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The Four Year Time Bar – a story with a happy ending

We recently presented seminars on the disputes process aimed at providing advisers with some guidance on various procedural aspects. A critical part of the seminar dealt with the application of the statutory time bar and time bar waiver provisions to tax disputes, and how these should be dealt with for maximum advantage to the taxpayer. The principles being presented in the seminars were practically applied in a current case that went in favour of the taxpayer at the IRD's Adjudication Unit.

Our client in this case was an accountant that represented an established Kiwi corporate taxpayer with a long history of tax compliance. The taxpayer amalgamated with a wholly owned subsidiary that was simply not performing financially, and in so doing, inadvertently triggered a possible tax liability that arose from the amalgamation during the tax year ended 31 March 2003. The disputes process was initiated by the IRD, leading eventually to the filing of a Statement of Position ("SOP") in December 2007. The IRD sought to increase the tax payable by the corporate taxpayer in the return.

The 4 year time bar was due to take effect from 31 March 2008. As the taxpayer had filed its SOP however, the IRD was entitled to issue an assessment without the matter proceeding to the Adjudication Unit, and so short cut the disputes process before the Adjudication Unit could rule on the matter.

The facts of the case raised a number of interesting procedural issues; was it the return of the amalgamated company or the amalgamating company that was being challenged by the IRD, as practically only the latter company survives the amalgamation? Could the return for the amalgamated company (or the amalgamating company) become time barred and how would this affect the issues and specifically the company that survives the amalgamation?

Had we been approached at that stage to sign a time bar waiver, we would probably have done so, in order for the matter to be determined by the Adjudication Unit before the time bar applied. However we were instead met with a request from the IRD to allow further submissions to be made before the matter was sent to Adjudication, which we did. The effect of this was to delay the matter beyond 31 March 2008, a point apparently overlooked by the IRD. Our view was that at this stage the matter had become time barred, albeit through inadvertence. Fortunately, the IRD's Adjudication Unit agreed with us and ruled that the returns of both the amalgamated company and the amalgamating company had become time barred on 31 March 2008, and thus preventing the IRD from making any adjustments to the return in question. The end result; a very happy and relieved taxpayer, and further reason to take very careful note of the time periods in dispute work.

Tim Chemaly**GST Change in Use Adjustments Proposal**

In June 2008 the Policy Advice Division of the Inland Revenue Department issued a paper suggesting a range of options designed to strengthen the business-to-business neutrality of GST (read 'shift more obligations and costs onto the registered person and make it easier for the IRD and the Government').

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The proposals include:

- A 'reverse charge mechanism', for land, going concerns, and high value transactions, whereby the purchaser accounts for the vendor's GST output tax on a supply, and will offset their input tax entitlement (if any) against it.
- Treating associated entities as a single economic unit so that if the supplier defaults in paying the GST on a supply made to the associate, the recipient will lose their input tax claim.
- The power to put caveats on land titles so the IRD is notified of a sale.
- Increasing the time for IRD requesting more information, initiating an audit, or releasing a GST refund from 15 to 20 working days.
- Valuing one-off change in use adjustments at market value rather than the current lower of cost or market value.

Comment

The latter proposal values a one-off change in use adjustment on a similar basis to a deregistration adjustment.

A change in use adjustment can be made when an asset ceases to be used in the taxable activity, but the person's GST registration is able to continue through having some other taxable activity, as opposed to a deregistration when all taxable activities cease.

If the proposal becomes law, it could result in a significant additional GST liability if a change in use adjustment is made after the change in law.

For example, a property that is now worth \$2,000,000 was bought for use in a taxable activity in 1996 for \$500,000. GST of \$55,555 was claimed. If the property ceases to be used to make taxable supplies, under the current change in use rules, GST of \$55,555 would be paid back. If the proposal goes ahead, GST of \$222,222 would need to be paid back based on the market value of \$2,000,000.

If a client has property in the GST net it may be worthwhile considering whether a change in use adjustment based on the original cost can be made to take the property out of the GST net before the proposal, if enacted, takes effect.

There are some fishhooks to be wary of, such as the need to be able to remain registered with some other taxable activity not involving the property to avoid having to make a deregistration adjustment instead, which would be based on current market value. Also a change in use adjustment can be disregarded if a sale is contemplated at the time the adjustment is made, with the result that the sale is subject to GST.

Then again, if deregistration is possible because the taxable activity has ceased or the turnover is below the threshold for compulsory registration, it may be worthwhile considering whether to deregister now and account for GST on the current market value (the real estate market being what it is at the moment), rather than at a later date when values may have risen.

For more information or to discuss the possible options for your client, contact one of our tax consultants.

Gravin Stewart