

## AMENDMENTS TO GST, IRD, AND UNCLAIMED MONEY ACTS

This Appendix details the amendments made by the following Acts:

- The Goods and Services Amendment Act 1990
- The Inland Revenue Department Amendment Act 1990
- The Unclaimed Money Amendment Act 1990

These Acts were enacted on 1 August 1990.

### GOODS AND SERVICES AMENDMENT ACT 1990

The following amendments result from issues raised as part of the GST Legislative Audit.

#### 1. SHORT TITLE - Section 1

This Act can be cited as the Goods and Services Amendment Act 1990, and shall be read as part of the Goods and Services Act 1985. Unless otherwise stated these provisions of this section shall come into force on the day on which this Act received the Royal Assent (1 August 1990).

#### 2. INTERPRETATION - Section 2

This section makes a number of amendments to definitions.

The section omits the definition of the term "superannuation scheme" from section 3(2) of the GST Act and inserts a new definition of "superannuation scheme" which refers to the Superannuation Schemes Act 1989.

The section also amends the definition of second-hand goods to allow *wool* (as defined in section 2 of the Wool Industry Act 1977) purchased from a non registered grower to be treated as secondhand goods for the period 24 March 1988 to 1 July 1989.

#### Retirement villages

The definition of commercial dwelling is amended and a new definition of license to occupy is included.

These changes, together with a change to section 14, extend the exemption from GST for rent to include the supply of accommodation in a dwelling (ie. a unit, apartment, etc.) situated within a

rest home complex or a retirement village. The exemption applies where the only service supplied in return for rent paid, is the right to occupy that dwelling. This amendment ensures that the supply of accommodation in a dwelling within a retirement village or a rest home is treated in the same manner as other supplies of residential accommodation .

This amendment applies from 1 August 1990 which is the date the Act received the royal assent.

#### 3. MEANING OF THE TERM SUPPLY - Section 3

Section 5 of the principal Act is amended by repealing subsection (11A). This subsection included within the meaning of the term supply, the application of postal stamps to a postal note where the postal note will be used as consideration for a supply.

This subsection is now repealed as New Zealand Post ceased to issue postal notes in August 1986.

This section applies from 1 August 1990 which is the date the Act received the royal assent.

#### 4. ZERO RATING - Section 4

Section 4 of the amendment Act makes four amendments to Section 11 of the principal Act. The amendments are as follows.

1. The legislation is clarified to make it clear that the supplier has to enter the goods for export and that the goods have to be exported by the supplier in order to be zero rated.
2. The zero rating provisions are amended to allow the customs sealed bag system to qualify for zero rating.
3. The Commissioner is given the discretion to extend the time allowed to elapse between goods being entered for export and actually being exported before GST is charged at the standard rate.
4. The legislation is clarified to make it clear that moveable personal property does not include "choses in action".
5. Consequential amendment to section 32 of the principal Act.

## **Supplier to be the exporter of the Goods**

Section 11(1)(a) of the principal Act is amended to make it clear that in order for a good to be zero rated the supplier has to enter the good for export and actually export the good within 28 days of supply.

Previously the Act allowed goods to be zero rated where they were entered for export, however there was no requirement for the supplier to export the goods or to ensure that the goods were actually exported.

## **Sealed Bag system**

As a result of the above amendment a specific provision had to be inserted into the zero rating provisions to enable goods exported under the sealed bag system to qualify for zero rating.

The sealed bag system allows holders of an export warehouse licence, who have been granted a licence to operate a sealed bag system, to sell duty free and GST free goods to tourists who will be departing NZ within five working days of the date of the sale. The duty free goods are placed in a sealed bag which is uplifted by the tourist. The purchase is evidenced as having been exported by the plucking of a sales docket from the sealed bag by an agent of the duty free shop when the passenger enters the departure lounge at an international airport.

Sales made by the licensed duty free shop which cannot be evidenced as having been exported in the sealed bag by the matching of dockets collected at the airport with those of the duty free shop, will be subject to GST at the standard rate.

## **The Commissioner's discretion to extend the 28 day time limit for goods to be exported.**

The time limit allowed to elapse between goods being entered for export and actually being exported before GST is charged at the standard rate is extended.

