



31 October 2025

Dear [REDACTED]

Thank you for your request made under the Official Information Act 1982 (OIA), received on 2 October 2025. You requested the following (numbered for ease of responding):

1. *Copies of all internal guidelines, manuals, or instructions used by Inland Revenue staff to assess whether a taxpayer's belief that registration was automatic (factor 3 of paragraph 12, SPS 18/03) is sufficient to justify retrospective GST registration.*
2. *Any internal legal or policy advice prepared since 2018 relating to the exercise of discretion under s51(4)(a) of the GST Act, specifically in relation to voluntary GST registrations under s51(3).*
3. *The Commissioner's view or policy notes on when "ignorance of obligations" is considered insufficient vs when other factors (such as belief registration automatic) are considered persuasive.*
4. *The number of retrospective GST registration applications considered by Inland Revenue from 1 April 2020 to 31 March 2025.*
5. *Of these, how many were approved, how many declined, and the primary reasons recorded for each outcome (e.g. ignorance, insufficient evidence, administrative cost, belief registration automatic, etc).*
6. *All internal correspondence, memos, or reports prepared by Inland Revenue staff in relation to the GST registration application of [REDACTED] [REDACTED] from 1 April 2024 to the present, excluding correspondence directly between Inland Revenue and myself.*

Item 1

Internal guidelines on this topic are provided to staff via our intranet. I am releasing, attached as **Appendix A**, the relevant sections of our intranet page titled *Backdating a GST registration*. Some information has been redacted as it falls outside the scope of your request and some information has been withheld under section 18(c)(i) of the OIA, as making this information would be contrary to the provisions of section 18(3) of the Tax Administration Act 1994 (TAA). The Commissioner of Inland Revenue is not required to disclose any item of revenue information if the release of that information would adversely affect the integrity of the tax system or would prejudice the maintenance of the law.

Items 2 and 3

There are four documents in scope of this part of your request, as detailed in the table below. I am partially releasing the relevant sections of these documents, attached as **Appendix B**. Some

information has been redacted as it falls outside the scope of your request and some information has been withheld or refused under sections 18(c)(i) of the OIA, as the release of this information would be contrary to the provisions of section 18(3) of the TAA.

Item	Date	Document
1.	20/05/2021	ADJ01411 – Adjudication report
2.	20/05/2021	ADJ01411 – Issues report
3.	16/01/2024	ADJ01495 – Adjudication report
4.	16/01/2024	ADJ01495 – Issues report

Items 4 and 5

In May 2025, Inland Revenue implemented a decision support mechanism which allows for the retrieval of the number of approved or declined requests for GST registrations. Details of outcomes are recorded in notes within customer accounts. To determine the circumstances of a particular GST registration, a manual review of each case would need to be completed. Retrieving this information would require extensive manual effort, necessitating significant time and resources, which would adversely impact Inland Revenue's other operations. Accordingly, I am refusing your request for the number of retrospective GST registration applications considered by Inland Revenue from 1 April 2020 to 31 March 2025, and the reasons for these decisions, under section 18(f) of the OIA, as the information requested cannot be made available without substantial collation.

In making my decision, I considered if narrowing the request or extending the timeframe would enable Inland Revenue to answer your request. However, in this case, neither of these options would enable Inland Revenue to grant you the information requested.

In the spirit of the OIA, I can provide the number of applications considered from May 2025 onwards. The table below provides the total number of retrospective GST registration applications considered by Inland Revenue from 1 May 2025 until to 13 October 2025.

Table 1: Total number of retrospective GST registration applications considered by Inland Revenue from 1 May 2025 to 13 October 2025.

	May	June	July	August	September	October
Completed	79	423	376	502	294	109
Rejected	5	30	69	72	92	39

Item 6

There are two documents in scope of this part of your request, as detailed in the table below. I am releasing these documents, attached as **Appendix C**.

Item	Date	Document
1.	03/09/2025	Nikki Teams message
2.	27/09/2025	Ajay Teams message

Right of review

If you disagree with my decision on your OIA request, you have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the OIA. You can contact the office of the Ombudsman by email at: info@ombudsman.parliament.nz.

Thank you again for your request.

Yours sincerely



Raelene Stewart
Group Lead – Micro Business



Backdating a GST registration

Published 14/10/2025

Not in scope

[Allocation of review task](#)

[Factors to consider](#)

[Property](#)

[Web messages and information required relating to backdating GST registrations](#)

[Requesting additional information](#)

[Actioning reschedules](#)

[Common examples](#)

[Related reading](#)

All references are to the [Goods and Services Tax Act 1985](#).


Generally, a GST registration will commence from the date of the customer's application. But in exceptional circumstances, the registration may be backdated to apply from an earlier date.

There is no automatic entitlement to a backdated registration. Requests for a commencement date back to the beginning of the month should be processed unless the applicant has represented that they are not GST registered in a transaction during this period, for example in a property sale and purchase agreement. Apply a similar common-sense approach to approving backdating requests within a week or so of the requested date, even if received in the following month. Where this does not apply, a request for a backdated GST registration or amended commencement date needs to be considered applying the [Standard Practice Statement \(SPS\) 18/03: Effective date of GST registrations](#). The factors to consider and the procedure to be applied are highlighted in the instructions below.


The implications of backdating a GST registration are generally to enable applicants to claim input tax deductions in an earlier period. **Enabling a customer to claim prior expenditure related to an activity is not a valid reason for approving a backdated registration.** In many circumstances, the inputs can still be claimed even if the registration date is not backdated, but the entitlement will be spread over several adjustment periods as per [section 21B](#).

In most cases, the task involves reviewing START information and requesting information confirming taxable activity **and** the earlier of the date GST was charged or \$60,000 threshold was breached.

Not in scope



Not in scope




- **Have they applied and previously been declined?**- Check START notes and previous correspondence. If more information was requested, ensure that the information has been provided and any queries have been resolved before proceeding.
- **Does the requested start date align with previous information held or provided?** If they have previously indicated an earlier GST start date compared to what is the current registration, we should be querying this mismatch.
- **What is the business/industry?** - Check BIC codes, if the BIC code related to property? Refer to [Property](#) below.
- **Is this a taxable activity for GST?** or are the supplies exempt for GST, for example renting a residential building.
- **What is the entity type?** For an estate, we can accept a backdated registration **without** requesting any supporting information, provided the start date is the day **after** the date of death and it's the same activity being conducted. For any other entity type, supporting information should be requested to support a backdated registration.
- **Check income profile for individuals and for a company check the shareholder's income profile** - if only income sources are from income tested benefit then extra care is needed and supporting information demonstrating taxable activity and reasons for backdating should be requested.
- **What filing frequency are they requesting?** Does it align with the balance date. If it does not, then discuss with the customer. In most instances, GST filing

