

GOODS AND SERVICES AMENDMENT ACT (NO 2) 1989

Unless where otherwise stated, the provisions in this Act came into force on 19 December 1989 which was the date on which the Act received the Governor-General's assent.

SUPPLIES BY PUBLIC AUTHORITIES

Sections 2(1), (3), and (4) Sections 4(2) and (7)

The Public Finance Act 1989 made a number of consequential amendments to the Goods and Services Tax Act 1985 to reflect the financial management reforms contained in that Act. In particular, the Public Finance Act 1989 amended the GST Act by:

- (i) Introducing the definition of the term "revenue from the Crown" to identify the amount appropriated by the Crown that would be subject to GST.
- (ii) Amending section 5(6) to deem a supply of goods and services by a public authority to occur where "revenue from the Crown" is brought to charge by that public authority.
- (iii) Inserting a new section 9(7) to provide a time of supply in respect of "revenue from the Crown" being brought to charge.
- (iv) Amending section 10(10) to determine the value of the deemed supply in terms of section 5(6).
- (v) Amending section 19 to limit the payments basis of accounting for GST to those public authorities on the mode A basis of appropriation. That is, not those on an accruals basis (Mode B), or the appropriation method used in some trading activities of Government departments (Mode C).

Revenue from the Crown - Sections 2(1), (3), and (4)

The definition of "revenue from the Crown" ensures that only the revenue received from the Crown (an appropriation) in respect of a supply of goods and services produced by a public authority (including a Government department) is taken into account in calculating GST. This is achieved by excluding certain revenue received by a public authority from the meaning of that term.

As the term refers to revenue received for the supply of goods and services, any money received an (appropriated) in relation to:

- (a) The Crown's net asset holding in a public authority (i.e., capital injections); or
- (b) The payment of benefits and grants on behalf of the Crown -

is not included.

In addition, the following items are specifically excluded:

- (a) Revenue received from any other public authority in the form of explicit charges and fees. Such fees and charges are subject to GST in the same manner as any other supply. This revenue is excluded to ensure that where such amounts are also an appropriation by the Crown a double impost of GST does not occur.
- (b) Goods and services tax levied under the GST Act on the deemed supply by a public authority.
- (c) Revenue collected by a department on behalf of the Crown, such as taxes.

It should be noted that "revenue from the Crown" applies only in respect of appropriations made pursuant to Mode B or C. That is, appropriations on an accruals basis, or the appropriation method used in some trading activities of Government departments.

The previous definition was deficient in identifying the portion of revenue received for the purposes of the deemed supply because:

- (a) It referred to an appropriation of public money which gives the impression that there is always a payment of public money for the supply of goods and services by a public authority. This is not the case as a Mode B appropriation may include non-cash items such as depreciation.
- (b) It also included fees and charges received from other public authorities and third parties, where those fees and charges were also an appropriation of public money. This would have led to a double imposition of GST.

Deemed supply by Public Authorities - Sections 4(2) and (7)

Section 5(6)(b) of the GST Act which deems a supply to occur where revenue from the Crown is brought to charge by a public authority is amended to remove reference to public money.

The amendment is necessary because non-cash items appropriated under Mode B are part of the deemed supply by the public authority.

These provisions apply in respect of supplies made on or after 1 July 1989 to coincide with the implementation of the Public Finance Act 1989.

SERVICE OCCUPANCY AGREEMENTS

Sections 2(2) and 8(2)

A new term “service occupancy agreement” is defined as being a licence created where a person occupies a dwelling for no consideration.

Section 14(c) of the GST Act 1985 (Exempt Supplies) is amended to ensure that where accommodation in a dwelling is supplied for no consideration, pursuant to a service occupancy agreement, an exempt supply is deemed to be made.

FINANCIAL SERVICES

Section 3

Sections 8(1) and (3)

These amendments are a result of the recent Court of Appeal decision which held that certain services supplied to the trading banks were financial services, and therefore exempt from GST. This decision centred on the premise that the services supplied were an integral part of the financial services supplied by the trading banks and therefore were an exempt supply. In addition, the Court looked at the activity rather than the nature of the supply of goods and services between the supplier and the recipient.

