NEWSLETTER

Issue 4
November 2015 – January 2016

INSIDE THIS EDITION

GST on foreign supplies

Imposing Goods and Services Tax (GST) on the digital economy has been a hot topic this year as New Zealand retailers push for equal GST treatment between local and foreign suppliers.

At present, foreign providers of cross-border services and intangibles (including music, e-books, videos and software purchased from offshore websites) do not have to pay GST on sales to New Zealand based consumers. This puts local based providers at a substantial disadvantage because they have to charge GST, which will, at a minimum, increase their prices by 15% when compared to foreign competitors.

Currently, whether or not GST applies to a particular transaction depends on a number of factors, such as the location of the supplier or where the services are performed. Because most e-tailers are not based in New Zealand, and their services are not performed from New Zealand, GST does not apply.

This issue is not isolated to New Zealand with many countries facing similar GST/VAT non-collection issues. Given the significant revenue at stake, governments worldwide have a vested interest in reform. The Organisation for Economic Co-operation and Development (OECD) has released guidelines on GST/VAT treatment, which countries are considering adopting.

The New Zealand Government has now released its own discussion document titled 'GST: Cross-border services, intangibles and goods' which broadly proposes to align New Zealand with the general direction of reforms undertaken by a number of countries. The key suggestions include:

- Introducing a new 'place of supply' rule so that services and intangibles supplied remotely by an offshore supplier to New Zealand-resident consumers will be treated as performed in New Zealand and therefore subject to GST.

- The new rules to apply to a wide range of ‘services’, which capture both digital and traditional services.
- A requirement for offshore suppliers to register and return GST when they supply services and intangibles to New Zealanders if their services exceed a given threshold in a 12 month period.
- In situations where offshore suppliers do not directly supply services to their customers, and instead use electronic market places to market and sell their services or intangibles, the electronic marketplace may be required to register for GST instead of the principal offshore provider.

While not confirmed in the discussion document, the expectation is that the proposed changes will not require offshore providers to return GST when they make supplies to New Zealand businesses (who would normally be able to claim the GST back). The new rules would focus on taxing business-to-consumer supplies.

At present, GST not collected on low-value goods imported into New Zealand is also an issue. The Government intends to align, where possible, the collection of GST on imported goods with the changes relating to cross-border services and intangibles. The New Zealand Customs Service is looking at options for simplifying the collection mechanism and reducing the threshold before GST is charged on imported goods (currently $400), while balancing the cost to collect that GST.

As e-commerce continues to grow, the volume of services and imported goods on which GST is not collected is becoming increasingly significant. It has passed the tipping point where the Government is now moving to capture that lost tax revenue.

Businesses should also be mindful of similar changes being implemented in other countries that may result in GST/VAT being required to be paid.

Changes to closely held company tax rules

In New Zealand, companies are often the preferred vehicle when setting up a new business. They are well understood, underpinned by well-functioning legislation, flexible, and liability is generally limited to the amount of a shareholder’s investment.

However, the tax rules surrounding companies can be complex and not well suited to small businesses. In acknowledgement of this, the Look Through Company (LTC) regime exists to provide the corporate benefits described above, while ignoring the corporate form for tax purposes. Instead, an LTC is treated as a partnership for tax purposes and profits or losses ‘flow through’ to the shareholders.

Unfortunately, the devil has been in the detail, as the LTC rules themselves are also complex resulting in few companies electing into the regime. The IRD have recognised this and released an Official Issues Paper that proposes to make the LTC rules more user-friendly. The paper also considers changes to the treatment of capital gains and dividends.

Proposed changes to the LTC rules
The major changes proposed to the LTC rules include:

- Eliminating the requirement for most LTCs to complete the loss limitation calculation because it has limited practical application.
- Changes to the eligibility requirements to allow more than one class of shares (provided all shares have uniform entitlements to income and deductions).
- Tightening the entry requirements for LTCs with trust shareholders. For example, a beneficiary that has received a distribution in the last six years will be a ‘counted owner’.
- Excluding charities and Maori authorities from being shareholders in LTCs.
- Restricting the amount of foreign income earned to the greater of $10,000 or 20% of its gross income when more than 50% of the LTC’s shares are held by non-residents.
- Clarification of the debt remission income rules, including a change that should mean no debt remission income arises when an amount owed to a shareholder by an LTC is remitted.

Overall, it is debateable whether the proposed changes simplify the LTC regime or not.

Other initiatives
Generally, a company is able to distribute a capital gain tax-free when the company is liquidated. However, if a company makes a capital gain on the sale of an asset to an associated person, that gain is taxable on liquidation. It is pleasing to see that this rule may be relaxed to exclude sales to non-corporate purchasers and sales between companies that are 66% commonly owned.

Other simplification changes include removing the requirement for certain companies to withhold Resident Withholding Tax from fully imputed dividends and some interest payments.

Doing your own Due Diligence

When purchasing a business it is important to understand its value. The value of a business will ultimately determine whether to purchase it and if so, how much to pay. A number of factors need to be considered when determining the value of a business, including; it's financial position, future forecasts, existing customer relationships, staff structure and relationships, why the current owner is selling, your future exit strategy, and the list goes on.

Ideally, advisors who specialise in completing due diligence and financial analysis should be used. However, if that isn't possible or if a 'starting point' is required before a specialist team is brought in, here are four key areas to focus on:

- the reoccurring nature of revenue,
- the quality of earnings,
- what drives business growth, and
- the business's cash flow.

Understanding business revenue is integral to understanding the value of a business. A key question is therefore how is revenue secured going forward, i.e. how does the company retain their customer base? If business sales are generated by long-term contracts this will greatly increase the value of the business when compared to unsecured business sales that are retained by customer loyalty alone.