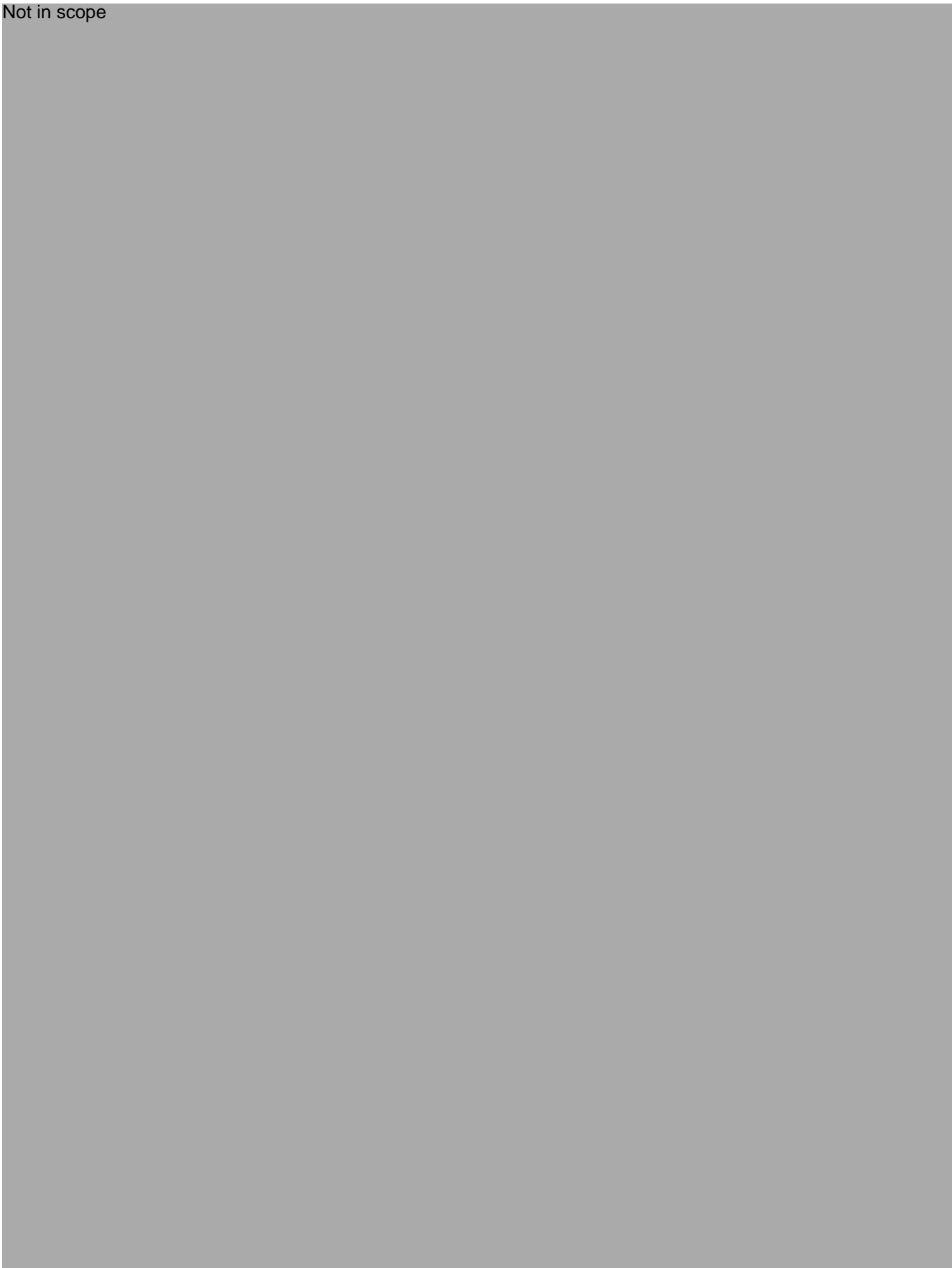
frequencies must align with their balance date.

- **Who has filed the application?** Agent, customer themselves or someone else?

18(c)(i)



Not in scope



There must still be a taxable activity being conducted (as defined) and there is no requirement to register a customer from the date their taxable activity started. The Commissioner has the discretion to choose an appropriate date. Generally, a voluntary registration should not be backdated. However, in accordance with [SPS 18/03: Effective date of GST registrations](#), there are some occasions where this can occur.

There are several factors you can consider to decide whether to backdate the GST application. Reasons shown in **bold** are considered acceptable:

- The reason why the applicant did not seek voluntary registration at the time that they are requesting to be registered from. The person must have been carrying on a taxable activity at that date and intending to register from that date, but circumstances prevented registration. Persuasive circumstances include:
 - **Absence overseas**
 - **Illness or personal tragedy**
 - Ignorance of obligations over a long period of time or failure to register is not persuasive reasons.
- **Whether the applicant proceeded in business in the belief that they were ineligible to be registered.** For example, the person's business activity might easily appear at first sight to be an exempt activity but the applicant later discovered from a reliable source that the activity was a taxable activity.

- **Whether the applicant has proceeded in business on the reasonable belief that they had automatically been registered.** Evidence of this belief might be demonstrated by the applicant mistakenly charging GST on the goods and services supplied.
- **If the applicant was required to be registered from the date requested** - see [Is the registration required](#) above.
- Whether the applicant can substantiate the amount of output tax payable on the supplies made during that period. The applicant must have accurate accounting records to be able to establish the supplies that were made over the period and to whom.
- The amount of time between the date of application and the requested registration date will be a significant factor. The longer the time between the application date and the requested registration date, the less likely it will be that the Commissioner will exercise the discretion.
- The possible effect on the administration of the Goods and Services Tax Act 1985, including any effect that the backdating of the registration would have on other registered persons.

These factors are not an exhaustive list; other factors particular to an applicant's circumstances that are relevant may influence your decision. The decision should be based on a balance of all relevant factors, i.e. meeting one listed qualifying factor does not guarantee automatic approval of a retrospective registration if other factors indicate it should not be persuasive, e.g. verified overseas absence at the time the registration should have occurred, but we have information that numerous other business tasks relating to the activity were successfully undertaken at the same time. In this instance, the overseas absence was not the cause of the GST registration not being completed.

When a customer has charged GST before they were registered

Sometimes a customer mistakenly says that GST has been included in their prices when they have only been charged GST on goods and services they purchase (e.g. ticking the "prices include GST" box in the myIR registration case). It should be clarified that it is only relevant to consider any GST that may have been charged/included in the sale price by the applicant in making a supply/sale, not whether they have paid any GST on purchases. If no supplies have been made, then no GST has been included in their prices.

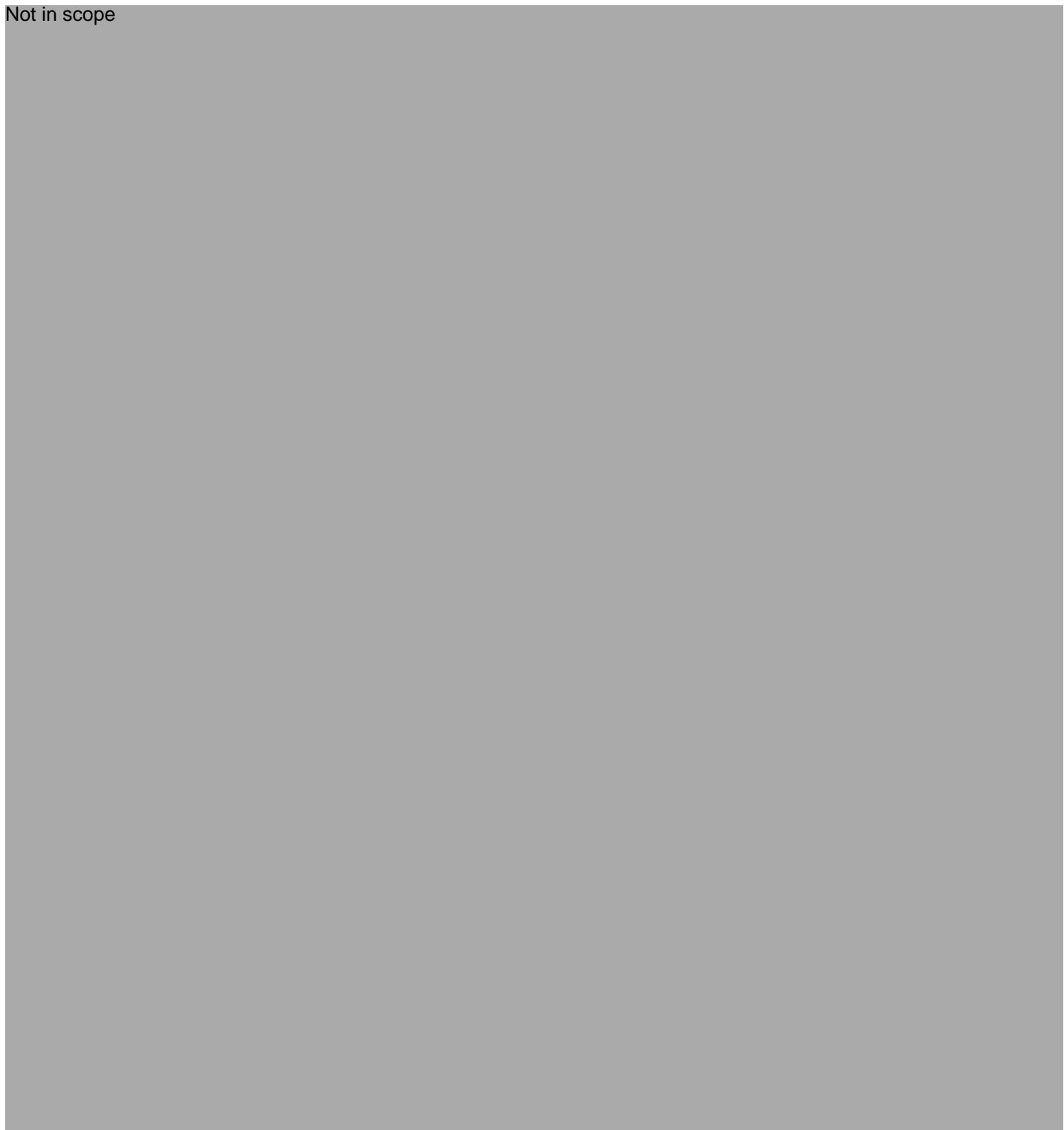
If the applicant has charged GST on sales or represented they were, GST registered, and prices were GST inclusive and we are satisfied that they are carrying on a taxable activity (refer to [GST taxable activities](#)) then it is likely appropriate to commence the registration from the date the supplies were made. If we are not satisfied a taxable activity was being undertaken at that time then, [section 51B](#) determines that any GST collected must be returned to the CIR but the applicant will not be entitled to claim any GST on purchases related to the supply, i.e. in a 51B circumstance, we would

