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GST Direct: Bringing you the latest GST and Customs developments

December 2013



GST

GST on offshore online purchases – what's your view?

In our September issue of *GST Direct* we discussed whether GST should apply to offshore online purchases. We also asked you to participate in our special GST poll on the issue. We'd like to thank you for your participation, we received 250 completed forms and we can share more with you.

What can we take out of these key findings?

The findings demonstrate we need to have an open mind in considering and reviewing the possibility of GST applying to offshore online purchases of low value items. As part of any future consultation process, weighing up the interests of all relevant stakeholders will be important.

The Government has confirmed they are looking to release a consultation paper in the near future to address the duty/GST low value threshold (LVT) and the payment of GST on imported goods and services from online purchases.

It is an exciting and fascinating debate, even if complex. With the continuing rapid growth of online shopping, the Government is looking to be proactive. We welcome the commitment from the Government to consult with the relevant stakeholders on this issue.

New Zealand is not alone at looking at this issue. South Africa has passed a law (effective 1 January 2014) that will tax foreign suppliers in relation to digital downloads by South African residents. The US has proposed legislation to impose sales tax on online sellers regardless of their location. More close to home in Australia, the Federal and State treasurers recently met to discuss the business case for eliminating or reducing the LVT from A\$1,000 to possibly A\$100.

Should GST apply to offshore online purchases?

Over half (53%) of the participants thought GST should apply to offshore online purchases. While this is not overwhelming, it reinforces the need for the New Zealand Government to look further into this issue.

53%
yes

47%
no

33%
yes

67%
no

Should the current low value threshold (LVT) be reduced from \$400 to \$150?

Interestingly though, 67% of respondents did not think the current LVT should be reduced from \$400 to \$150.

18%
yes

82%
no

Should the Government consider other taxes to compensate for the tax leakage as a result of GST not being collected on offshore online purchases?

Finally, an overwhelming 82% of those who responded did not think the Government should consider other taxes to compensate for the tax leakage as a result of GST not being collected on offshore online purchases.

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Low value threshold for imported goods

The Border Processing (Trade Single Window and Duties) Bill is currently before Parliament. This Bill proposes to change the low value threshold (LVT) for imported goods from minimum duties/taxes to a minimum value of goods.

The LVT is currently set at \$60 of duties/taxes and the value of goods that is covered by the LVT can range from \$225 to \$400 (as not all goods attract duty). Moving to a single value of goods will make administration easier.

We believe these are positive changes. They will also assist with any future reform in relation to the LVT on imported goods and strike the right balance between integrity at the border and ease of administration of any border taxes/duties.

What will the Bill do?

The Bill will also make it mandatory for interested parties who are substantially affected to be consulted before any changes are made in this area. This is a unique move rarely seen in legislation.

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GST return for the period ended 30 November 2013

Remember, you have extra time to file your GST return for the period ended 30 November 2013. This return and any payment are due on 15 January 2014.



Watch out for vouchers and gift cards

There has been a rapid proliferation of voucher/gift card schemes based on 'reward points', or similar, over the last few years. Our experience is that these are seldom thought through properly from a GST perspective by the business before implementation.

The GST rules regarding vouchers are not perfect – they don't even define what a 'voucher' is, so there are issues whether discount coupons, value reloadable cards, or even loyalty 'points' are within the scope of the rules. When this uncertainty is looked at against a background of virtually non-existent case law in New Zealand and a large number of cases in the United Kingdom where the rules are much more sophisticated, businesses would be well advised to proceed with caution.

At the heart of the problem is the fact that vouchers usually entail two supplies; one on issue and another on redemption and the existing rules are designed to eliminate one of these two supplies. This also means if you don't fit into the rules there is plenty of room for double taxation.

Take the simple example of a business giving away a 'voucher' which entitles the bearer to a discount off the price of goods and because it is issued for no consideration the rules do not apply. Does the seller/retailer account for GST on the 'net of discount' cash received after redemption of the 'voucher', or is the voucher itself non-monetary consideration meaning GST should be accounted for on the full, pre-discount, price of the redeemed goods? This is the type of scenario where an adverse GST outcome after a number of years operating the scheme could seriously impact the cost of a simple marketing strategy.

Loyalty schemes often involve the accumulation of 'points' such that when a stipulated number have accrued the customer becomes entitled to goods or services of a defined value. At the time points are redeemed, a question arises whether the redeemed points are 'consideration' for the goods or services purchased. If so, there will be a GST liability with a business not receiving cash to fund that liability. This outcome, whilst bad enough, can get worse. The points were most likely issued on the purchase of goods or services in an earlier transaction(s), in which case GST on those points would have already been accounted for (the customer received goods plus points, in return for the price on which GST was paid). A second GST liability on the points is a cost most businesses could do without.

Inland Revenue has taken a view that points in certain cases can be 'vouchers' under the voucher rules. We have also seen Inland Revenue argue that payments by a manufacturer to a retailer towards the cost of redeeming a voucher are 'third party consideration' and therefore part of the price paid by the customer, on which GST is payable.