Further, if customer loyalty is attached directly to the existing business owner this can decrease the value of the business. Understanding what drives the business revenue provides a more in-depth understanding of the reoccurring nature of the revenue and what a new business owner will need to do to retain the same level of revenue.

Secondly, the quality of earnings must be examined. The earnings you use to value a business should be earnings that are maintainable into the future. Often within company accounts there are entries that distort a business's true earnings. These can be one-off events that will not occur again in subsequent years such as a large cost or sale that is attributable to unusual circumstances. Staff and rent costs are often worth examining as it is common for these costs to not truly reflect their market price. All costs must be adjusted to market value to provide a fair reflection of profit.

Often, earnings will be forecast to grow into the future. If this is the case understanding what drives that growth is paramount. In order to analyse this it is useful to compare the historic accounts with the forecast accounts and analyse the key assumptions and key risks to achieve the growth. Assumptions should be realistic and the risks shouldn't be understated.

Finally, the working capital requirements of a business should be examined. Every business has different cash flow requirements due to seasonal changes or supplier and customer relationships. Can future capital requirements be funded? Moreover, if the business is forecast to grow, what working capital is required to fund that growth?

Answers to the above questions will help determine whether the business is worth purchasing and might save some money when negotiating the price with the vendor.

Fit staff / Fit business

Productivity, budgets, utilisation, cash flow and market penetration are all areas that most businesses focus on as they strive for improved performance and growth. However, many organisations are also exploring and implementing 'healthy' initiatives that provide the dual benefit of improving the health of their employees, and the business.

Sick days and staff turnover

There are many benefits to regular exercise. One in particular, is the effect that exercise has on the brain. Exercise stimulates various brain chemicals that can leave you feeling happier and more relaxed, which can lead to improvements in diet and mental health. Take for example, an employee who has been for a run during their lunch hour. They are less likely to reach for an afternoon pick-me up, such as a chocolate bar at 3 o'clock, than an employee who has sat at their computer all day.

Regular physical exercise can help to prevent or control a wide range of health problems and concerns, which benefits not only the individual, but the organisation they work for as well. Healthy workers naturally take less sick days, and they are also more likely to remain in their job longer. According to a study by Towers Watson and the

National Business Group on Health, voluntary resignations are lower at organisations with a highly effective wellness program (9%), compared to those whose programs are not as effective (14%).

Greater productivity and increased quality of work

Exercise has been proven to increase employee productivity at work and enhance the quality of their work because it increases employee stamina, concentration span and vitality. Researchers at Stockholm University demonstrated that devoting work time to physical activity can in fact lead to higher productivity. In a study that observed 180 dental staff over a 12 month period, they found that workers who spent 2.5 hours per week exercising had higher productivity compared to employees that did no exercise. The increase in productively was largely attributed to the increased stamina and less absenteeism caused by the increase in exercise.

Healthy workplace culture

It is also important to create a healthy workplace culture that complements any healthy workplace initiative. This culture should work to create a sense of core beliefs that promotes workplace health throughout the organisation. A healthy culture often starts at the top, when a good strong leader can inspire commitment and motivate their staff. Such a culture often attracts and retains motivated people that are committed to the business and its beliefs. By creating a sense of core beliefs that everyone in the organisation lives by and supports, a good leader can set expectations around how people treat each other, manage their work and deal with customers.

Investigating healthy initiatives for your business can be extremely worthwhile for both employees and the business. Employees usually feel happier and healthier meaning the business can benefit from greater productivity and increased employee engagement and retention. The potential gains a business can achieve from implementing healthy initiatives are worth exploring. Ideas to get started include team-building exercises, leadership training for senior managers, subsidised gym memberships or sports equipment, work based team sports, a "biggest loser" contest, encouraging lunchtime runs and arranging for external speakers, such as nutritionists, to speak on the premises.

Snippets

Further cuts to ACC levies

ACC must collect sufficient funds to cover the costs of all current and past claims. In 1999 the Government realised funding was insufficient to cover on-going costs of pre-1999 claims and therefore, introduced a 'residual levy' to build up adequate funds.

The residual levy has been incorporated into the work levy whereby, at present it comprises two components; (1) a current portion and (2) a residual portion. Each year, the current portion of the work levy is adjusted to reflect the most recent injury experience within the business's specific industry. The residual portion however, has been fixed since 2005 and is based on the remaining cost of pre-1999 claims.

Following a recent valuation of ongoing claims costs, the Government has proposed to remove residual levies in 2016/2017, which could result in 75% of businesses paying a reduced levy.

Once the residual levy is removed, work levies will be fully calculated on more recent injury trends and industries with increased injury rates will pay higher levies (and vice versa), i.e. those who operate in industries with higher injury costs.

The Jedi Society Incorporated

The Jedi Society failed. Its mission was to register with Charities Services and qualify for tax exempt status. But the dark side of the force conspired against it and its application was denied.

The Jedi Society promotes 'Jediism', which is defined in the Society's purposes as the advancement and promotion of the Jedi, to be Guardians of the Peace and to enable understanding and knowledge of the Force. The Society explained to Charities Services that the universal belief of Jediism is a belief in the 'Force' and that it "exists in every living thing, and binds everything together."

The Charities Registration Board declined the application as they did not satisfy the requirement that it was established and maintained exclusively for charitable purposes. Specifically, Jediism was found to be insufficiently structured and not serious enough to advance religion. There was also insufficient evidence supporting the advancement of moral or spiritual improvement in a charitable manner.

Hence the Force, but not Charities Services, will be with them.

If you have any questions about the newsletter items, please contact us, we are here to help.