register the customer only for the periods GST was charged and only accept returns with outputs and no corresponding inputs. Please ensure the customer is advised and this is clearly noted on the account.

Please ensure comprehensive notes are made when you consider backdating to be acceptable, as these will be referred to when the first GST return, likely a refund, is processed. Continue to Procedure to process the registration.

If the information provided does not support a backdated registration, refer

Not in scope



Not in scope




Not in scope



On 15 October 2023 customer requests to register from 1 August 2022 on the basis that they thought their accountant was completing the registration for them. The customer provides the accountant's minutes of the meeting where registration was discussed noting that the accountant was to complete the registration. Alternatively, it may be evident from communications between the parties that they thought they were already GST registered or thought the accountant would be doing the registration. Please note that if the customer asserts that the accountant was supposed to complete the registration but there is nothing to verify that undertaking then

Not in scope



Not in scope

On 15 May 2023 the customer requests to register with a commencement date of 1 December 2022 being the day they settled on a farm property purchase which included all livestock and operational equipment. Customer represented they were registered in sale and purchase agreement and the sale was zero-rated. Customer has continued the farming operations previously undertaken by the vendor. The delay in applying for the registration relates to many farm operations filing 6-monthly Nov/May returns and they are now starting to gather information for the May return so the fact they weren't already registered wasn't identified earlier.

The customer provides the financial statements of the vendor showing turnover of \$400,000 from the farm operations in the 12-months to 31 May 2022. Provided there were no unusual items in the financial statements, on 1 December 2022 when the customer/purchaser took over the farm and continued operations in the same circumstances, there was a reasonable expectation that turnover would exceed \$60,000 therefore they were liable to be registered from 1 Dec 2022. Approve the request.

9. Liable to be registered - reasonable expectation exceed \$60k threshold. Yes - where supporting documents provided

On 15 May 2022 the customer requests a registration date of 1 April 2022. A property they owned was leased as commercial offices from 1 May 2022. A formal 12-month lease contract was signed on 1 April 2022 for \$7k per month. On 1 April 2022 the customer has a reasonable expectation, that can be substantiated by the lease agreement, that taxable supplies in the next

12-months would exceed \$60k. They are therefore liable to be registered from 1 April. Approve the request.

10. Liable to be registered - GST charged indicating threshold will be exceeded in following 12-months. Yes - where supporting documents provided

On 15 May 2023 the customer requests to register with a commencement date of 1 November 2022. Provides issued invoice dated 23 November 2022 showing GST charged on window glazing supplies. Services of \$24,000 plus \$3,130 GST charged as 1/3rd instalment of installation contract. Liable to register for November 2022 to return GST charged and where contract is for completion within 12-months, it is clear the registration threshold will be exceeded. Can be registered from 23 November or earlier where contract was finalised and it was evident the registration threshold would be exceeded.

11. Liable to be registered - GST charged. Yes - where supporting documentation provided - modified date may be required

On 15 March 2023 the customer requests to register with a commencement date of 1 October 2022. New business - sales invoices charging GST issued from 15 November 2022 are provided. Sales are subsequently under \$5k per month, only rough, non-supported/detailed estimates provided that sales will exceed \$60k from 1 October 2022. Can register from 15 November when represented GST was charged on the supplies and taxable activity undertaken, not 1 October as requested as expected turnover not reasonably substantiated.

12. Liable to be registered - income breached \$60k - where there is sufficient evidence or supporting documentation provided.

On 1 June 2023 the customer requests to register with a commencement date of 1 October 2022. Income profile shows schedular payments/withholding tax income started 1 October 2022 and breached 60k by mid January 2023. GST can be registered from 1 February 2023 (first day of the following month in which the threshold was breached). For GST to be registered with an earlier start date of 1 October 2022, additional documentation will need to be supplied.

13. Property transaction - Voluntary. No - if inconsistent with conduct of parties

On 20 April 2023 customer requests to register with a commencement date of 1 March 2023. Customer acquired a vacant commercial property which settled on 30 March 2023. Customer noted they were a non-registered purchaser on sale and purchase agreement - price of \$500k plus GST agreed,

GST of \$75,000 at 15% was shown on 30 March 2023 settlement statement.
Decline backdating - customer can introduce the property to their taxable activity from registration date of 20 April 2023 and progressively claim back

Related reading

Op info

- [20 January 2009](#) Voluntary GST registrations - backdating the effective date

Standard Practice Statement

[SPS 18/03: Effective date of GST registrations](#)

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Adjudication Report

Tax Counsel Office

18(c)(i)

20 May 2021

Use of this report

The analysis and decisions recorded in this report reflect the facts and legal arguments put forward by the parties to this dispute. Consequently:

- this report is not a statement of general Inland Revenue policy on any issue;
- the decisions recorded in this report, and the reasons for these decisions, are not precedential for other taxpayers or other periods.

Legislation

All statutory references in this report are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated.

Abbreviations

The abbreviations used in this report are listed at the back of the report.

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Not in scope

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Not in scope	
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Not in scope

1. Decisions

- 1.1 18(c)(i) [Redacted]
- 1.2 The Taxpayer purchased a property 18(c)(i) [Redacted]
[Redacted] During the initial development, the Taxpayer sold the Property to a related company, and later applied for backdated GST registration to claim inputs for the development. Customer and Compliance Services (**CCS**) declined the application for GST registration 18(c)(i) [Redacted]
[Redacted]
- 1.3 Not in scope [Redacted]
[Redacted]

Reasons for decisions

- Not in scope [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Not in scope

it is considered that CCS's decision 18(c)(i) not to retrospectively register the Taxpayer was consistent with the Commissioner's obligations. Weighing up the factors in Standard Practice Statement 18/03: *Effective date of GST Registrations* and the Commissioner's overarching obligations under ss 6 and 6A of the Tax Administration Act 1994 (**TAA**), while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances.