The issues are numerous, and it is beyond the scope of this article to explore them all. The clear message to businesses is to think very carefully before adopting any marketing scheme involving vouchers or loyalty points.

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New Tax Bill introduced

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill was introduced into Parliament on 22 November 2013.

The main GST amendments included in the Bill are:

- clarifying that the supply of accommodation in a residential unit in a retirement village or rest home by way of the right to occupy is an exempt supply for GST purposes. This change is effective from 1 April 2011 with a savings date of 31 March 2015 if current practice is different; and
- neutralising the GST effect when directors' fees are paid to directors (and board members) who represent a third party employer.

These two amendments were signalled in the GST Remedial Issues Paper released in December 2012. We worked closely with the Retirement Villages Association in making submissions to Inland Revenue to achieve the first of the changes above, which will be welcomed by the retirement sector industry.

Various aspects of the zero-rating of land rules are clarified, primarily concerning surrenders and assignments of interests in land (effective 1 April 2011), as well as procurement of leases (effective from the date of enactment of the Bill).

Other changes include:

- a new rule to allow a wash-up adjustment when a 100% change of use occurs;
- extending the scope of existing section 5(16) so that output tax will apply to all future supplies if input tax was originally claimed when purchasing land or a dwelling. The subsequent supply of that land or dwelling will be treated as a taxable supply;
- clarifying that services provided to a non-resident (natural person) who is in New Zealand at the time (but not for reasons connected with those services) may still qualify for zero-rating. This change was signalled by officials earlier in the year;
- clarifying the definition of 'hire purchase agreement'; and
- clarifying the non-profit bodies exemption.

Various aspects of the zero-rating of land rules are clarified, primarily concerning surrenders and assignments of interests in land (effective 1 April 2011), as well as procurement of leases (effective from the date of enactment of the Bill).

Latest changes to ADLS/REINZ standard real estate contract

Important changes were made to the standard ADLS/REINZ real estate form in November to address certain aspects of the compulsory zero-rating (CZR) rules. We have worked closely with ADLS, REINZ and the drafting team on the changes. We believe the changes will improve the current practice and minimise some of the confusion that has existed when executing sale and purchase agreements.

The front page of the standard sale and purchase agreement now contains the following question:

“The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement Yes/No”

If the vendor answers “No” it will not be necessary to complete the GST Schedule, and the transaction should be GST inclusive (if any). This will address some of the confusion that had previously arisen in relation to private/residential sales. Note that CZR is only intended to apply as between GST-registered parties.

If the vendor answers “Yes” the relevant parts of the GST Schedule will need to be completed, and the transaction will either be zero-rated under the CZR rules (or possibly as a going concern), or subject to 15% GST (depending on the circumstances of each case). If the vendor answers “Yes”, best practice is for the price to be “plus GST (if any)”.

Clause 14 contains various consequential changes. New clause 14.6 specifically draws a distinction under section 5(15) of the GST Act between a principal place of residence and the remainder of the property, to treat them as separate supplies. These also flow through into the GST Schedule.

As CZR determines the vendor’s position by reference to the purchaser’s (or nominee’s) profile, and often there may be an impact on cashflows if facts change after signing the contract, specific advice on the contractual drafting and GST consequences should be sought as early as possible.

We believe the changes will improve the current practice and minimise some of the confusion that has existed when executing sale and purchase agreements.

Addressing common GST risk areas

Inland Revenue recently released their 2013 compliance focus paper which included common GST risk areas.

These are:

- failing to recognise associated party transactions
- incorrect treatment of non-routine transactions
- incorrect time of supply
- incorrect zero-rating
- GST return preparation errors.

We comment on each below.

Associated party transactions

Special timing rules apply to supplies between associated parties and it appears these rules are not always observed. Businesses should consider GST grouping in the context of supplies between associated parties.

Non-routine transactions

These are transactions that are not in the ordinary course of the business and are usually 'one off'. Examples given by Inland Revenue include insurance settlements and the sale of an asset.

The GST consequences of these transactions may not be correctly accounted for through normal processes and controls and therefore may require special attention.

Time of supply

Inland Revenue report that the time of supply rules are a source of common error despite the relative simplicity of the general principles.

If you are registered on an invoice basis, you must account for the full amount of GST when any part payment (eg. a deposit) is received, or any invoice is issued. If you are registered on a payments basis, you must generally account for GST when you receive payments.

Zero-rating exports

Generally, for goods to be zero-rated, the supplier must be the exporter. A recent Taxation Review Authority case found that the taxpayer failed to satisfy the zero-rating requirements. For this reason, GST at the standard rate of 15% was payable. Specific zero-rating criteria must be met for exported services.

GST return preparation errors

It seems Inland Revenue receive many GST returns which contain small errors resulting in incorrect returns. Common examples are:

- mistakes in arithmetic
- transposed numbers
- blank fields
- not including transactions in the correct return period.

Errors of this nature often arise due to returns not being checked before filing. We strongly recommend the use of review procedures, either within the business or by your tax advisors to eliminate this type of error.