The proposed amendment was announced on Budget night by the Minister of Revenue. The purpose is to ensure the original boundary between taxable and exempt supplies is retained. The new rules are not solely directed at the company featured in the Court of Appeal Case, but to any other person who in terms of that decision is treating taxable services as exempt.

Financial services - Section 3

The meaning of the term “financial services” contained in section 3 of the GST Act 1985 is amended by:

- (a) Inserting a definition of the term “general accounting and record package services” in section 3(2); and

(b) Deeming “general accounting and record package services” not to be financial services where those services are supplied to a supplier of financial services or a customer of that supplier of financial services.

“General accounting and record package services” are

- (a) The provision of a financial clearing system which may form part of a settlement process.

A financial clearing system is a system which allows for financial instruments such as cheques to be gathered at a central point to be processed. This processing may involve the verification of the information contained on those instruments, the extraction of information for other purposes, or the sorting of those instruments for redistribution to the payers of those financial instruments. This list is not exhaustive. A clearing system may lead to a settlement process occurring where the total balance of all financial instruments processed is ascertained in respect of the parties to the clearing system. These balances are then set off between these parties to establish a net amount which is either payable or receivable.

- (b) The posting of financial transactions to customers’ accounts.

This service involves the debiting and crediting of customers’ accounts (i.e., the customer of the provider of the financial services) with amounts shown on financial instruments. It also includes such amounts as interest etc., which are a direct result of a financial instrument.

- (c) The maintenance of customers’ accounts.

This is the day to day upkeep of the customers’ accounts involving changes of address, details of type of account, the account balance, interest and fee characteristics applicable to a customer and so on. It also involves the preparation of periodic statements, the monitoring of the account for default, exceeded predetermined credit limits, etc. Again this list is not exhaustive.

- (d) The provision of any ancillary services supplied in relation to the services supplied above.

This would include such services of network management where the supplier of the financial services has on-line computer access to the type of record contained in paragraphs (b) and (c). The provision also makes specific reference to software development and support. This provision is a catchall in respect of other services supplied in connection with the services described in the preceding paragraphs.

The term "general accounting and record package services" does not include the above described services where those services are supplied by a supplier of financial services and are reasonably incidental and necessary to the supply of those financial services by that supplier.

The purpose of this exclusion is to ensure that where, for example, a bank makes an explicit charge for a change of address in respect of a bank account, which would be deemed to be a taxable supply in terms of these amendments, it is treated as an exempt supply as it is reasonably incidental and necessary to the operation of the bank account which is a financial service supplied by the bank.

Exempt supplies - Sections 8(1) and (3)

Section 14(a) of the GST Act which exempts certain supplies of goods and services from the imposition of GST is repealed and a new paragraph substituted. The new paragraph provides that the supply of financial services is still exempt except where:

- (a) The supply of those services would be zero rated under section 11(2) of the GST Act 1985. This exception applied previously.
- (b) A supply of goods and services which forms part of a supply of financial services, between the supplier of that part and the recipient, is not a supply of a financial service.

The purpose of paragraph (b) is to ensure that the nature of the supply between the supplier and the recipient determines whether the supply is taxable or exempt, not the activity to which the supply was made. In the above-mentioned Court of Appeal decision it was held that services supplied were an integral part of the financial services supplied by the recipients and therefore were an exempt supply themselves. This gives the impression that the tax status of the supply is determined by the nature of the recipient's activity, not the nature of the supply itself. This amendment overcomes this concept as regards financial services by ensuring that only those supplies which

are in themselves a financial service qualify for the exemption from GST.

In addition, section 14(a) has been amended to expand the exemption from GST in respect of the supply of financial services to include goods and services which are supplied by a supplier of financial services in conjunction with a supply of a financial service. This expansion is limited to goods and services supplied by the supplier of a financial service which are reasonably incidental and necessary to the supply of that financial service.

Despite the Government's earlier intentions when the Minister of Revenue announced that the amendments would apply from 28 July 1989, these provisions apply to supplies made on or after 16 December 1989 when the enacting legislation received the Governor-General's assent.

GOODS SOLD IN SATISFACTION OF A DEBT

Sections 4(1) and (6)
Section 10
Section 11(3)

These amendments amend the following sections of the GST Act:

- (a) Section 5(2) which deems a supply to occur where goods are sold in satisfaction of a debt;
- (b) Section 17 which provides for a special return to be furnished in respect of goods sold in satisfaction of a debt; and
- (c) Section 24 which sets out the tax invoice requirements.