Outcome

Not in scope

9(2)(a)

Albert Lim
Tax Counsel 3
Tax Counsel Office

Date: 20 May 2021

2. Background

Facts

- 2.1 The Taxpayer 18(c)(i) [redacted] applied for retrospective GST registration 18(c)(i) [redacted]
- 2.2 In an Agreement for Sale and Purchase 18(c)(i) [redacted] the Taxpayer agreed to acquire a property 18(c)(i) [redacted]
- [redacted] Not in scope [redacted]
- [redacted] [redacted]
- [redacted] [redacted]
- [redacted] [redacted]
- 2.7 18(c)(i) [redacted] the Taxpayer on-sold the Property to an associated limited liability company, 18(c)(i) [redacted] The property was sold to the Company to limit personal liability on the part of the Taxpayer. Not in scope [redacted]

GST registration

- 2.8 Not in scope [redacted]
- 2.9 18(c)(i) [redacted] the Taxpayer applied for GST registration (**Application**) with retrospective effect 18(c)(i) [redacted]

Not in scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Not in scope
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

2.23 For these reasons, the Commissioner advised that her final decision was that the Taxpayer's request for retrospective GST registration would not be accepted.

Not in scope
[Redacted]

Dispute process

2.24 Not in scope
[Redacted]

Not in scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Issues

2.30 Not in scope

[Redacted]

[Redacted]

- If the Taxpayer is not required to be registered, did the CIR appropriately refuse the Taxpayer's application for retrospective GST registration?

Not in scope

Not in scope

Backdating voluntary GST registrations

5.30 If a person has met the requirements of s 51(3) and the Commissioner is satisfied that the person is eligible to register for GST, s 51(4)(a) provides the person shall be a registered person from such date as the Commissioner may determine. As previously discussed, this gives the Commissioner a discretion to choose the date from which a person will be registered for GST under this provision.

5.31 While the Commissioner has a discretion as to the date of a voluntary GST registration, this does not mean she can exercise this discretion arbitrarily or however she pleases. The Commissioner's decision-making powers are subject to the principles outlined in *Wednesbury*.⁸¹ The *Wednesbury* principles, introduced by Greene MR, can be summarised as follows:⁸²

- the exercise of a statutory discretion must take into account all relevant factors and must not take into account irrelevant factors.
- What is relevant or irrelevant, as the case may be, will be determined from the statutory context.
- The exercise of the discretion must not be made in bad faith or dishonestly.
- Those who assert that the person exercising the discretion contravened the law are those who must establish that it is so, i.e. the onus of proof rests with the plaintiff and not with the person who exercised the discretion.

5.32 In addition, as with all discretionary matters in the Inland Revenue Acts, the discretion in s 51(4)(a) is underpinned by the Commissioner's overriding obligations in s 6 and 6A of the TAA to use her best endeavours to protect the integrity of the tax system. In particular, ss 6(2)(b), (c) and (f) include in the meaning of "integrity of the tax system":

(2) Without limiting its meaning, the **integrity of the tax system** includes—

...

- (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and

⁸¹ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223; [1947] 2 All ER 680.

⁸² *Wednesbury* at 682.

- (c) the rights of persons to have their individual affairs...treated with no greater or lesser favour than the tax affairs of other persons; and
- ...
- (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

5.33 This means that in applying her discretion, the Commissioner must ensure she is doing so fairly, impartially, and according to law, and treating the affairs of each taxpayer with no greater or lesser favour than the tax affairs of other persons.

5.34 Section 6A (together with s 6) of the TAA was enacted to provide the framework within which the Commissioner administers the tax system. Section 6A(2) clarifies the Commissioner's overall objective in carrying out those functions.

5.35 To discharge her s 6A(2) duties, the Commissioner must compare the available courses of action with the likely effect on the amount of net revenue collected over time. To do this, the Commissioner must consider both the short- and long- term implications of each course of action and have regard to all three factors listed in s 6A(2). These factors are:

- the resources available to the Commissioner (s 6A(2)(a));
- the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts (s 6A(2)(b)); and
- the compliance costs incurred by persons (s 6A(2)(c)).

5.36 The Commissioner has set out the factors she will consider in determining the date of a voluntary GST registration from paragraph [10] of the SPS:

Where the value of taxable supplies made is less than the threshold in s 51(1)(a), a person is entitled to register voluntarily for GST under s 51(3). **Although the Commissioner has complete discretion as to the effective date of that registration, that date will generally be from the date on which the Commissioner became satisfied that the person was able to be registered for GST or from such other date which is considered appropriate.** For example, an applicant may request that an effective date be the first day of the month of that application. Provided the applicant has records and systems in place to accurately establish the correct tax payable, and it does not impact any other person, then the Commissioner is likely to approve that date. A date of the beginning of the month of application will not be treated as a request for a retrospective date.

In exceptional circumstances, the Commissioner may agree to a voluntary registration having a retrospective effective date. It is not uncommon for persons to apply for retrospective registration dates to facilitate input tax claims, notwithstanding that these are generally available using the adjustment provisions at the first adjustment period following their registration date.

The following are factors that will be considered to determine whether a retrospective GST registration would be approved:

- **The reason why the applicant did not voluntarily register earlier. The person must have been carrying on a taxable activity at that earlier date and have intended to register from that date, but circumstances prevented registration.** Persuasive circumstances include absence overseas, illness, or personal tragedy.
- **Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered.** For example, the person's business activity was thought to be an exempt activity, but later discovered that it was a taxable activity; or the person did not register in the mistaken belief that they were not able to register until they reached the turnover threshold.

- Whether the applicant proceeded in business in the reasonable belief that the registration is automatic. Evidence of this belief might be demonstrated by the applicant mistakenly charging GST on the goods and services supplied.
- The applicant's ability to verify the amount of output tax payable on the supplies made during that period. The applicant must have sufficient accounting records that establish the supplies made over the period.
- **The compliance cost difference between allowing a retrospective date and allowing a current date. This applies for both the applicant and the Commissioner.** Note that a retrospective registration in order to facilitate an input tax claim instead of making an input claim using the adjustment provisions is not in itself a sufficient reason.
- **The amount of time between the date of application and the requested registration date.** The longer the time between the application date and the requested registration date, the less likely that the Commissioner will exercise the discretion. Ignorance of obligations, or failure to register over a long period of time would not be persuasive reasons.
- **The effect that a backdated registration would have on the administration of the Act.** This includes consideration of the effect the backdated registration is likely to have on other persons, including suppliers and recipients.

...

The list of factors set out above is not exhaustive. There may be other factors particular to the applicant's circumstances that are relevant and may influence the decision to allow the GST registration to be back-dated. Note that no one factor is determinative. In applying her discretion, the Commissioner will be careful that the person is not trying to use a legislative provision to their advantage. [Emphasis added]

- 5.37 The SPS states that the Commissioner may agree to a retrospective voluntary registration in "exceptional circumstances" and sets out some of the relevant criteria the Commissioner will consider in determining whether to agree to a retrospective voluntary registration.
- 5.38 By default, the SPS states that the date of the registration will be the date on which the Commissioner becomes satisfied that the person is eligible to be registration. In other words, the GST registration will generally be prospective from the date the application is considered and accepted.
- 5.39 This approach is consistent with the precursor to the SPS, an item in TIB Vol 7, No 3 (September 1995) titled *GST Registration – Effective date when applicant requests backdated voluntary registration (TIB)*. The TIB provides some further detail as to the relevance of these factors. Notably, the TIB states that the Commissioner "will only register a person retrospectively when the circumstances show that it would be unfair on the taxpayer for the registration not to be retrospective".
- 5.40 The factors set out in the SPS and TIB, while not based on any specified legislative provisions or case law, provide a framework for the Commissioner to ensure she is acting consistently with her obligations under ss 6 and 6A in applying the discretion in s 51(4)(a). These overriding obligations must be kept in mind in considering how these factors apply and what other information may be relevant in determining whether a retrospective registration is appropriate.
- 5.41 The following will briefly consider the relevance of some of these factors in relation to the Commissioner's obligations under ss 6 and 6A.

