



TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

GST – input tax deduction and taxable activity

Decision date | Rā o te Whakatau: 8 March 2023

Issue date | Rā Tuku: 11 September 2023

TDS 23/11

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Subjects | Kaupapa

GST: input tax deduction; tax invoice; taxable activity; cancellation of registration.

Taxation laws | Ture tāke

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

Facts | Meka

1. The Taxpayer is a company. It was registered for GST on a payment basis.
2. The Taxpayer claimed input tax deductions for the periods under dispute (disputed periods).
3. Customer & Compliance Services, Inland Revenue (CCS) proposed to reassess the GST assessments of the Taxpayer for the disputed periods, on the basis that the Taxpayer did not provide the required records and documentation to allow for an input tax deduction. CCS also considered that the Taxpayer did not provide sufficient evidence to show that a taxable activity was being carried on.
4. CCS proposed to cancel the Taxpayer's GST registration retrospectively.

Issues | Take

5. The main issues considered in this dispute were:
 - whether the Taxpayer met the requirements to claim input tax deductions in the disputed periods; and
 - whether the Taxpayer carried on a taxable activity continuously and regularly in accordance with s 6.
6. There was also a preliminary issue on the onus and standard of proof.

Decisions | Whakatau

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

- the Taxpayer did not meet the requirements to claim input tax deductions in the disputed periods; and
- the Taxpayer was not carrying on a taxable activity and should be retrospectively deregistered.

Reasons for decisions | Pūnga o ngā whakataau

Preliminary issue | Take tōmua: Onus and standard of proof

8. The onus of proof in civil proceedings¹ is on the taxpayer, except for shortfall penalties for evasion or similar act, or obstruction.² The taxpayer must prove that an assessment is wrong, why it is wrong, and by how much it is wrong.³
9. The standard of proof in civil proceedings is the balance of probabilities.⁴ This standard is met if it is proved that a matter is “more likely than not”.⁵ Whether the Taxpayer has discharged the onus of proof is considered in the other issues.

Issue 1 | Take tuatahi: Input tax deduction requirements

10. The issue is whether the Taxpayer had satisfied the documentation requirements to claim the GST input tax deductions in the disputed periods.
11. The calculation of GST payable by a registered person is set out in s 20. In brief, 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)).
12. Requirements for deductibility:
 - Input tax can only be claimed by a GST registered person. Registration for GST is dependent on a person carrying on a taxable activity.

¹ Challenge proceedings (ie, the proceedings that would follow if this dispute proceeds to the TRA or a court) are civil proceedings.

² Section 149A(2) of the Tax Administration Act 1994 (TAA).

³ *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA); *Beckham v CIR* (2008) 23 NZTC 22,066 (CA).

⁴ Section 149A(1) of the TAA; *Yew v CIR* (1984) 6 NZTC 61,710 (CA); *Birkdale Service Station Ltd v CIR* (1999) 19 NZTC 15,493 (HC); *Case X16* (2005) 22 NZTC 12,216; *Case Y3* (2007) 23 NZTC 13,028.

⁵ *Miller v Minister of Pensions* [1947] 2 All ER 372, 374.

- 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.⁶
- The goods or services acquired must have been used for, or available for use in, making taxable supplies (s 20(3C)).⁷
- Tax invoice requirements must be met.

Tax invoice requirements

13. Generally, for a person to claim an input tax deduction in respect of a supply, a tax invoice must be provided in accordance with the GSTA, and the person must hold the tax invoice when they furnish the return (s 20(2)(a)).
14. It is not enough that the taxpayer merely shows there was a supply made to them. It must go further and provide sufficient particulars of the supply, generally in a tax invoice.⁸
15. The tax invoice must satisfy the requirements for a "tax invoice". A tax invoice must contain the particulars set out in s 24(3) or in s 24(4) for supplies not exceeding \$1,000.
16. A tax invoice is not required for supplies made for a consideration of \$50 or less (s 24(5)).⁹
17. Even if the above requirements for an input tax deduction are satisfied, the Commissioner may determine that no such deduction is available if sufficient records are not kept in accordance with s 75.
18. TCO decided that the Taxpayer was not entitled to the input tax deductions relating to supplies over \$50 claimed in the disputed periods because:
 - the Taxpayer had failed to provide the tax invoices for all the input tax deductions; and
 - to the extent that the Taxpayer had provided tax invoices, they were issued to another party and were not evidence that the Taxpayer acquired the goods or services.

⁶ *CIR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 at 13,193.

⁷ *Case Z12* (2009) 24 NZTC 14,142; *CIR v Trustees in the Mangaheia Trust* (2009) 24 NZTC 23,711.