Goods sold in satisfaction of debt - Sections 4(1) and (6)

A new section 5(2) of the Goods and Services Act is substituted. In addition to retaining the provision of the repealed subsection, which deemed a supply to have been made where goods of one person are sold by another in satisfaction of a debt owed by that first-mentioned person, the new subsection also:

- (a) Provides for the GST treatment of goods repossessed in terms of a hire purchase agreement.

Where a good is repossessed in terms of a hire purchase agreement and sold in satisfaction of a debt, the person seizing the good and selling it is making that supply to the subsequent purchaser on behalf the

defaulter. This means that there is no supply from the defaulter to the reposessor unless the reposessor purchases the good.

- (b) Makes it clear that the supply is deemed to be made in the course or furtherance of a taxable activity carried on by the person whose goods have been sold in satisfaction of a debt and that that person is a registered person.
- (c) Provides a mechanism for the person exercising the power of sale to determine the tax status of the supply.

At present, the person whose goods are sold is required to furnish to the person exercising the power of sale a written statement to the effect that the supply would not be taxable, if made by the first person. In addition to the written statement, the person exercising the power of sale can, where no such statement can be obtained, determine the status of the supply on the basis of any reasonable evidence held.

It is considered that reasonable information held for the purposes of paragraph (b) of the new section 5(2) would be:

- (a) Details of the customer's or borrower's GST status obtained by the retailer or financier from the customer or the borrower at the time of entering into the hire purchase agreement or loan document and whether the goods used as security form part of the taxable activity, if the customer or borrower is registered. In addition, the documentation should also contain a covenant requiring the customer or borrower to advise the retailer or financier of any change in registration for GST.
- (b) Information from the accountant, solicitor, neighbour of the person whose goods are sold, gained at the time of exercising the power of sale.

It should be noted that, in terms of section 27(1A) of the GST Act, where any assessment is raised in respect of a special return (furnished pursuant to section 17) the person exercising the power of sale is liable for any tax payable. This ensures that the onus is placed on the person exercising the power of sale to determine that the status of the supply is correct.

Special Returns- Section 10

Where goods are sold in satisfaction of a debt in terms of section 5(2) of the GST Act, section 17

requires the person selling the goods to furnish a special return accounting for the tax on that supply. This section of the amendment Act amends section 17 of the principal Act to allow the Commissioner to change the format of the special return.

At present a special return is required to be furnished, by the person selling the goods, in respect of each person whose goods are sold in satisfaction of a debt. As a result of the amendment, such supplies will now be recorded on a composite return which will allow the person selling the goods to record the supplies of different defaulters on the one return. Instead of the person who sells the goods issuing a copy of the return form to the defaulter, that person will now be required to supply to the defaulter the information shown on the return form.

Tax Invoices - Section 11(3)

Section 24 of the GST Act is amended to explicitly allow the person selling goods in satisfaction of a debt to issue a tax invoice in respect of the supply made pursuant to section 5(2). This applies whether that person is registered for GST purposes or not.

The purpose of this amendment is to ensure that a tax invoice can be issued in all cases where a recipient of the section 5(2) supply, requests a tax invoice. Previously, if the person selling the goods in satisfaction of the debt was not registered for GST purposes, that person was unable to issue a tax invoice in terms of section 60(1) of the GST Act. This problem was further compounded where the person whose goods have been seized and sold refused to provide a tax invoice or has absconded.

This amendment also provides that where the person selling the goods is not registered for GST purposes, and therefore unable to show their GST registration number on the tax invoice, that person must show their Inland Revenue Department identification number instead.

RACE BETTING - Section 4(3) - (5) and section 6(3)

Section 5(8) deems there to be a supply of goods and services when a bet is placed on a race. The value of that supply being determined by section 10(12) of the GST Act 1985. The amendments relate to two issues:

- (a) Intertrack betting, and
- (b) Rounding of dividends.

Intertrack Betting

An intertrack bet is a bet placed at a racecourse on races being conducted at another racecourse.

Section 5(8) is amended to deem there to be a supply of goods and services where an intertrack bet is placed. This amendment brings the GST treatment of intertrack betting into line with the way that GST is imposed on other forms of race betting.