The reason why the applicant did not voluntarily register earlier


- 5.42 This states that the person must have been carrying on a taxable activity at that earlier date and have intended to register from that date, but circumstances prevented registration. The SPS refers to overseas absence, illness or tragedy. This factor is relevant because it may be unfair or inequitable to refuse a retrospective GST registration if the only reason the person did not register was because of circumstances outside their control. The TIB explicitly refers to the relevance of the circumstances being outside the person's control. In an example in the TIB, the relevant person did not register earlier as he had not sought professional advice. This was relevant in concluding the Commissioner would not backdate the person's GST registration.

Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered

- 5.43 This factor also focuses on the reasons for the failure to register. Presumably, the Commissioner considers that a person who failed to register due to a genuine belief that their activity was, for example, exempt, should not be treated the same as a person who failed to register due to something like inertia or poor planning.

The compliance cost difference between allowing a retrospective date and allowing a current date

- 5.44 This is a clear reference to the resources available to the Commissioner in s 6A(2)(a) and the compliance costs incurred by persons in s 6A(2)(c). The Commissioner is less likely to exercise her discretion where a retrospective registration would be resource-intensive for the Commissioner, or where the person could just claim inputs in a later return under the adjustment provisions.
- 5.45 The proviso to s 20(3) of the GST Act allows a person entitled to an input to deduct from an amount of output tax payable in a later taxable period, provided it has not been deducted previously and the later period is within two years of the earlier of the invoice or payment to which the input relates. If a person can claim the input in a later period, there would be no need to register the person retrospectively.

- 5.46 Not in scope
- 

The amount of time between the date of application and the requested registration date

- 5.47 The SPS states that the longer the period of time between the application and the requested registration date, the less likely the Commissioner will be to exercise her discretion to backdate registration.
- 5.48 This factor also appears to be focused on the relative administrative and compliance costs associated with retrospective registration. This is because the

more retrospective the registration, the more transactions would need to be revisited, the more returns would need to be filed, and the more assets would move into the GST net and need to be accounted for. In addition, there is an argument that the longer a person waits to apply for registration, the less fair or equitable it would be to backdate the registration.

- 5.49 As Wylie J observed in *Arai Korp*: “A taxpayer who has sat on his or her hands and done nothing, is not entitled to expect preferential treatment”.⁸³ Allowing retrospective registration for a person who took no action to register for a long time would potentially mean treating that taxpayer more advantageously than other taxpayers who diligently applied for GST registration and met their obligations in a timely manner.
- 5.50 Presumably, however, the first factors regarding the reason for the delay would also be relevant in assessing the relative importance of the length of the delay. The SPS refers to ignorance of obligations, or failure to register over a long period of time, as reasons that would not be persuasive for this purpose.

The effect that a backdated registration would have on the administration of the Act

- 5.51 The SPS states that this includes consideration of the effect backdated registration is likely to have on other persons, including suppliers and recipients.
- 5.52 It is considered this refers to both the retrospective impact of previous supplies, and the effect of backdating in light of the wider purpose of relevant provisions of the GST Act. The Commissioner would likely not be acting consistently with her obligations if she applied a discretion in circumstances where doing so frustrated the intent behind the provision which empowers the use of the discretion.
- 5.53 The Taxpayer referred to a passage in *LR McLean v CIR* concerning the purpose of the GST Act to tax the final consumer on the price, and for the tax paid by those earlier in the chain to be refunded to them:⁸⁴

No doubt the purpose and scheme of the [GST] Act is generally to tax the added value at each stage, and not to tax sales by unregistered persons. It is also, however, **to tax the ultimate consumer on the full price, and for the tax paid by those earlier in the chain to be refunded to them.** [Emphasis added]

- 5.54 The Taxpayer states that it is in keeping with the purpose of the GST Act to allow a person carrying on a taxable activity to claim inputs, as the tax is intended to be on the final consumer. While there is no dispute between the parties that GST is intended to be a tax on the final consumer, this paragraph takes the judgment in *LR McLean* somewhat out of context.
- 5.55 The *LR McLean* case concerned the ability for a person to claim a secondhand goods input tax credit for raw wool. Notably, the Court of Appeal concluded that the taxpayer in that case *was not entitled to a secondhand goods credit* for the

⁸³ *Arai Korp Limited v Commissioner of Inland Revenue* [2013] NZHC 958, (2013) 26 NZTC 21,014 at [68]. While this case concerned the application of s 113 for a taxpayer who did not engage with the disputes process, the underlying sentiment concerns the Commissioner’s obligation to treat taxpayers fairly and with no greater or lesser favour, which is equally applicable in this case.

⁸⁴ *LR McLean & Co Ltd v CIR* (1994) NZTC 11,211 (CA) at 11,219.

wool as it was not within the ordinary meaning of "secondhand goods" by virtue of not being secondhand. The very same paragraph referred to above goes on to state the following regarding secondhand goods and the purpose of GST:

The appellants' argument, so far from amounting to double tax, would deprive the Revenue of tax on the full final price. Such an anomaly is allowed by the legislation in the exception created for secondhand goods, where only the added value is taxed. In the case of most secondhand goods, such as a motor car, tax will have been paid on the goods when they were bought as new. There is nothing in the purpose or scheme of the Act which would justify extending this exception to raw wool, and ignoring the ordinary meaning of the words "secondhand goods".

5.56 Seen in context, McKay J was confirming that a person carrying on a taxable activity will not in all circumstances be entitled to an input tax credit. As McKay J states, in the case of most secondhand goods, tax will have been paid when they were bought as new. To claim an input tax credit in relation to an item for which no tax has previously been paid would generally not be consistent with the purpose of taxing the final consumer on the price. On the contrary, *LR McLean* highlights that in some circumstances, allowing an input tax claim would deprive Inland Revenue of tax on the final full price.

5.57 Blanchard J also addressed the intent of the GST system as a tax on final consumption in *Glenharrow Holdings v CIR* at [43] and [44]:⁸⁶

[43] GST utilises the invoice or credit-offset system. Consequently, and differing from other forms of consumption tax, GST is a multi-stage tax imposed on the value added at every stage of the business activity by which goods or services reach the ultimate consumer. **It is a tax on final consumption because it is the sum of the value added by firms at each stage of the supply chain that consumers ultimately purchase and consume. Registered persons producing taxable supplies effectively operate as tax collectors on behalf of the government and as such are not themselves subject to GST's economic incidence. That is of course consistent with the neutrality and efficiency of the revenue collection rationales that underlie the Act. The corollary is that registered persons should, by the same token, not obtain unacceptable windfall gains from the regime.**

[44] **From a reading of the Act as a whole it is clear that the legislature anticipated that, for a trader in goods and services, there will over time usually be some balancing out or netting off of the GST components of sales and purchases.** There will obviously be timing differences. Goods and services will frequently not be both bought and sold in the same GST period, but the Act appears to have been drafted with an anticipation that in the long run, and broadly speaking, appropriate offsetting will occur. In fairness, however, where a cost of acquisition precedes the return from a sale, a deduction is made available in advance of the arrival of that return. Where this occurs there is always the risk that the return which eventuates will not be as great as the cost of acquisition, or there will be a nil return. That is a risk which the Act requires IRD to accept as within a normal range of trading results, in the same way as it is able to take a greater benefit where a return from a business transaction is unusually large. The intent and the application of the Act accommodates such variables. [Emphasis added]

5.58 Broadly, GST consequences for registered persons are intended to balance out or net off over time, and registered persons should not obtain unacceptable windfall gains. For these reasons, it is considered that while it accords with the purpose of GST to tax the ultimate consumer on the price, this does not mean that it is necessarily inequitable for a person not to receive an input tax credit.