Previously the proviso to section 11(1)(a)(ii) only catered for circumstances, beyond the control of the parties to the contract, which prevented the goods from being exported within 28 days of the time of supply. This proviso applied to such events as strikes, bad weather etc.

The legislation now provides that the Commissioner may extend the 28 day period within which a good has to be exported, upon written application by the supplier, where

1. Circumstances beyond the control of the supplier and recipient, have prevented or will prevent the exportation of those goods within 28 days of the time of supply; or
2. Due to the nature of the supply it is not practical for those goods to be exported within 28 days of the time of supply.

It is proposed that suppliers of similar goods on a regular basis, such as magazines, newspapers, books, etc, may seek the prior approval of the Commissioner for individual suppliers to extend the period allowed between the deemed time of supply and the export for a certain class of supplies.

Where the good is not a high volume supply or a supply of similar goods, for example the supply of a boat, then the supplier may seek prior approval by the Commissioners to extend, for a specified time, the period allowed between the deemed time of supply and export of an individual supply.

## **Moveable personal property does not include choses in action**

Prior to this amendment it could be argued that the term "moveable personal property" included choses in action.

A chose in action is a right to something which the person who holds the right does not have possession of, for example, shares, trademarks, copyrights, patents, mortgages, life insurance policies, and debts.

It was never intended that choses in action be included in the term moveable personal property for the purposes of the zero rating provisions contained in section 11(2) of the principal Act.

The term moveable personal property in paragraphs (c)(i) and (e)(ii) of section 11(2) of the principal Act is amended to exclude choses in action.

This amendment also ensures that choses in action provided to a non resident who is outside NZ at the time the service are performed, but where those rights are for use within NZ, are not zero rated.

## **Consequential amendment to section 32 of the principal Act**

Section 32(1) of the principal Act is consequentially amended to replace the previous reference to section 11 of the principal Act in order to take account of the new paragraphs inserted in section 11.

This section applies from the 1st of August 1990 which is the date the Act received the royal assent.

## **5. IMPOSITION GOODS AND SERVICES TAX ON IMPORTS - Section 5**

Two amendments are made to Section 12(4) of the principal Act.

The first amendment inserts a new paragraph (ba) which allows a non registered person who imports goods, or a registered person who imports goods in his/her private capacity, to claim back the GST paid on the imported good where the good is found to be faulty or the wrong good has been sent.

The person who imports the good has to be the person who exports the good in order for a refund to be obtained.

The re-export of the faulty or wrong good has to be -

- 1) In relation to the wrong goods imported, within a two month period of the date of importation or, where the Comptroller of Customs approves, a period up to 12 months after the date of importation.
- 2) In relation to faulty goods, within 12 months of the date of importation.

The second amendment exempts from GST the importation of certain tourist publicity and promotional material. This amendment was instigated by the OECD Council on International Tourism which adopted a convention under which member countries were obliged to admit certain tourist and publicity material free of all duties and taxes.

Material covered by this convention is listed below.

This section applies from the 1st of August 1990 which is the date the Act received the royal assent.

- a) Documents (folders, pamphlets, books, magazines, guides, posters framed or unframed, unframed photographs and photographic enlargements, maps whether illustrated or not, printed window transparencies, illustrated calendars) for free distribution, the chief purpose of which is to encourage the public to visit foreign countries, including inter alia, attending cultural, touristic, sporting, religious or professional meetings or demonstrations held in such foreign countries, provided that these documents do not contain more than 25

percent private commercial advertising and are obviously designed for general publicity purposes.

- b) Lists and year books for foreign hotels published or sponsored by official tourist organisations and timetables of transport services operating abroad, when such documents are for free distribution and do not contain more than 25 percent private commercial advertising.
- c) Technical material sent to the representative or correspondents appointed by official tourist organisations, not intended for distribution, eg year books, telephone or telex directories, lists of hotels, catalogues of fairs, samples of negligible value of handicrafts, documentation about museums, universities, spas and other institutions.

