



ANALYSIS

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1993, No. 131

An Act to amend the Goods and Services Tax Act 1985

[28 September 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Goods and Services Tax Amendment Act (No. 2) 1993, and shall be read together with and deemed part of the Goods and Services Tax Act 1985 (hereinafter referred to as the principal Act).

2. Meaning of term "supply"—(1) Section 5 (6A) of the principal Act (as amended by section 116 (4) of the Transit New Zealand Act 1989) is hereby amended by omitting the words "carried on by the person who collects the fees so paid", and substituting the words "carried on by the Ministry of Transport".

(2) The Transit New Zealand Act 1989 is hereby consequentially amended by repealing so much of the Fourth Schedule as relates to subsection (6A) of section 5 of the Goods and Services Tax Act 1985.

(3) This section shall apply with respect to fees paid on or after the 1st day of April 1994.

3. Tax invoices—(1) Section 24 (7) of the principal Act is hereby amended by omitting from the proviso the expression "\$20", and substituting the expression "\$50".

(2) This section shall apply with respect to supplies of secondhand goods made on or after the day on which this Act receives the Royal assent.

4. When objection may be referred in first instance to High Court—(1) Section 36 (2) (b) of the principal Act is hereby amended by adding the words “, and shall notify the objector accordingly”.

(2) Section 36 of the principal Act is hereby amended by repealing subsections (5) to (9), and substituting the following subsections:

“(5) Within 3 months after—

“(a) The date of the objector’s giving notice under subsection (2) (a) or subsection (3) (a) of this section, where it is the objector who requires or desires the Commissioner to state a case for the opinion of the High Court; or

“(b) The date of the objector’s giving notice in relation to the objection under section 34 (2) of this Act, where it is the Commissioner who determines or desires under subsection (2) (b) or subsection (3) (b) of this section to state a case for the opinion of the High Court,—

the objector shall serve on the Commissioner, by delivery to the Head Office of the Inland Revenue Department at Wellington or to such other address as may have been notified in writing by the Commissioner to the objector for the purpose, a notice in the prescribed form of the objector’s points of objection.

“(6) The points of objection shall state, with sufficient particularity so as to fairly inform the Commissioner and the Court,—

“(a) The facts upon which the objector relies in support of the objection; and

“(b) The propositions of law (if any) on which the objector relies in support of the objection; and

“(c) The issues which the objector considers require to be determined by the Court.

“(7) The objector shall annex to the points of objection copies of any documents upon which the objector intends to rely in support of the objection:

‘Provided that where the documents upon which the objector intends to rely are numerous, the objector may annex a list of those documents instead of copies of the actual documents.

“(8) If the objector fails to serve on the Commissioner the points of objection within the period referred to in subsection (5) of this section, or within such further period as may be allowed pursuant to subsection (9c) of this section, the objection shall be deemed to be withdrawn and the

Commissioner shall not be required to take any further steps in relation to the objection.

“(9) Where under this section an objection is to be referred directly to the High Court, the Commissioner shall, within 3 months after the date of service of the points of objection or within such further period as may be allowed pursuant to subsection (9c) of this section, state and sign a case which shall comprise—

“(a) A notice in the prescribed form containing—

“(i) Particulars of the assessment made by the Commissioner to which the objection has been made; and

“(ii) The grounds of objection given by the objector; and

“(iii) The question for the determination of the Court; and

“(b) The points of objection served by the objector; and

“(c) A notice in the prescribed form stating—

“(i) Any further facts which the Commissioner considers are relevant to the issues to be determined by the Court; and

“(ii) The issues which the Commissioner claims require to be determined by the Court.

“(9A) The case so stated and signed together with one copy thereof shall be filed by the Commissioner—

“(a) In the registry of the High Court specified by the objector in the notice under subsection (2) (a) or subsection (3) (a) of this section, where such a notice has been given by the objector; or

“(b) In such registry of the High Court as the Commissioner thinks fit in any other case, having due regard to the convenience of the objector.

“(9B) A copy of the case so filed shall be served by the Commissioner on the objector either personally or by sending it to the objector by registered post addressed to the objector at the address for service specified by the objector in the points of objection, or at such other address as the objector may have notified to the Commissioner in writing for the purpose, and the copy so sent by registered post shall be deemed to have been received when in the ordinary course of post it would be delivered.

“(9c) The High Court may, on the written application of the objector or the Commissioner, as the case may be,—

“(a) Extend the time for service by the objector on the Commissioner of the points of objection; or

“(b) Extend the time for the filing of the case by the Commissioner—

until such time as the Court thinks fit, whether the application is made before or after the expiry of the time limit:

“Provided that when application is made for an extension of time more than 2 months after the date for service of the points of objection or the date for filing the case, as the case may be, an order for extension of time shall be made only in exceptional circumstances.

“(9D) Where the Commissioner fails to file a case within the time specified in subsection (9) of this section, or within such further time as may be allowed pursuant to subsection (9c) of this section, the objector may apply to the High Court for an order directing the Commissioner to allow the objector’s objection, and the High Court—

“(a) Shall make such an order accordingly, unless it is satisfied that there are reasonable grounds for the failure to file the case:

“(b) May, where it refuses to make such an order, make such other orders as in the circumstances it thinks fit, whether relating to the filing of the case in the High Court, the remitting of the objection to a Taxation Review Authority for hearing and determination, or otherwise.

“(9E) The contents of the case shall not be conclusive as to the matters set forth therein either against the objector or the Commissioner, except so far as agreed to in writing by or on behalf of the objector and the Commissioner.