⁸⁶ *Glenharrow Holdings Ltd v C of IR* (2009) 24 NZTC 23,236 (SC).

5.59 In the context of retrospective GST registration, it is considered that the Commissioner would be more likely to allow a retrospective GST registration where, for example, a person would otherwise be unable to claim inputs for expenditure related to supplies they are making or intend to make that give rise to output tax liabilities. This is because the supplier would be bearing the cost of the tax, rather than the ultimate consumer. Such a situation would arguably be "double taxation" as argued by the appellant in *LR McLean*. However, this would also need to be considered and weighed in light of the other factors above. In addition, it is noted that voluntary registration is, by its very nature, voluntary. A person in the above scenario could avoid output tax liability by keeping their activity outside the GST net.

Land transactions

5.60 The SPS states that the last factor is particularly important in respect of land transactions involving another GST registered party. This is because of the impact on the compulsory zero-rating rules for land.

5.61 Section 11(1)(mb) of the GST Act provides that a supply of goods is charged with GST at a rate of 0% where the supply wholly or partly consists of land if both parties are GST registered and the recipient intends to use the goods for making taxable supplies.

5.62 If a vendor is unregistered at the time of supply, but is later registered from an earlier date, the vendor will then be liable to account for GST at either 0% or 15% depending on whether the transaction is zero-rated. The SPS states that this situation would most likely arise in the case of required registrations as a person is unlikely to apply for a voluntary GST registration where this would impact on a past land transaction.

Other factors

5.63 The SPS states that there may be other factors particular to the person's circumstances that may influence a decision to backdate, and that no one factor is determinative.

5.64 It is considered that relevance and weighting given to any other factors will need to be considered in light of the Commissioner's overriding obligations in s 6 and 6A of the TAA.

Application to the facts

5.65 Section 51(4)(a) states that where a person has made an application under ss 51(2) or (3), and the Commissioner is satisfied that the person is eligible to be registered, that a person shall be registered for GST from such date as the Commissioner may determine.

5.66 Not in scope

Not in scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Whether retrospective GST registration appropriate

5.71 Not in scope [Redacted]
[Redacted] the following will discuss whether the Commissioner was correct not to backdate GST registration, with regard to the factors listed in the SPS and the Commissioner's overarching obligations in ss 6 and 6A of the TAA.

The reason why the applicant did not voluntarily register earlier

5.72 The Taxpayer did not voluntarily register earlier as "they genuinely believed they were ineligible to register for GST until they had made taxable supplies".¹ Consistent with the example in the TIB, the reason for the delay is not due to circumstances outside the Taxpayer's control. It was a simple failure to register due to lack of information.

5.73 This does not support the Taxpayer's view that registration should be backdated.

Not in scope

Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered

- 5.74 As above, the Taxpayer states that it genuinely believed it was ineligible to register. CCS states 18(c)(i) [REDACTED] that it is "aware that other entities 18(c)(i) [REDACTED] have registered in similar circumstances where no supplies have been made". Presumably, CCS's inference is that the Taxpayer ought to have known it could register, or, as the Taxpayer suggests, CCS believed there was some deliberate reason behind the delay.
- 5.75 Consistent with comments from the Taxpayer, there was no apparent benefit to the Taxpayer in delaying the application. On the basis that CCS accepts the Taxpayer had a taxable activity, there is no reason why a voluntary GST registration application would not have been accepted if the Taxpayer had applied when its taxable activity commenced. Failure to register earlier served no evident purpose except preventing the Taxpayer from being able to claim inputs in relation to the purchase and development of the Property.
- 5.76 CCS has not provided any information regarding other related entities and the situations in which they may have registered for GST. In light of the lack of any apparent benefit to the Taxpayer in delaying the registration, whether the Taxpayer ought to have known based on the activities of other associated entities is not considered persuasive.
- 5.77 The Taxpayer's genuine belief that they were unable to register may support a decision to backdate registration.

The compliance cost difference between allowing a retrospective date and allowing a current date

- 5.78 In this case, as the Taxpayer states, it would be "pointless" to allow a current date in this situation. As the Taxpayer ended its taxable activity prior to making the Application, it is considered it would not only be pointless but impossible for CCS to register the Taxpayer for GST prospectively as the requirements in s 51 would not be met. It is implied that the Taxpayer considers the inability to register prospectively would support a decision to backdate registration.
- 5.79 However, this factor seems to be concerned with the Commissioner's resources and compliance costs for taxpayers. The effect of the Taxpayer's inability to register will be considered further below regarding the effect of backdating on the administration of the GST Act.
- 5.80 The compliance cost of backdating on the facts of this dispute would not appear to be particularly high. The Taxpayer has provided some evidence in support of the inputs it would presumably claim if registered, 18(c)(i) [REDACTED]
[REDACTED] The administrative cost to the Commissioner would presumably be limited to processing the GST returns and refunds in relation to the relevant taxable periods, and including the Supply in the GST net. Neither party has provided information regarding the compliance costs or administrative costs to them in backdating the registration, but nothing has been provided that would indicate it would be particularly burdensome.
- 5.81 The Taxpayer has stated that it would be happy to claim GST inputs under the adjustment provisions if this is what the Commissioner would be comfortable with. However, the Taxpayer would not be able to make an adjustment under

the proviso to s 20(3) as prospective registration is not possible in this case. This means the Taxpayer will have no subsequent taxable periods in which to deduct the inputs. In addition, the Supply was made 18(c)(i) so the Taxpayer would be out of time to make an adjustment in accordance with the two-year limit in the proviso to s 20(3).

- 5.82 The relevance of this factor is difficult to gauge on the specific facts of this dispute as the SPS assumes that the Commissioner will register prospectively if a backdated registration is not considered appropriate. Nevertheless, it is noted that the Taxpayer would not be able to claim the inputs in subsequent returns, and the administrative or compliance costs for either party do not seem to be particularly high.

The amount of time between the date of application and the requested registration date

- 5.83 The SPS states that the longer the time between the application date and the requested registration date, the less likely the Commissioner will exercise the discretion to backdate.
- 5.84 CCS relied on the 30-month delay in making the Application, and 7-month delay from the ending of the taxable activity in support of its decision not to backdate. CCS did not provide reasoning in support of the relevance of this factor, but it is considered that 30 months is a significant delay.
- 5.85 The Taxpayer states that the time lapse is arguably not sufficiently long to deny GST registration. It submits that CCS over-emphasised the importance of this factor relative to other factors favourable to the Taxpayer. The Taxpayer has also not provided any reasoning in support of this assertion, but it is noted that the SPS states that no one factor is determinative.⁸⁸
- 5.86 The SPS also states that ignorance of obligations or failure to register over a long period will not be persuasive. The analysis above suggests that this is based on the relative fairness of backdating GST registration several years, when other taxpayers are expected to be aware of their obligations and comply with them in a timely manner. In this case, it has already been established that the Taxpayer's failure to register was a result of ignorance regarding their ability to register while not making taxable supplies. However, the SPS factors also treat genuine belief that a person was ineligible to register as relevant, as discussed above.
- 5.87 CCS states 18(c)(i) that considering the factors in the SPS, the Commissioner's position is that at the time of the Application, the Taxpayer's taxable activity had ceased and it had not made, and would never make, any taxable supplies that would require the Taxpayer to register. Alongside the significant delay in applying, CCS appears to have relied on the lack of ongoing taxable activity and lack of taxable supplies as a primary reason for declining the Application.
- 5.88 This appears to be a conflation of the Taxpayer's eligibility to register with the Commissioner's discretion to backdate registration. Although 18(c)(i) CCS states that the factors in the SPS "do not support the GST registration of the

⁸⁸ SPS at [14].

[Taxpayer] nor the backdating of any such registration”, indicating CCS is aware that these are not the same thing.