Rounding of Dividends

The Racing Act 1971 provides that dividends paid shall be rounded down to the nearest 5 cents. Income from the rounding of dividends (fractions income) is deemed to be a taxable supply.

The value of fractions income is calculated as the amount of money retained by either the racing clubs or the Totalisator Agency Board due to the rounding of dividends (to 5 cents).

Example

If the amount of money available to be distributed as dividends was \$3400 and there were 2764 winning punters then the dividend that should be paid to each is \$1.23. This amount would, however, be rounded down and only \$1.20 would be paid.

The amount that is retained, by either a racing club or the Totalisator Agency Board, as a result of rounding will, following this amendment, be subject to GST.

In the example the amount of GST charged would be calculated as;

$$(3400 - (2764 \times \$1.20)) \times 1/9 = \$9.24$$

TIME OF SUPPLY - Section 5

Section 9(3)(aa)(ii) of the Goods and Services Tax Act currently provides for successive time of supply rules where:

- (i) Goods and services are supplied directly in the construction, major reconstruction, manufacture, or extension of a building or a civil engineering work, and
- (ii) The consideration for that supply is to be paid in instalments or periodically in relation to the progressive nature of the supply.

Each successive supply is deemed to take place when any payment falls due or an invoice relating to that supply is issued.

Section 5 widens the scope of section 9(3)(ii)(aa) to include goods and services supplied directly in the construction, major reconstruction, manufacture, or extension of an engineering work.

An example of an engineering work that will now be included within the scope of section 9(3)(aa)(ii) is the construction of a boat.

VALUE OF SUPPLY OF GOODS AND SERVICES - Section 6(1)

Section 10(3) of the Goods and Services Tax Act provides that where there is a supply between two associated persons the consideration shall be deemed to be the open market value of that supply.

Section 10(3A) provides that section 10(3) shall not apply where the associated persons are both registered. However, this exclusion could have been used to manipulate the GST value of goods and services provided between associated parties who could thereby gain a GST advantage.

Section 6(1) of the Act repeals the previous section (3A) and substitutes a new subsection which provides that section 10(3) shall not apply where:

- (i) Both of the associated persons are registered, and
- (ii) The supply is principally for use in a taxable activity.

IMPOSITION OF GOODS AND SERVICES TAX ON IMPORTS - Section 7

Section 12(2) of the Goods and Services Tax Act determines the value, for GST purposes, of goods imported into New Zealand.

This provision is now amended to provide that this value will include any amount of duty levied under the Dumping and Countervailing Duties Act 1988.

TAXABLE PERIODS - Section 9

Section 9 amends section 15 of the Goods and Services Tax Act 1985.

Section 15 provides for taxable periods of one, two, or six months duration. This amendment ensures that all taxable periods commence on the first day of a month and finish on the last day of a month.

TAX INVOICES - Section 11

Section 11 amends section 24 of the Goods and Services Tax Act 1985 to:

- (i) Deem an invoice issued by the recipient of a supply to be a tax invoice, where certain conditions are met, and
- (ii) Alter the conditions that are required to be met before an invoice issued by the recipient of a supply may be deemed to be a tax invoice.

An invoice that is issued by the recipient of a supply will be deemed to be a tax invoice only where, in addition to the present conditions contained in section 24, the following conditions are met:

- (a) The invoice is provided to the supplier of the supply and a copy is retained by the recipient of the supply, and
- (b) The words "buyer created tax invoice - IRD approved" are displayed in a prominent place on the document.

The current conditions, that still apply, are

- (a) The Commissioner must grant prior approval for the issue of such documents.
- (b) The supplier and the recipient must agree that the supplier shall not issue a tax invoice in respect of the taxable supply to which the recipient created tax invoice has been issued.
- (iii) Require that the words "modified tax invoice - IRD approved" be shown in a prominent place on any tax invoice which is issued pursuant to a determination by the Commissioner, that a tax invoice may omit one or more of the requirements specified in the Goods and Services Tax Act.
- (iv) Provide that where the Commissioner has granted his approval for a recipient to issue tax invoices in respect of a supply of goods and services, that approval may be withdrawn at any time where the Commissioner is satisfied that the conditions of that approval have not been complied with.
- (v) Provide that where the Commissioner has determined, either, that modified tax invoices may be issued, or that a tax invoice is not required to be issued, that

determination may be revoked at any time where the Commissioner is satisfied that the conditions of that approval have not been complied with.