⁸ *Case 1/2012* (2012) 25 NZTC 1,013 at [147].

⁹ See Tax Information Bulletin Vol 7, No 4 (October 1995) at 9 for the Commissioner's policy on the record keeping requirements for goods or services costing \$50 or less.

19. Whether the Taxpayer was entitled to input tax deductions relating to supplies costing \$50 or less was dependent upon whether the Taxpayer was carrying on a taxable activity.

Issue 2 | Take tuarua: Taxable activity

20. An input tax deduction can only be made by a GST registered person. Whether a person is liable to register (s 51(1)), and whether they are entitled to voluntarily register (s 51(3)), is dependent on their taxable activity status.
21. Section 52(5) allows the Commissioner to cancel a person's registration if he is satisfied that the registered person is no longer carrying on a taxable activity. The effective date of cancellation can be retrospective to a date determined by the Commissioner, but not earlier than the last day of the taxable period during which the taxable activity ceased (s 52(5A)).
22. "Taxable activity" is defined in s 6. There are four requirements that must be satisfied to show there is a taxable activity under s 6(1)(a):
- There must be an activity.¹⁰
 - The activity must be carried on continuously or regularly by a person.¹¹
 - The activity must involve, or be intended to involve, the supply of goods and services to another person.¹²
 - The supply or intended supply must be made for a consideration.¹³

¹⁰ *Newman v CIR* (1994) 16 NZTC 11,229 (HC) at 11,233, *CIR v Bayly* (1998) 18 NZTC 14,073 (CA) at 14,078, and *Case 14/2016* [2016] NZTRA 14, (2016) 27 NZTC 3-036 at [63].

¹¹ *CIR v Newman* (1995) 17 NZTC 12,097 (CA) at 12,100; *Smith v Anderson* (1880) 15 Ch D 277 at 278; *Premier Automatic Ticket Issues Ltd v FCT* (1933) 50 CLR 268 (HCA) at 298; *Case 14/2016* at [67]-[68]; *Wakelin v CIR* (1997) 18 NZTC 13,182 (HC) at 13,185-13,186; *Case N27* (1991) 13 NZTC 3,229 at 3,238-3,239; *Allen Yacht Charters Ltd v CIR* (1994) 16 NZTC 11,270 (HC) at 11,274; *Case P20* (1992) 14 NZTC 4,136 at 4,147; *Tout & Anor v Cook* (1991) 13 NZTC 8,053 (HC).

¹² Definition of "supply" in s 5(1); *Databank Systems Ltd v CIR* (1987) 9 NZTC 6,213 (HC) at 6,223; *Pacific Trawling Ltd v Chief Executive of the Ministry of Fisheries* (2005) 22 NZTC 19,204 (HC); *Case S77* (1996) 17 NZTC 7,483; *Case L67* (1989) 11 NZTC 1,391; *Case N27* at 3,239-3,238; *Case 14/2016* at [69].

¹³ Definition of "consideration" in s 2(1); *CIR v New Zealand Refining Co Ltd* (1997) 18 NZTC 13,187 (CA) at 13,193; *Director-General of Social Welfare v De Morgan* (1996) 17 NZTC 12,636 (HC); *Suzuki New Zealand Ltd v CIR* (2001) 20 NZTC 17,096 (CA) at [61]; *Taupo Ika Nui Body Corporate v CIR* (1997) 18 NZTC 13,147 (HC) at 13,150; *Chatham Islands Enterprise Trust v CIR* (1999) 19 NZTC 15,075 (CA) at [18] and [30]. *Trustee, Executors and Agency Company New Zealand Limited v CIR* (1997) 18 NZTC 13,076 (HC) at 13,086; *Turakina Maori Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032 (CA).

23. Based on the evidence presented in this dispute, TCO decided that the Taxpayer did not satisfy the onus of proving that it was carrying on a taxable activity because:
- While the intermittent issuing of invoices by the Taxpayer may have suggested the Taxpayer was undertaking an activity, there was insufficient evidence to support an argument that the activity (if any) was carried out by the Taxpayer continuously or regularly.
 - There were no contracts, correspondence or explanations of the activities undertaken by the Taxpayer to support a view that the Taxpayer was carrying on a taxable activity.
 - The Taxpayer had not provided sufficient descriptions or explanations of its course of conduct during the disputed periods to support a position that it was carrying on a taxable activity.
24. As the Taxpayer was not carrying on a taxable activity, CCS was able to cancel the Taxpayer's GST registration in accordance with sections 52(5) and 52(5A). As such, the Taxpayer was unable to claim an input tax deduction in the disputed periods.