The following "tourist promotional material" is required to be admitted free of any duties or taxes when it is imported by official tourist organisations or bodies recognised by them and approved by the competent authorities of the importing country:

- a) Pictures and drawings, framed photographs and photographic enlargements, art books, paintings, engravings or lithographs, sculptures and tapestries and other similar works of art.
- b) Display material (show cases and similar articles), including electrical and mechanical equipment required for operating such displays.
- c) Documentary films, records, video and tape recordings and other audio visual works intended for use in performances at which no charge is made, but excluding those whose subjects lend themselves to commercial advertising and those which are on general sale in the country of importation.
- d) A reasonable number of flags.
- e) Dioramas, scale models, lantern-slides, printing blocks, photographic negatives.
- f) Specimens, in reasonable numbers, of articles of local handicrafts, local costumes, and similar articles of folklore.

## **6. EXEMPT SUPPLIES (LEASEHOLD LAND) - Section 6**

Two amendments are made to section 14 of the principal Act. The first exempts from tax the supply of residential rental accommodation in a

rest home or a retirement village. This amendment has been explained above in relation to retirement villages (section 2).

The second amendment relates to the sale of leasehold land that has previously been used for the supply of rental accommodation.

The sale by any registered person of any dwelling used for the supply of residential accommodation for a period of 5 years or more is deemed by the GST Act 1985 to be an exempt supply.

The freeholding of leasehold land used for residential accommodation is now (from 1 August 1990) treated in the same manner.

## **7. TAXABLE PERIOD (RETURN TO THE DATE OF BANKRUPTCY OR DEATH) - Section 7**

Section 15, which provides for the allocation of return periods, has been amended to allow return periods to be cut short in certain circumstances. Normally taxable periods end on the last day of the final month of the period. Now, (from 1 August 1990) where a registered person dies, goes into liquidation or receivership, or becomes bankrupt - the date of death, insolvency, etc., is deemed to be the last day of the person's taxable period.

This amendment removes the requirement for trustees and the like to furnish GST returns that include supplies made both before and after the date of death, adjudication of bankruptcy, etc. Two returns will now be furnished in such cases - the second return will cover the period from the day after death or insolvency until the end of the usual taxable period. Both returns will be due on the normal due date.

The amendment does not affect the status of a trustee, liquidator or receiver. These persons are still deemed to be carrying on the taxable activity of the deceased or insolvent person.

This amendment takes effect from the 1st of August 1990 which is the date the Act received the royal assent.

## **8. CALCULATION OF TAX PAYABLE - Section 8**

This section includes two of the three amendments to section 20 of the principal Act.

The first amendment repeals paragraph (da) of subsection (3) which allowed the National Roads

Fund to claim an input credit in respect of any excise duty refunded in terms of the Transport Act 1962. This paragraph has been repealed because with the advent of The Transit NZ Act 1989, which came into force on the 1st of October 1989, the National Roads Fund has been abolished.

The second amendment redrafts section 20(3A) and splits it into 2 subsections, with effect from 1 August 1990, because there were doubts about its effectiveness. It was originally inserted in conjunction with the temporary concessional deregistration provision given by section 5(3A). That section gave voluntary registrants and non-profit bodies the opportunity to deregister without having to pay output tax on assets held before 1 October 1986.

The new sections 20(3A) and 20(3AB) prevent any input credit being claimed by the owner, or an associated person of the owner, for the subsequent use, within 5 years, of any asset concessionally treated under section 5(3A).

## **9. CANCELLATION OF REGISTRATION - Sections 9, 10, and 13**

A number of amendments are made to the GST Act to allow the Commissioner to instigate the deregistration of a registered person where the Commissioner is satisfied that the person has not been carrying on a taxable activity.

The first amendment amends section 27(1) of the principal Act by inserting a new paragraph (ca). This paragraph allows the Commissioner to make an assessment of the amount of the tax payable, where that person has been deregistered by the Commissioner, from the date of original registration. This ensures that the Commissioner can require the repayment of input tax previously claimed by the deregistered person.

Section 32(1) is amended to enable a person to object to the Commissioner's decision to either deregister or register the person for GST purposes. The amendment includes within the term "decision" anything which is left to the *satisfaction* of the Commissioner. The words "satisfies" and "satisfied" appear in sections 51 and 52 of the principal Act with respect to the Commissioner being satisfied that a person should be registered, or that the person should be deregistered for GST purposes.

