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Public Consultation
Inland Revenue Department
Via email

11 November 2019

Dear Sir or Madam:

PUB00352: Changing GST treatment after reducing the previously agreed consideration

Thank you for the opportunity to review and comment on the draft publication.

Summary

As a general comment, while we appreciate Inland Revenue providing guidance to taxpayers and practioners on practical issues, our team of indirect tax specialists found this draft Question We've Been Asked ("QWBA") difficult to interpret and follow, and the examples provided are either not relevant to the technical issues being addressed or misleading. We respectfully disagree with the view that:

- "…section 25 will allow an adjustment only of an amount equal to GST on the amount by which the consideration is reduced"; and
- A request under s 113 of the Tax Administration Act 1994 ("the TAA") is required for a change in GST treatment where section 113A does not apply.

S 25 (s25(2)(b) in particular) has been incorrectly applied when determining excess output tax. Limiting excess output tax to the GST content of the reduction in consideration is not consistent with the wording of the section, ordinary practice and, in our view, the scheme of the Act. Addressing excess output tax through a s 113 request is impractical and costly for both taxpayers and Inland Revenue.

Technical analysis

The specific situation addressed by this draft QWBA is outlined in Paragraph 1 as:

- A supplier charged and accounted for GST at the standard rate on a supply;
- The supplier later establishes that they incorrectly interpreted the legislation and should not have treated the supply as a taxable supply; and
- The supplier then agrees to reduce the previously agreed consideration for the supply by an amount equal to the amount of the GST charged.

Paragraph 3 correctly identified that a deduction calculated under s 25(2)(b) is allowed under ss 20(3)(a)(iii) and (b)(iv) as the situation in question is as described under s 25(1)(b).

Paragraph 4, however, states:

> *"…the adjustment calculated under s 25(2)(b) is limited to an amount equal to GST incorrectly accounted for as a result of the reduction in the consideration."*

Paragraph 4 introduces a limitation to s 25(2)(b) that is not provided in the legislation. Interpreting s 25(2)(b) plainly, excess output tax to be deducted under section 20(3) is "the amount of output tax actually accounted for" that exceeds "the output tax properly charged". In the situation in question, we would expect the excess output tax to be the full GST charged.

Examples

While we agree with the technical position reached under Example 1, we are unsure as to the relevance of this example for the purposes of this QWBA (i.e it does not involve a change in GST treatment). Example 1 does, however, have the effect of impacting the incorrect application of s 25(2)(b) in Example 2 as referenced in the draft QWBA.

Example 2 applies the principles of s 25(2)(b) but includes the limitation (i.e. excess output tax is limited to the GST content of the reduction in consideration) that is not provided in s25(2)(b). We, therefore, believe that this example is technically incorrect.

Excess output tax as described under s 25(2)(b) should be calculated as follows:

	Output tax accounted for	**Output tax charged**	**Excess output tax**
Example 1	$115 x 3 / 23 = $15	$100 x 3 / 23 = $13.04	$15 - $13.04 = $1.96
Example 2	$115 x 3 / 23 = $15	Nil – exempt supply	$15 - $0 = $15

Practical implications

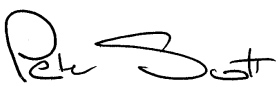
Taxpayers who routinely make a mixture of standard rated and zero-rated/exempt supplies will be significantly affected by this QWBA. From time to time, innocent mistakes are made whether as a result of human error or a lack of information. Practically, when the situation in question occurs, the common practice is to issue a credit note for the full consideration originally charged, re-issue a new tax invoice with the correct GST treatment and consideration and make an adjustment in the next GST return for the effect of the credit note and the new tax invoice.

The self-correction threshold under s 113A of the TAA is deliberately low for various policy reasons. If Inland Revenue proceeds with the currently proposed position, technicality aside, there will be a significant increase in the need for requests under s 113 of the TAA by taxpayers to correct simple mistakes.

Questions

Should you have any questions or would like to discuss our comments further, please contact us.

Yours faithfully



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