

TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

GST registration date

Decision date | Rā o te Whakatau: 16 January 2024

Issue date | Rā Tuku: 28 May 2024

TDS 24/10

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Subjects | Kaupapa

Commissioner's discretion; GST: voluntary registration, backdating registration

Taxation laws | Ture tāke

All legislative references are to the Goods and Service Tax Act 1985.

Facts | Meka

1. This dispute involved an attempt by the Taxpayer to register for GST with a backdated date of registration.
2. The Taxpayer had been registered for GST from its incorporation in early 2021 (first application for GST registration). However, the Taxpayer was deregistered in mid-2021 at the request of the Taxpayer's first agent. The Taxpayer argues that this was a mistake.
3. The first agent was eventually replaced in June 2022, and the new agent, on realising the Taxpayer was not registered for GST, requested the Taxpayer be re-registered with effect from the original date of registration (second application for GST registration). This application was denied as the agent failed to respond to a request for information from Customer and Compliance Services, Inland Revenue (CCS) to support the application.
4. The agent applied for GST registration again in March 2023 (third application of GST registration). This time CCS approved the registration application but refused to backdate the registration as requested by the agent.
5. The Taxpayer had purchased two properties:
 - The Taxpayer had signed a sale and purchase agreement to purchase the properties in October 2021 with settlement in February 2022.
 - The properties had existing residential houses which were rented out.
 - The Taxpayer had plans drawn up to develop these properties with the removal of the existing houses and a subdivision into several lots with new units on each.

Issues | Take

6. In relation to the effective date of registration, the main issues considered in this dispute were whether:
 - the Taxpayer's application for registration was a voluntary registration or whether the Taxpayer was liable to register for GST;
 - if the application was voluntary, whether CCS's decision not to backdate the registration was a valid exercise of the Commissioner's discretion under s 51(4)(a).

Decisions | Whakatau

7. TCO decided:
 - The Taxpayer's application for registration was a voluntary application because the Taxpayer was not liable to be registered. This meant that under s 51(4)(a), CCS had a discretion to determine the effective date of registration.
 - CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

Reasons for decisions | Pūnga o ngā whakatau

Voluntary and mandatory GST registration

8. Whether a person is liable to register or voluntarily registers can affect the effective date of registration.
9. A person may voluntarily register for GST (subject to some conditions), or they may be required to register for GST. Where a person registers voluntarily, the Commissioner may determine the date of registration (s 51(3) and (4)(a)). Where a person becomes liable to be registered, the person must apply for registration within 21 days of becoming liable. If they are liable for registration and make an application within 21 days, again, the Commissioner may determine the date of registration. If a person does not apply for registration within the time frame, then the effective date of application is the date the person first became liable to be registered. This last point is subject to the proviso that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Commissioner considers equitable (CCS did not rely on this proviso).

Whether the Taxpayer was liable to be registered

10. To be liable to be registered for GST, a taxpayer must have reasonable grounds for believing that their taxable supplies made in that month and the following eleven months would exceed the \$60,000 threshold (threshold). The onus is on a taxpayer to prove these grounds. Whether there are reasonable grounds is an objective test;¹ a taxpayer's subjective belief is irrelevant.
11. For the following reasons, TCO concluded the Taxpayer did not have reasonable grounds to believe they would exceed the threshold:
 - Exempt supplies do not count towards the threshold (ss 6(3)(d), 14(1)(c)). The supply of residential accommodation is an exempt supply. Therefore, the supplies of residential accommodation made by the Taxpayer do not count towards the threshold.
 - The threshold relates to supplies made by the person not those received by the person. Therefore, the expenses incurred by the Taxpayer (which the Taxpayer argued were well in excess of the threshold) on supplies received do not count towards the threshold.
 - The evidence supplied by the Taxpayer did not demonstrate they would have had reasonable grounds to believe they would exceed the threshold. As late as January 2023 consents had not been obtained and plans were still a work in progress and yet to be finalised. There was no evidence of any marketing activity or any sales of the units off the plans.
12. The Taxpayer did not satisfy the onus of proving it was liable to be registered. Therefore, the registration was voluntary and CCS was able to determine the date of registration.

Exercise of discretion

13. As the application was voluntary, the question became whether CCS's decision not to backdate the registration was a valid exercise of the Commissioner's discretion under s 51(4)(a).
14. For the following reasons, TCO concluded that the decision by CCS not to backdate the registration was correct on the facts of this dispute.

¹ See, for example, *Goatlands Ltd (liq) v Borrell* (2007) NZTC 21,107.

15. Section 51(4)(a) gives the Commissioner a wide discretion to determine the effective date of registration.
16. TCO decided that the fact that the Taxpayer was registered for GST from incorporation before being deregistered provided little support for backdating registration. The taxpayer argued the deregistration by the first agent was an error. The second agent stated that the first agent had disregarded the Taxpayer's requirement and wrongly represented they were not engaged in a taxable activity. Whether an error or misrepresentation, the Taxpayer did not provide evidence to support these assertions. TCO also considered that a failure by an agent to consider the clients requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence, are not strong reasons for the Commissioner to backdate a GST registration.
17. TCO noted that an earlier attempt to register for GST could be a relevant factor in considering a request to backdate registration. However, TCO decided that the weight that could be placed on the Taxpayer's earlier attempt to re-register for GST in June 2022 (the second application for GST registration) was reduced due to the Taxpayer's failure to respond to a request by CCS for information. Without the information requested, CCS could not have been satisfied whether the Taxpayer was undertaking a taxable activity from that date.
18. TCO also decided that the delay between the second and third applications for GST registration supported CCS's decision not to backdate the registration.
19. TCO decided that the additional administrative costs of backdating (including the processing of multiple GST returns) supported CCS's decision not to backdate registration.
20. TCO decided that the lack of any apparent benefit to the Taxpayer for backdating the registration supported CCS's decision not to backdate registration. If backdated, input tax deductions could be claimed by the Taxpayer in the relevant taxable periods. However, the same input tax deductions could have been claimed, without backdating, in the first adjustment period (s 21B). Either way, it appeared that the same refund would arise for the Taxpayer.