- 5.89 It has already been concluded that the Taxpayer was not eligible to register for GST at the time of the Application, as its taxable activity had already ceased. While this is not directly relevant to the factors in the SPS, it is considered that if the Taxpayer was eligible to register for GST, then the fact that its taxable activity had already ceased would be relevant to the consideration of the length of the delay in making the Application.
- 5.90 This is because the reasons that make the delay factor in the SPS relevant are exacerbated by the lack of ongoing taxable activity. There will be no future outputs for which the Taxpayer would be denied inputs if not retrospectively registered, minimising the potential for unfairness resulting from not exercising the discretion. In addition, the Taxpayer carried on a taxable activity completely outside the GST net, and ceased that taxable activity without a liability to register ever arising.
- 5.91 It is arguable that allowing the Taxpayer to register for GST, not only over two years late but entirely after the fact would be treating the Taxpayer with greater favour than other taxpayers who applied for GST registration on commencement of their taxable activity and complied with the obligations in a timely manner. This is particularly so given the Commissioner is clear in the SPS that she will only backdate voluntary GST registration in exceptional circumstances. A taxpayer cannot sit on their hands and do nothing and expect preferential treatment.⁸⁹
- 5.92 Overall, it is considered that the 30-month delay is significant, and the cessation of the Taxpayer’s taxable activity prior to making the Application exacerbates this issue. While it is acknowledged that this factor is not solely determinative, consistent with the Taxpayer’s comments regarding CCS’s reliance on the delay, it is considered that this provides significant support for the Commissioner’s decision not to backdate registration.

The effect that a backdated registration would have on the administration of the Act


- 5.93 The Taxpayer states that retrospective registration would have no effect on the administration of the GST Act. This is because it would not change the GST consequences of any transactions the Taxpayer entered into. Any suppliers who transacted with the Taxpayer would have accounted for GST on those supplies, and the Taxpayer only made one supply, which would have been zero-rated, as discussed at [5.102] below. This is relevant as retrospective registration would have minimal effect on other persons, which provides some support for backdating registration.
- 5.94 The parties’ primary disagreement regarding this factor is the equity of allowing backdated registration so that the Taxpayer can claim inputs in relation to its taxable activity. Specific details have not been provided regarding the amounts that the Taxpayer would be able to claim, and there have been no assessments made or returns filed in relation to any period. However, from the context of the dispute it appears as though the Taxpayer would be seeking to claim a

⁸⁹ *Arai Korp* at [68].

secondhand input credit for the purchase of the Property and for the GST paid for goods and services relating to the initial development of the Property before it was sold. If the Taxpayer is not registered for GST, then it would be precluded from claiming inputs in relation to any of these expenses.


- 5.95 CCS considers there is no inequity in not allowing the Taxpayer to claim any inputs in relation to the purchase of the Property as the vendor was not GST registered and the Taxpayer did not pay any GST on the purchase of the Property.
- 5.96 The Taxpayer states that it would be equitable to retrospectively register it as the conceptual basis for the ability to claim a secondhand goods input tax credit is the introduction of that asset into the GST net. In this situation, the Taxpayer asserts that the good was introduced into the GST net, as the Company is charging GST on the lease of the Property, but no GST input credit has been granted. This is in accordance with s 3A(3) of the GST Act, which limits the availability of input credits for supplies between associated persons.⁹⁰ The Taxpayer considers the imbalance is inequitable, and the Commissioner is benefitting from the inequity.■
- 5.97 The Taxpayer referred to *LR McLean* in support of this assertion, and a statement in that case regarding the purpose of GST to be a tax on the final consumer. However, it is considered in the analysis above that in *LR McLean* the availability of a secondhand input credit is based on the assumption that a secondhand good would have been subject to GST originally on purchase, and in that case it was found that a new good could not give rise to a secondhand goods credit.
- 5.98 While there does not seem to be any dispute that the Taxpayer would be able to claim a secondhand goods credit in relation to the purchase of the Property if registered, *LR McLean* highlights that the ability to claim inputs is generally linked to tax paid. It is therefore considered the Taxpayer's argument regarding *LR McLean* does not particularly assist in the context of a general consideration of the effect of registration on the administration of the GST Act, as the Taxpayer did not pay any GST in the acquisition of the Property.
- 5.99 It is noted that the Taxpayer would have paid GST in relation to goods and services related to the initial development of the Property before it was sold. There is perhaps a stronger argument that the Taxpayer should be able to register to claim these amounts, looking very broadly at the GST consequences to the Taxpayer. However, neither party has addressed this.

5.100 Not in scope



⁹⁰ Section 3A(3) limits the availability of input tax credits in supplies between associated persons.

Not in scope



18(c)(1)



5.101 Overall, it appears as though the consequences of retrospective registration would not be significant from a compliance or administrative standpoint. However, in these specific circumstances, it would not necessarily be unfair or inequitable to refuse retrospective registration, particularly in relation to the Property. The Company's inability to claim an input credit for the Property is because of the rules regarding associated persons and the Taxpayer's decision to restructure for commercial reasons. The Commissioner has indicated she will only accept a backdated voluntary registration in exceptional circumstances or where it would be unfair to register prospectively. In accordance with the *Wednesbury* principles, the onus of proof rests with the person asserting that the person exercising the discretion contravened the law, not with the person who exercised the discretion. It is not considered that the Taxpayer has discharged this onus.

Land transactions – zero-rated supply

5.102 If the Taxpayer were registered for GST at the time of the Supply, then it is considered the compulsory zero-rating rules in s 11(1)(mb) would apply. This is because the recipient, the Company, is also GST registered. On the facts provided, the Company intended to use the Property for carrying on taxable supplies 18(c)(i) Not in scope

5.103 The SPS states that in land transactions, if a vendor subsequently applies for GST registration and this is backdated to before settlement, GST will retrospectively apply to the transaction either at 0% or 15%. As s 11(1)(mb) would apply to the transaction, the rate would be 0%. Therefore, while backdating registration would change the GST consequences of a land transaction, the effect of this would seem to be minimal given the Supply would be zero-rated.

5.104 CCS states 18(c)(i) that the Commissioner will typically not backdate a voluntary registration where it would change the GST consequences of a transaction. It is considered that while changing the GST consequences of a transaction may be relevant for compliance cost and administrative reasons, the consequences appear to be minimal where the transaction is zero-rated, as there is no GST that needs to be accounted for. It would only need to be included in the return for the relevant taxable period.

5.105 Again, the apparently minimal impact on the administration of the GST Act may support the Taxpayer's argument for retrospective registration. However, the fact that the Supply would be zero-rated also supports CCS's argument that not backdating registration would not be unfair or inequitable for the Taxpayer. It would not be able to claim inputs but also would not be required to account for any outputs.

Conclusion on factors in SPS

5.106 Considering the factors in the SPS together with the Commissioner's overarching obligations under ss 6 and 6A of the TAA, it is considered that while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to

retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances. In accordance with the *Wednesbury* principles, the onus of proof rests with the person asserting that the person exercising the discretion contravened the law, not with the person who exercised the discretion. The Taxpayer has not discharged this onus.

Not in scope

Conclusion

Not in scope

- 5.111 Not in scope it is considered that CCS's decision 18(c)(i) not to retrospectively register the Taxpayer was consistent with the Commissioner's obligations. Weighing up the factors in the SPS and the Commissioner's overarching obligations under ss 6 and 6A of the TAA, while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances.

Not in scope

TO: Tania Sauvao, Acting Group Leader, Tax Counsel Office

FROM: Liam McCaffery, Tax Counsel 1, Tax Counsel Office
Albert Lim, Tax Counsel 3, Tax Counsel Office

SUBJECT: Retrospective GST registration

ADJ01411

Issues Report

Tax Counsel Office

18(c)(i)



19 May 2021

Use of this report

The analysis and decisions recorded in this report reflect the facts and legal arguments put forward by the parties to this dispute. Consequently:

- this report is not a statement of general Inland Revenue policy on any issue;
- the decisions recorded in this report, and the reasons for these decisions, are not precedential for other taxpayers or other periods.

