

GST - the changes continue

There were a number of significant changes to the GST rules that took effect on 1 April 2011.

Two of these were new adjustment rules and the capturing of holiday homes.

Both of these changes were not well thought through or conceived.

Adjustments

The adjustment rules were altered under the guise of tax simplification but any adviser who has dealt with them will give this concept a huge - Yeah Right!

Prior to Christmas important amendments to the adjustment rules were passed and backdated to 1 April 2011.

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Firstly, there was a restriction whereby no input tax claim was available for goods acquired before registration that cost less than \$5,000 - this has been repealed so adjustments can be made in relation to all goods introduced into a taxable activity.

Secondly, there was no ability to claim input tax in relation to goods acquired before registration before 1 April 2011 - this has been fixed and adjustments can be made under the new apportionment rules. However, they cannot be applied if a different tax position was taken between 1 April 2011 and 14 September 2011.

Holiday homes

With effect from 1 April 2011 home stays, farm stays and the like were brought into the GST net by way of changing the definition of *commercial dwelling*. At the same time section 21HB(1) was introduced to permit affected taxpayers to make an input tax claim on the cost of the property if one had not been made.

The change did not affect taxpayers who had a turnover of less than \$60,000.

The problem was that if the home stay was owned by a GST registered person it was automatically caught as once a person is GST registered they are

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GST registered for all supplies.

Just before Christmas Inland Revenue announced that this was "unintended" - yeah right! and the law is to change.

We think the proposed change is aimed at preventing holiday home owners from making the section 21HB(1) input tax claim at a significant cost to the Government. In other words, when Inland Revenue advocated bringing holiday homes in the GST net it never considered the outward lump sum cash flows. There are around 15,000 holiday home available for rent after all.

It is proposed that a GST registered person who is earning less than \$60,000 pa in rent from a holiday home can choose to include it in the GST net.

If they so choose they:

- get a GST input claim
- account for GST on income
- account for GST on sale.

If they choose to keep the holiday home out they don't:

- get a GST input tax claim
- account for GST on income
- account for GST on sale.

Again the change is back-dated to 1 April 2011.



Residency

The issue of tax residency is complex at the least.

Inland Revenue has reviewed its position on the matter and has released a draft Interpretation Statement for comment.

Tax residency is determined under the Act through personal presence/absence and through the existence or otherwise of a *permanent place of abode*. The legislative rules are then subject to the residence Articles in Double Tax Agreements ("DTA's") New Zealand has with a number of countries.

A key change in the view of Inland Revenue is in relation to dwellings and the *permanent place of abode*.

Under the proposed view, for a person to have a *permanent place of abode* they:

- Must have an abode in New Zealand; and
- It must be permanent.

The place of abode may be a dwelling (owned or rented), a room at the parents, friends, relatives or work and it does not need to be available in a vacant sense.

This means that, contrary to the historical position where if a person rented out their house and goes overseas it was not available, the new view is that it is still available as the person can move back in by giving notice. The new view also applies to a rental property that the taxpayer may never have lived in.

Oz knocks Kiwi's again!

After we published our December 2012 issue of *Tax Assessment* the Australian Government announced a new national disability insurance scheme. The scheme however will specifically exclude New Zealanders who moved to Australia after February 2001 unless they hold permanent residency or citizenship.

This move follows on from the exclusion of Kiwis from new benefits available to all other Australian residents for injuries caused by acts of terrorism overseas.

Clients considering moving to the "Lucky Country" need to be aware that they will not receive most federal benefits and support payments, including the dole and student loans.

It makes no difference how long or how much tax Kiwis pay - they are the only excluded nationality from entitlement.

The Queensland Government has also moved to remove anti-discrimination laws so Kiwi's cannot sue it for refusing disability assistance to them.

Add higher tax rates, capital gains tax, stamp duty, land tax, a higher cost of living and higher costs of doing business and the "Lucky Country" may not be all it is cracked up to be.

On the other hand, if a person does not own a dwelling in New Zealand and has nowhere to live they will not have a *permanent place of abode*.

When it comes to a person being tax resident in two countries, the DTA's generally have a tie-breaker relating to having a permanent home available to them.

If there is a permanent home in both countries (or none) the second test is where a person's personal and economic interests are strongest.

With the widening of Inland Revenue's view this test will become more significant and is a much more complex and subjective test.

Failing that, the third test is the one of habitual abode and re-

lates to frequency, duration and quality of stays in a country.

The residency bar has been raised!

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