

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[4] *Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] 3 NZLR 767 (SC).

[5] *Case N19* (1991) 13 NZTC 3,158; *Case S74* (1996) 17 NZTC 7,459.

30. Any allegations of breaches of natural justice, unfairness or other procedural defects could be addressed by the TCRA or a court if the dispute proceeded to the challenge stage. A hearing before the TCRA or a court would cure breaches of this nature.[6]

Conclusion

31. TCO concluded that it was not unfair or unjust to charge GST on the sale of Lot 2. The TCRA or a court, rather than the Commissioner, should address any allegations of breaches of natural justice, unfairness or other procedural defects.

[6] *Dandelion Investments Ltd v CIR* (1996) 17 NZTC 12,689 (HC).