GST consequences of a transfer of interest in a partnership

Inland Revenue released a draft 'Questions we've been asked' paper in October setting out their views on whether the transfer of an interest in a partnership is subject to GST.

Comments on the draft were invited by 29 November 2013.

Assuming the draft is finalised in its current form it will clarify aspects of section 57(2) of the Goods and Services Tax Act 1985.

The draft provides useful examples which illustrate the following conclusions reached by Inland Revenue:

- a partner is not liable to register for GST for the activities of the partnership
- any supplies made by the partnership do not count towards determining whether the partner has to register for GST in their own right
- if the partner is registered for GST in their own right, a transfer of an interest in a partnership will be subject to GST only if it is a supply made in the course or furtherance of a taxable activity carried on by the partner (other than the partnership taxable activity).

Most instances involving the transfer of an interest in a partnership are not subject to GST.

In short, most instances involving the transfer of an interest in a partnership are not subject to GST.



Customs



NZ Customs releases annual report for 2012/13

The latest annual report from New Zealand Customs was recently released. In the 2012/13 year, the New Zealand Customs Service has focused on streamlining and simplifying trade facilitation to promote secure and efficient trade, and to protect and maintain the Crown revenue base through revenue compliance and efficiencies.

Some key figures from the report include:

- the number of import transactions processed by Customs in 2012/13 jumped by 12.5% from the previous record total in 2011/12. Most of the increase has been in the number of low-value imports. This reflects the increasing volume of goods purchased online from overseas, partly driven by the strong New Zealand dollar. In the same period, the number of export transactions decreased by 4.1% from the record total in 2011/12.
- the total Crown revenue collected by Customs in the 2012/13 was \$11.2 billion, which was a slight decrease from the record \$11.3 billion collected in 2011/12. 16.3% of the \$11.2 billion collected in the 2012/13 year came from excise duties, while customs duty accounted for 18.3% and GST made up the remaining 65.4%.
- Customs has sought to increase their visibility, creating a presence on Facebook, Twitter and Google Plus, which will be used to communicate information to clients and the wider public.

The number of import/export transactions collected by Customs (2012/2013)

Import transactions

The number of import transactions processed by Customs in 2012/13 jumped by 12.5% from the previous record total in 2011/12.

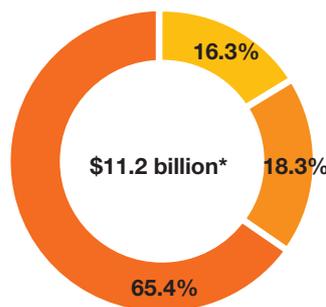


Export transactions

The number of export transactions decreased by 4.1% from the record total in 2011/12.



Total crown revenue collected by Customs (2012/2013)



Excise duty Customs duty GST

* A slight decrease from the record \$11.3 billion collected in 2011/2012

Creating a presence on social media to communicate



Customs has sought to increase their visibility, creating a presence on Facebook, Twitter and Google Plus.

Anti-dumping duties

The Dumping and Countervailing Duties Act 1988 provides for a mechanism to maintain fair levels of import competition for New Zealand producers, when the dumping or subsidisation of imported goods causes or threatens to cause material injury to the New Zealand industry.

The Associate Minister of Commerce terminated anti-dumping duties imposed on certain bound stationery with effect from 11 September 2012 (gazette notice dated 11 October 2013).

Goods which are still subject to anti-dumping action on importation into New Zealand are:



canned peaches from Greece and South Africa



plasterboard from Thailand



diaries from China and Malaysia



preserved peaches from China and Spain



galvanised wire from Malaysia



reinforcing steel bar and coil from Thailand



hog bristle paintbrushes from China



wire nails from China

Applications for a subsidy or dumping investigation should be made to the Ministry of Economic Development.

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Import tariff levels to remain unchanged until at least 2017

The Government recently announced that import tariffs will remain unchanged until at least 30 June 2017, except where they are being reduced through free trade agreements (FTAs).

This decision comes following a Cabinet paper which recommended that import tariffs remain at their current levels until 2017 and that the Minister of Commerce should revisit the question of import tariff rates in 2016.

Under New Zealand's current tariff regime, most goods are imported into New Zealand duty free. Tariff rates are effectively declining as tariffs phase out under existing FTAs and further FTAs are negotiated. The simple average general tariff across all goods is approximately 2%.

The general consensus of officials is that the desired economic state is a tariff-free economy. However, the Cabinet paper indicated that total tariff elimination could have a small net cost to consumers due to the impact the trade balance would have on the exchange rate.

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Customs and Excise Act to be reviewed

In a welcome development, the Customs Minister has recently announced that the Customs and Excise Act 1996 will be reviewed.

The review will look to ensure that the Customs legislation provides a flexible legislative framework that can adapt to changes in the trade environment and technology. A discussion paper for public consultation is expected to be available in 2014.



Contact us

If you have any questions regarding the issues covered in this publication, please contact your normal PwC advisor or a member of our GST team. Our team can help you by delivering practical GST and Customs solutions and effectively managing your indirect taxes risk.

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