

BC'S BUSINESS BRIEFS

GST RATE CHANGE – 1 OCTOBER LOOMS LARGE

There has been much written about the increase in the GST rate from 12.5% to 15% occurring in less than two weeks on 1 October. Suppliers of accounting software have been kept busy ensuring their software will be ready to go on 1 October and it is assumed that the majority of business' will have in hand the basic changes they need to make. However there are some issues which have not been so widely canvassed, that may impact you, which deserve some coverage here.

Transitional adjustments for Payments Basis clients

- 1 All business clients who account for GST using the payments basis will be required to make a GST rate change adjustment on their Debtors and Creditors outstanding at 30 September. In simple terms if Debtors exceed Creditors, you will be entitled to claim back the difference between those invoices which have been charged at the 12.5% rate prior to 30 September and what GST would have been if they had been charged after 30 September at the 15% rate. This will then ensure that all future returns do not require any adjustments and GST will be accounted for at 15%;
- 1 Some Lease contracts will be exempt from the new rate. An amendment has been made to the GST Act which will treat all Finance Leases entered into before 1 October 2010 which have less than 5 years to run will continue to have GST charged at the rate of 12.5% to the termination of the lease;
- 2 Anyone who is involved in the construction of a house right now (either as the builder or as the purchaser) may well be making progress payments on the build. The transitional arrangements allow that the builder is able to charge GST at 15% for any progress payments made after 1 October (so long as the contract allows for a price rise as a result of changes outside the control of the builder), meaning that for a purchaser who is not able to claim the GST back, the effective price of the house will rise for any progress payments invoiced on 1 October or later. There may be options available to people in this situation to mitigate this price increase and if you are caught we suggest you contact us to discuss those options;
- 3 IRD have issued a new policy guideline on the "Time of Supply" as it relates to the sale of land. While the issue is somewhat complex, the IRD's change of view may well trigger the time of supply at an earlier date than in the past, and therefore the liability to account for GST may arise earlier. The principal change appears to be that in the past conditional contracts would not lead to the "Time of Supply" being triggered but under the new policy this may change. If you are involved in a land sale transaction, then you need to ensure that you are aware of implications this change as it relates to your position prior to signing the contract. We have no doubt there will be case law in this area in the future.



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Transitional adjustments for Payments Basis clients - continued

- 4 Along with the Time of Supply changes on land transactions there are more clearly defined responsibilities being placed on vendors and purchasers of land where transactions are zero rated. To be zero rated, both parties to a land sale transaction must be registered for GST at the time the contract of sale is entered into. If IRD investigate a transaction and deem that the transaction should not have been zero rated the initial responsibility to account for GST falls on the vendor. However should the vendor be able to show evidence that they have taken the necessary steps to establish that both parties are registered and were misled by the purchaser, then the purchaser will be held liable for the GST and any associated penalties.
- 5 Input Tax adjustments are currently viewed by IRD as complex and open to manipulation. Instead of the "principal purpose test" it is proposed that from now on when assets are purchased with a dual business/private purpose that an estimate of the business use be undertaken in the period of purchase and only that amount of GST be claimed back initially and if this percentage proves to be materially correct, no further adjustment will be required in future GST periods. If it is incorrect in a material fashion there will be a limited number of periods in which an adjustment will be required (perhaps 5) after which no adjustments will be completed. At present there are no limites on the time periods for which these adjustments are required.

TRUSTEE LIABILITES

It has been common practice for professionals to use a trustee company to act as trustee in their clients trusts. The recent case of **NEWMARKET TRUSTEES LIMITED v CIR** has clarified what is good practice in this area. NTL was a trustee company operated by a firm of solicitors which was trustee for 118 trusts. These trusts between them owned 145 properties. One of the trusts had an outstanding GST liability which it was unable to satisfy and the IRD sought to recover this from NTL by liquidating the company. NTL argued that it was inconvenient to all the other trusts for whom it was trustee to be liquidated, as they would all have to have the titles changed. The court dismissed NTL's defence and ruled NTL liable. Accordingly all 145 titles needed to be changed. This case along with others shows why professionals are often reluctant to be appointed as trustees on their clients behalf and in the case of this writer will ensure that we have no more than 10 trusteeships per trustee company going forward to minimize the risks associated with trusteeship of clients trusts.

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