Section 52 enables the Commissioner to instigate the deregistration of a registered person. Previously the Commissioner could only deregister a registered person where the registered person made written application seeking deregistration.

Also a minor amendment is made to Section 27(4) of the principal Act which deals with setting a new due date for the payment of tax after a reassessment has been issued or a where an assessment has not been issued until after the due date for the payment of tax. This section allows the Commissioner to set a new due date for the payment of tax where the Commissioner does not suspect "wilful neglect" on behalf of the registered person in complying with the GST Act.

The amendment removes the word "wilful" from the expression "wilful neglect" because it is felt that it would be difficult for the Commissioner to prove "wilful neglect" as opposed to "neglect".

This section applies from the date of assent of the Act which is 1st of August 1990.

#### **10. RECOVERY OF TAX - Section 11**

Previously section 42 of the principal Act, which deals with the recovery of tax, did not cover the situation where a business entity other than a company, went into receivership.

The amendment inserted another paragraph into section 42(2) of the GST Act to ensure that when a receiver is placed in charge of a partnership, trust, or unincorporated body that any unpaid GST ranks ahead of all other debts.

This amendment applies from 1 August 1990 which is the date of assent of the legislation.

#### **11. INTEREST ON REFUNDS - Section 12**

This item modifies the circumstances in which interest is paid to registered persons where a refund has been requested.

Where the Department is not satisfied with a return and requests information about it, interest will have to be paid if, within 15 working days of the receipt of that information, no response has been made by the Department.

If however, the Department is not satisfied with a return and decides at any time that the return needs investigation, then the Department, providing notice is given is not bound by the requirement to pay interest on the refund.

The second change prevents the Department from incurring interest on a refund that has been withheld due to a registered person having failed to furnish returns for any taxable period as required by the Act. The change will mean that where a person claims a refund, the Department will not start to incur interest on that refund until

15 working days after the Department has received all of that registered person's outstanding returns.

This amendment applies from the 1st of August 1990 which is the date of assent of the Act.

#### **12. GROUP OF COMPANIES - Section 14**

This section makes a minor drafting amendment to section 55(8)(c) of the GST Act. The amendment replaces the word "persons", with the word "individuals".

This amendment applies from the 1st of August 1990 which is the date of assent of the Act.

### **INLAND REVENUE DEPARTMENT AMENDMENT ACT 1990**

#### **14. SHORT TITLE - Section 1**

This Act can be cited as the Inland Revenue Department Amendment Act 1990, and shall be read as part of the Inland Revenue Department Act 1974. The provisions of this section shall come into force on the day on which this Act received the Royal Assent (1 August 1990).

#### **15. EVIDENCE OF FINANCIAL OR PROPERTY TRANSACTIONS - Section 2**

This section amends section 21 of the Inland Revenue Department Act 1974 which relates to evidence of financial or property transactions and allows the Commissioner to use certain types of evidence in proceedings. Previously the section only applied to proceedings in relation to the Income Tax Act 1976 or the Land Tax Act 1976 but the amendments made by this section extend the scope of the section to include proceedings in relation to the Goods and Services Tax Act 1985.

As a result of the amendment any record, or entry in any record, or photocopy thereof, made in the regular course of business or a taxable activity shall be admissible as evidence when produced by the Commissioner in proceedings for proving the alleged offence.

Although the amendment applies from the date of the Governor-General's assent, section 21 has its own application. As a result all records will be admissible irrespective of when they came into existence and irrespective of when any offence, or alleged offence, was committed.

**UNCLAIMED MONEY  
AMENDMENT ACT 1990**

**16. SHORT TITLE - Section 1**

This Act can be cited as the Unclaimed Money Amendment Act 1990, and shall be read as part of the Unclaimed Money Act 1971. The provisions of this section shall come into force on the day on

which this Act received the Royal Assent (1 August 1990).

**17. COMMISSIONER MAY MAKE  
PAYMENT TO CLAIMANT - Section 2**

This section corrects a minor drafting error to ensure that the Commissioner is not responsible for the payment of money which has been paid out to a prior claimant.