“(9F) At any time before the case stated is set down for hearing—

“(a) The Commissioner may file an amended case and serve a copy on the objector at the objector’s address for service:

“(b) The objector may serve on the Commissioner amended points of objection at the Commissioner’s address for service specified in the case.”

(3) Section 36 (10) of the principal Act is hereby amended by omitting the words “an action”, and substituting the words “a proceeding”.

(4) This section shall apply with respect to any objection in relation to which the written notice of the objector under section 34 (2) or section 36 (2) (a) or section 36 (3) (a) of the

principal Act is received by the Commissioner on or after the 1st day of April 1994.

5. Test case procedure—The principal Act is hereby amended by inserting, after section 36, the following section:

“36A. (1) Where—

“(a) An objector has given notice under section 34 (2) or section 36 (2) (a) or section 36 (3) (a) of this Act requiring or requesting that an objection be heard and determined by a Taxation Review Authority, or that a case be stated for the opinion of the High Court in respect of an objection; and

“(b) The Commissioner considers that determination of the objection, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections,—

the Commissioner may designate that objection as a test case, and shall notify the objector accordingly.

“(2) The Commissioner may, notwithstanding section 36 (4) of this Act, state a test case for the opinion of the High Court without need for—

“(a) The objector’s consent; or

“(b) The leave of the High Court,—

and subsections (5) to (12) of section 36 of this Act shall apply in respect of any test case as if the Commissioner had determined to state the case pursuant to subsection (2) (b) of that section.

“(3) The Commissioner may in relation to any objection, at any time after the objection has been lodged and before it has been determined by a Taxation Review Authority or the High Court, notify the objector in writing that the objection will be stayed by reason of the taking of a test case on a similar objection before the High Court, if the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

“(4) Subject to subsection (9) of this section, the written notification by the Commissioner referred to in subsection (3) of this subsection shall have the effect of staying the objection pending the determination of the test case.

“(5) Upon receipt by an objector of the written notification by the Commissioner referred to in subsection (3) of this section, the objector may notify the Commissioner that the

objector requires that the objection be heard and determined notwithstanding the stating of a test case for the opinion of the High Court. Such notice shall be given in writing at such address as may be specified by the Commissioner in the notice given under subsection (3) of this section.

“(6) Within 14 days after the receipt by the Commissioner of the notice from the objector referred to in subsection (5) of this section, the Commissioner may apply to the High Court by originating application for an order that the objection be stayed pending the determination of the test case or the further order of the Court.

“(7) An application by the Commissioner pursuant to subsection (6) of this section shall be made on notice to the objector whose objection the Commissioner seeks to have stayed.

“(8) Where an objection has been stayed, the objector, the Commissioner, or both of them, may at any time apply to the High Court for an order that the objection cease to be stayed.

“(9) A stay pursuant to subsection (4) of this section shall lapse on the expiry of 14 days following the day on which occurs any of the following:

“(a) The expiry of the 14-day period specified in subsection (6) of this section, where the objector has issued a notice in writing pursuant to subsection (5) of this section and the Commissioner has not within the 14-day period made an application pursuant to subsection (6) of this section; or

“(b) The making by the High Court of an order dismissing an application by the Commissioner pursuant to subsection (6) of this section; or

“(c) The making by the High Court, on an application under subsection (8) of this section, of an order that the objection cease to be stayed; or

“(d) The determination of the test case which caused the objection to be stayed by the expiration of all rights of appeal.

“(10) For the purposes of this Act,—

“(a) For so long as an objection is stayed pursuant to this section, any time limits or periods specified in or pursuant to this Act (other than in subsections (5) to (9) of this section) in relation to proceedings on the objection shall not apply:

“(b) Where the stay of an objection lapses under subsection (9) of this section, any time limits or periods so specified shall be treated as if they were extended by the period commencing with the date of the Commissioner’s written notification under subsection (3) of this section, and ending with the day on which the stay lapses pursuant to subsection (9) of this section.

“(11) Service of notices by the Commissioner pursuant to subsections (3) and (7) of this section may be effected—

“(a) Personally; or

“(b) By sending a copy of the notice to the objector by registered post to the objector at the objector’s usual or last known place of abode or business in New Zealand, in which case it shall be deemed to have been received when in the ordinary course of post it would be delivered; or

“(c) By service on a solicitor who accepts service in writing on behalf of the objector, which service shall be deemed for the purposes of this section to be personal service on the objector; or

“(d) By effective delivery to an address for service supplied by the objector to the Commissioner.”

6. Obligation to pay tax where objection lodged—

(1) Section 37 (1) of the principal Act is hereby amended by inserting in the definition of the term “day of determination of final liability”, after paragraph (a), the following paragraphs:

“(aa) Where the objection to the assessment is deemed to be withdrawn pursuant to subsection (8) of section 36 of this Act, the day following the expiry of the period referred to in subsection (5) or, where appropriate, subsection (9c) of that section:

“(ab) Where the objection to the assessment is otherwise deemed to be withdrawn by or under this Act or the Inland Revenue Department Act 1974, the expiry of the period of 2 calendar months following the day on which the objection is deemed to be withdrawn.”.

(2) This section shall apply with respect to any objection in relation to which the written notice of the objection under

section 34 (2) or section 36 (2) (a) or section 36 (3) (a) of the principal Act is received by the Commissioner on or after the 1st day of April 1994.

This Act is administered in the Inland Revenue Department.