CREDIT AND DEBIT NOTES - Section 12

Section 25 of the GST Act specifies situations where a debit note or credit note may be issued and the details that are required to be shown.

The amendment provides that where a supplier has issued one or more tax invoices to a recipient in respect of taxable supplies and;

- (i) One or more supplies of goods and services have been cancelled; or
- (ii) The nature of those supplies of goods and services has been fundamentally varied or altered; or
- (iii) The previously agreed consideration for those supplies of goods and services has been altered, whether due to discount or otherwise; or
- (iv) The goods and services or part of those goods and services have been returned to the supplier,

the Commissioner may determine that the supplier may issue one credit note or debit note to each recipient with respect to those tax invoices.

Approval is conditional on:

- (i) The Commissioner being satisfied that there are sufficient records available to establish the particulars of a supply, and
- (ii) Any other conditions the Commissioner may consider necessary.

For example, a wholesaler may make supplies to individual retailers every week and then allow a discount based on the total volume purchased over a six month period. At present a credit note is required to be issued with respect to each weekly supply to each retailer. The amendment allows, where the Commissioner's approval has been granted, for a single credit note to be issued to each retailer in respect of the entire six months period.

NEW START GRANTS - Section 13

Section 48A of the GST Act allows the Commissioner to remit any amount of GST payable by a registered person where that person has received

a New Start Grant in respect of drought relief.

This amendment extends the scope of that relief to include New Start Grants paid to farmers in the Kerikeri area which have been affected by extreme rainfall.

The Commissioner is also provided the discretion to determine the amount of tax relief allowed. This is to ensure that a farmer accepting a New Start grant receives the full amount of the grant intact.

This amendment is deemed to come into force on the 4th of November 1988.

REGISTRATION - Section 14

This amendment amends section 51 of the GST Act which deals with registration for GST purposes.

It provides that where an application for registration for GST purposes has been made for or on behalf of any person that application shall be deemed to have been authorised by the person on whose behalf the application was made unless the contrary is proved. Previously, the onus was placed on the Commissioner to prove that the application for registration was made with approval of the registered person.

KEEPING OF RECORDS - Section 15

Section 75 of the GST Act sets out the records keeping requirements for registered persons.

The section is amended to ensure that registered persons are required to retain copies of all documents issued by them. The wording of the section prior to this amendment potentially left the provision open to the interpretation that only those records necessary to "enable ready ascertainment ... of that person's liability to tax" were required to be kept.

AMENDMENTS TO RATE CHANGE PROVISIONS

Section 16

Section 17

Section 18

The GST Act 1985 was amended by the Goods and Services Tax Amendment Act (No. 3)1988 and the Finance Act (No. 4) 1989 to introduce provisions to facilitate a GST rate change. In particular, the following provisions were introduced:

Section 78A: This section requires a registered person whose taxable period spans the date on

which the change in the rate occurs to file a return in two parts for that taxable period.

Section 78B: This section provides for an adjustment to be made by registered persons who account for GST on a payments basis in respect of particular supplies. This adjustment applies in respect of supplies made or received prior to the change in the rate of GST which have not been accounted for in a taxable period ending prior to that date. When such supplies (referred to as qualifying supplies) are accounted for subsequent to the rate change, they are accounted for at the new rate. This adjustment ensures that the effective rate for output tax or input tax is the old rate.

Section 78C: This section deals with changes in accounting basis that either coincide with a rate change or occur after a rate change.

The above provisions are discussed in detail in the Department's Public Information Bulletins 177 and 181.

Adjustment: Bad Debt Relief/Change in Accounting Basis - Section 16

This section amends section 78B of the GST Act which provides for an adjustment to be made by persons accounting for supplies on a payments basis as at the time of a GST rate change.

In particular, subsection (6) of section 78B requires the above adjustment to be reversed where a taxable supply made prior to the rate change (referred to as a qualifying supply) is written off as a bad debt. This is to ensure that the registered person does not obtain a tax advantage in respect of qualifying supplies written off.

