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Public Consultation
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PUB00228: Goods and Services Tax – Single Supply or Multiple Supply

1. The New Zealand Law Society (Law Society) appreciates the opportunity to comment on *PUB00228: Goods and Services Tax – Single Supply or Multiple Supply* (Exposure Draft). All statutory references are to the Goods and Services Tax Act 1985 (Act).
2. The Law Society's comments focus on the Exposure Draft's analysis of the UK case law and its relationship with the deemed apportionment provisions under the Act. The approach proposed in the Exposure Draft creates potential uncertainty for at least two common types of transaction.
3. The apportionment provisions include:
 - section 5(14) – which provides that where a supply that is charged with tax under section 8, but section 11, 11A, 11AB, 11B, or 11C requires part of the supply to be charged at the rate of 0%, that part of the supply is treated as being a separate supply;
 - section 5(15) – which provides that where a supply of a principal place of residence or a supply referred to in section 14(1)(d) is included in a supply, that part is treated as a separate supply;
 - section 5(20) – which provides that a supply of services to which section 11A(1)(ma) applies is treated as the only supply of services for the consideration provided by the warrantor;
 - section 5(24) – which provides that if a supply that wholly or partly consists of land is made, and the supply includes the provision of services, the supply of the services is treated as a supply of goods for the purposes of section 11(1)(mb);
 - section 14(1)(a) – which provides that the supply of any financial services (together with the supply of any other goods and services, supplied by the supplier of those financial services, which are reasonably incidental and necessary to that supply of financial services) shall be exempt from tax, unless the exceptions in section 14(1B) apply; and
 - section 11(1)(mb), which provides that a supply that partly or wholly consists of land made by a registered supplier to a registered recipient who acquires the land to make taxable supplies, and does not intend to use the land as a principal place of residence either for itself or an associate, is zero-rated.

4. The Exposure Draft states these deemed apportionment provisions are applied as a final step in the analysis:¹

After determining whether there is a single composite supply or multiple separate supplies, the final step is to check whether there are any provisions in the Act that treat the supply or supplies differently.

5. This analysis is inconsistent with the earlier steps, i.e., that in applying the UK case law analysis first, there may be nothing left to apportion under these provisions. This is illustrated by Example 1 in the Exposure Draft. Inland Revenue's analysis is that:²

The pre-arrival services are ancillary or incidental to the supply of education services. The pre-arrival services are not aims in themselves, but are a means of better enjoying the education services. Accordingly, there is a single supply of education services that is subject to GST at the standard rate.

6. This is consistent with the finding in *Auckland Institute of Studies Ltd v CIR (2002) 20 NZTC 17,685*.

7. However, this conclusion highlights the difficulties faced in reconciling the case law with the apportionment provisions. In the case of Example 1, paragraph 49 of the Exposure Draft would require the taxpayer to apply section 5(14) and nevertheless treat the pre-arrival services as a separate zero-rated supply. This approach is inconsistent with *Auckland Institute of Studies*, and presumably is not the outcome Inland Revenue intends.

8. Because the pre-arrival services are:

- ancillary or incidental to the education services, and
- are not a separate aim,

they do not exist for GST purposes, so section 5(14) is not engaged. In short, there is nothing left to apportion under section 5(14) after the UK case law analysis is applied.

9. Applying this logic across the other deeming provisions, it is clear the Exposure Draft will cause significant uncertainty. For example:

- In a section 11(1)(mb) context, if business assets are sold with a minor interest in land, which is ancillary to the other business assets and not a separate aim of the recipient, it is not clear whether there is:
 - (a) a single supply partly or wholly consisting of land, that is zero-rated (this is the conventional analysis); or
 - (b) a single supply that is standard rated because the land is effectively ignored for the same reasons the pre-arrival services are ignored in Example 1.
- If there is a sale of business assets that includes receivables, it is not clear whether there is:
 - (a) a single supply of the business assets that is standard rated; or

¹ PUB00228: *Goods and Services Tax – Single Supply or Multiple Supply*, at paragraph 49.

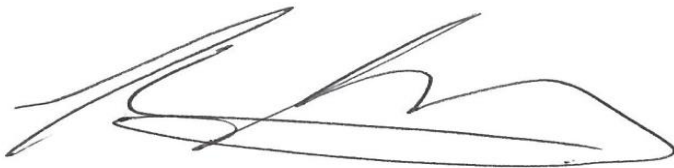
² *Ibid*, paragraph 60.

- (b) two supplies – one standard rated supply of the business assets excluding the receivables, and an exempt supply of receivables.
- 10. It is not clear to the Law Society how to reconcile the UK case law analysis and the deemed apportionment provisions in the Act. The difficulty would appear to arise because the various apportionment provisions in the Act were not written with the UK case law approach in mind.
- 11. Nevertheless, it is evident that given its internal inconsistency, the Exposure Draft will cause significant uncertainty and confusion in the market.
- 12. The Law Society recommends that Inland Revenue revisits its analysis of UK case law in the Exposure Draft, with an emphasis on reconciling that case law with the deemed apportionment provisions in the Act.

Conclusion

- 12. This submission was prepared by the Law Society’s Tax Law Committee. If you wish to discuss this further, please do not hesitate to contact the Tax Law Committee convenor Neil Russ, through the committee secretary Jo Holland (04 463 2967 / jo.holland@lawsociety.org.nz).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish underneath.

Kathryn Beck
President