

21 November 2013

Public Consultation
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

QWB0101: Income tax – Entry of a new partner into a partnership – effect on continuing partners

QWB0132: GST – Transfer of interest in a partnership

1. The Law Society appreciates the opportunity to comment on the draft questions *QWB0101: Income tax – Entry of a new partner into a partnership – effect on continuing partners* (Income Tax QWBA) and *QWB0132: GST – Transfer of interest in a partnership* (GST QWBA).
2. Both items clarify the Commissioner's views for taxpayers, which is helpful, and while the examples are fairly high level, the conclusions appear sound.
3. It would have been useful if Inland Revenue had also covered the more difficult issues that arise when the exit of a partner causes the "partnership" to go from having two partners to one, as is common when simple business partnerships or husband and wife partnerships come to an end and ownership of the business assets is restructured.
4. The other situation where this issue arises is on the death of a partner where the partnership does not carry on (although we appreciate that recent GST cases have left these issues largely unresolved).
5. In particular, we consider that where a partner in a two person partnership transfers all of their interests in the partnership to the other partner is a situation where GST consequences could arise (although not necessarily on the actual transfer of the partnership interest itself, which is the focus of the GST QWBA).
6. The Commissioner could extend the comments made on section 57(2) of the Goods and Services Tax Act 1985 (changes in members are ignored) to clarify the scope of the section in this situation and settle the debate among some practitioners over whether a change to the members of an unincorporated body to just one "member" can also be ignored for GST purposes.
7. Assuming the answer is no, then the partnership dissolves. This also raises GST issues around when the distribution of the assets on dissolution occurs. For example, presumably while the partnership is still GST registered and before a cessation supply arises for GST purposes.
8. We note that the Income Tax QWBA contains a brief comment that appears to carve out a "final dissolution" situation. The explanation notes that a "disposal" of a partner's interest does not arise for income tax purposes where a partnership dissolves by operation of law "unless the partnership is finally dissolved". We presume this indicates that "final dissolutions" are a different type of disposal situation from that being considered in the income tax QWBA. This is appropriate, as it is probably outside of

the scope of the question, which focuses only on *entry* of a new partner, i.e. to an existing and ongoing partnership.

9. However, the GST QWBA is wider in scope, as the question raised is when the transfer of a partnership interest is subject to GST. While the transfer itself may not be subject to GST, GST implications still arise where the transfer causes the partnership to dissolve and/or a taxable activity to cease altogether.
10. Accordingly, while we consider that transfers of partnership interests that cause a final dissolution of the partnership is also an area that should be further clarified, especially for GST purposes (and we would be happy to provide further comments on this), we appreciate that these issues may be considered outside the scope of these particular QWBAs. As such, we would suggest that in both the Income Tax and GST QWBAs, the Commissioner should make it clear that the position on “final dissolution” of a partnership is a separate situation that is not being covered.

Conclusion

11. This submission was prepared with assistance from the Law Society's Tax Law Committee. If you wish to discuss this further please do not hesitate to contact the committee convenor Neil Russ, through the committee secretary Rhyn Visser (04 463 2962, rhyn.visser@lawsociety.org.nz).

Yours sincerely

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