However, where a registered person has changed accounting basis subsequent to a rate change and writes off taxable supplies made before the rate change a tax advantage can be gained or a tax loss suffered.

Two new subsections are enacted to overcome these difficulties.

The new subsection (6A) applies where a registered person has changed from the invoice basis of accounting to the payments basis after a rate change. It provides that in relation to any qualifying supplies made which are subsequently written off as a bad debt the person is deemed to have made an adjustment pursuant to section 78B(1) in respect of that qualifying supply. As a result subsection (6) applies to recover that deemed adjustment made. This ensures that the registered person does not obtain a tax advantage.

The new subsection (6B) applies where a registered person has changed from a payments to an invoice basis of accounting after a rate change. The effect of subsection (6B) is to deem the adjustment in terms of section 78B(1) never to have been made. This means that where qualifying supplies are written off after the rate change there is no recovery of the adjustment made on the rate change. This ensures that such persons do not suffer a tax loss.

These amendments took effect from 1 July 1989 to coincide with the date the rate of GST was changed.

Adjustment: Credit and Debit Notes - Section 17

This section inserts a new section 78BA into the GST Act. This new provision applies in respect of debit and credit notes issued in respect of qualifying supplies made or received which have not been accounted for at the time of issue or receipt of that debit or credit note. It ensures that a registered person does not obtain a tax advantage or suffer a loss in such circumstances.

As mentioned in relation to section 16, a person who accounts for GST on supplies made or received on a payments basis is required to make an adjustment in respect of qualifying supplies following a rate change. The effect of this new section in relation to qualifying supplies for which a debit or credit note is issued or received is to ensure that the adjustment made on the rate change is on the basis of the amended consideration of the supply shown on the debit or credit note.

The new section provides that where a registered person being a supplier issues a debit or credit note in respect of a qualifying supply, an adjustment is required to be made to the tax payable by that person. This only applies where payment for the qualifying supply has not been received at the time of the issue of the debit or credit note. This adjustment is made in the taxable period in which the debit or credit note was issued.

Also, a registered person, being the recipient of a debit or credit note in respect of a qualifying supply, is required to make an adjustment to the tax payable in the taxable period in which the debit or credit note is received. The adjustment is required to be made only where payment for the qualifying supply has not been made at the time the debit or credit note is received. A registered person must make this adjustment where a debit or credit note has not been issued, but written (or other) notice or knowledge has been received that

a tax invoice held in respect of a qualifying supply is incorrect.

The amount of the adjustment in each case is determined by subtracting from the consideration originally payable or receivable the amount now payable or receivable in terms of the debit or credit note. The resultant amount is multiplied by an amount equal to the old tax fraction (1/11th) subtracted from the new tax fraction (1/9th).

Where the amount of the adjustment, in the case of the registered person who issues a debit or credit note is

- (a) A positive amount, it is treated as output tax; and
- (b) A negative amount, it is treated as input tax.

Where the amount of the adjustment, in the case of a registered person who receives a debit or credit note, is:

- (a) A positive amount, it is treated as input tax; and
- (b) A negative amount, it is treated as output tax

This amendment took effect from 1 July 1989 to coincide with the date the rate of GST was changed.

Change in Accounting Basis - Section 18

This section amends section 78C(2) of the GST Act which deals with the situation where a change in the accounting basis occurs after a rate change. The intention of this section was

- (a) The calculations required to be made in terms of section 19(7) and 19(8) (change in accounting basis) by a registered person would be at the new rate; and
- (b) The registered person would account for all supplies after the change in accounting basis when payment was received or made at the new rate notwithstanding that supply may have had GST imposed at the old rate.

However, when this section was enacted it did not explicitly require the registered person to account for all supplies at the new rate when payment was made or received. This deficiency in the legislation led to a registered person either gaining a tax windfall or suffering a loss depending on the circumstances. This amendment rectifies this deficiency.

All such payments received or made after a change in accounting basis are deemed to be consideration for a supply made or received by the registered person on or after the rate change. Input tax or output tax in respect of such supplies is calculated on the basis of the new rate.

This amendment took effect from 1 July 1989 to coincide with the date the rate of GST was changed.

APPENDIX B TO TIB NO. 8, FEBRUARY 1990

EXPLANATION OF GOODS AND SERVICES TAX AMENDMENT ACT (NO. 2)1989

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