Legislation

All statutory references in this report are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated.

Abbreviations

The abbreviations used in this report are listed at the back of the report.

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1. Recommended decisions

- 1.1 18(c)(i) [REDACTED]
- 1.2 The Taxpayer purchased a property 18(c)(i) [REDACTED]
[REDACTED] During the initial development, the Taxpayer sold the Property to a related company, and later applied for backdated GST registration to claim inputs for the development. Customer and Compliance Services (**CCS**) declined the application for GST registration 18(c)(i) [REDACTED]
[REDACTED]
- 1.3 Not in scope [REDACTED]
[REDACTED]

Reasons for decisions

- Not in scope [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Not in scope

- 1.10 Not in scope it is considered that CCS's decision in 18(c)(i) not to retrospectively register the Taxpayer was consistent with the Commissioner's obligations. Weighing up the factors in Standard Practice Statement 18/03: *Effective date of GST Registrations* and the Commissioner's overarching obligations under ss 6 and 6A of the Tax Administration Act 1994 (**TAA**), while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances.

Outcome

Not in scope

2. Background

Facts

- 2.1 The Taxpayer 18(c)(i) [redacted] applied for retrospective GST registration 18(c)(i) [redacted]
- 2.2 In an Agreement for Sale and Purchase 18(c)(i) [redacted] the Taxpayer agreed to acquire a property 18(c)(i) [redacted]
- [redacted] Not in scope [redacted]
- [redacted] [redacted]
- [redacted] [redacted]
- [redacted] [redacted]
- 2.7 18(c)(i) [redacted] the Taxpayer on-sold the Property to an associated limited liability company, 18(c)(i) [redacted]. The property was sold to the Company to limit personal liability on the part of the Taxpayer. Not in scope [redacted]

GST registration

- [redacted] Not in scope [redacted]
- 2.9 18(c)(i) [redacted] the Taxpayer applied for GST registration (**Application**) 18(c)(i) [redacted] with retrospective effect 18(c)(i) [redacted]. Not in scope [redacted]

Not in scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

2.23 For these reasons, the Commissioner advised that her final decision was that the Taxpayer's request for retrospective GST registration would not be accepted.

Not in scope

[Redacted]

Dispute process

Not in scope

[Redacted]

Not in scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Issues

[Redacted]

[Redacted]

[Redacted]

- If the Taxpayer is not required to be registered, did the CIR appropriately refuse the Taxpayer's application for retrospective GST registration?

Not in scope

Time bar



5. Application for retrospective GST registration

- 5.1 This issue concerns the Commissioner's discretion in s 51(4)(a) of the GST Act to register a person for GST where she is satisfied that the person is eligible to be registered, from a date the Commissioner may determine.
- 5.2 The Taxpayer argues that the Commissioner's decision not to accept the backdated GST registration is inconsistent with the policy by which she gives effect to s 51(4)(a), SPS 18/03: *Effective date of GST registrations (SPS)*. CCS disagrees and considers that the decision is consistent with s 51(4)(a) and the SPS.

Not in scope

The Taxpayer's view

Not in scope

Backdating voluntary GST registrations

- 5.46 If a person has met the requirements of s 51(3) and the Commissioner is satisfied that the person is eligible to register for GST, s 51(4)(a) provides the person shall be a registered person from such date as the Commissioner may determine. As previously discussed, this gives the Commissioner a discretion to choose the date from which a person will be registered for GST under this provision.
- 5.47 While the Commissioner has a discretion as to the date of a voluntary GST registration, this does not mean she can exercise this discretion arbitrarily or however she pleases. The Commissioner's decision-making powers are subject to the principles outlined in *Wednesbury*.⁸⁶ The *Wednesbury* principles, introduced by Greene MR, can be summarised as follows:⁸⁷
- the exercise of a statutory discretion must take into account all relevant factors and must not take into account irrelevant factors.
 - What is relevant or irrelevant, as the case may be, will be determined from the statutory context.
 - The exercise of the discretion must not be made in bad faith or dishonestly.
 - Those who assert that the person exercising the discretion contravened the law are those who must establish that it is so, i.e. the onus of proof rests with the plaintiff and not with the person who exercised the discretion.
- 5.48 In addition, as with all discretionary matters in the Inland Revenue Acts, the discretion in s 51(4)(a) is underpinned by the Commissioner's overriding obligations in s 6 and 6A of the TAA to use her best endeavours to protect the integrity of the tax system. In particular, ss 6(2)(b), (c) and (f) include in the meaning of "integrity of the tax system":
- (2) Without limiting its meaning, the **integrity of the tax system** includes—
- ...
- (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
- (c) the rights of persons to have their individual affairs...treated with no greater or lesser favour than the tax affairs of other persons; and
- ...
- (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.
- 5.49 This means that in applying her discretion, the Commissioner must ensure she is doing so fairly, impartially, and according to law, and treating the affairs of each taxpayer with no greater or lesser favour than the tax affairs of other persons.

⁸⁶ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223; [1947] 2 All ER 680.

⁸⁷ *Wednesbury* at 682.
18(c)(i)

5.50 Section 6A (together with s 6) of the TAA was enacted to provide the framework within which the Commissioner administers the tax system. Section 6A(2) clarifies the Commissioner's overall objective in carrying out those functions.

5.51 To discharge her s 6A(2) duties, the Commissioner must compare the available courses of action with the likely effect on the amount of net revenue collected over time. To do this, the Commissioner must consider both the short- and long- term implications of each course of action and have regard to all three factors listed in s 6A(2). These factors are:

- the resources available to the Commissioner (s 6A(2)(a));
- the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts (s 6A(2)(b)); and
- the compliance costs incurred by persons (s 6A(2)(c)).

5.52 The Commissioner has set out the factors she will consider in determining the date of a voluntary GST registration from paragraph [10] of the SPS:

Where the value of taxable supplies made is less than the threshold in s 51(1)(a), a person is entitled to register voluntarily for GST under s 51(3). **Although the Commissioner has complete discretion as to the effective date of that registration, that date will generally be from the date on which the Commissioner became satisfied that the person was able to be registered for GST or from such other date which is considered appropriate.** For example, an applicant may request that an effective date be the first day of the month of that application. Provided the applicant has records and systems in place to accurately establish the correct tax payable, and it does not impact any other person, then the Commissioner is likely to approve that date. A date of the beginning of the month of application will not be treated as a request for a retrospective date.

In exceptional circumstances, the Commissioner may agree to a voluntary registration having a retrospective effective date. It is not uncommon for persons to apply for retrospective registration dates to facilitate input tax claims, notwithstanding that these are generally available using the adjustment provisions at the first adjustment period following their registration date.

The following are factors that will be considered to determine whether a retrospective GST registration would be approved:

- **The reason why the applicant did not voluntarily register earlier. The person must have been carrying on a taxable activity at that earlier date and have intended to register from that date, but circumstances prevented registration.** Persuasive circumstances include absence overseas, illness, or personal tragedy.
- **Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered.** For example, the person's business activity was thought to be an exempt activity, but later discovered that it was a taxable activity; or the person did not register in the mistaken belief that they were not able to register until they reached the turnover threshold.
- Whether the applicant proceeded in business in the reasonable belief that the registration is automatic. Evidence of this belief might be demonstrated by the applicant mistakenly charging GST on the goods and services supplied.
- The applicant's ability to verify the amount of output tax payable on the supplies made during that period. The applicant must have sufficient accounting records that establish the supplies made over the period.
- **The compliance cost difference between allowing a retrospective date and allowing a current date. This applies for both the applicant and the Commissioner.** Note that a retrospective registration in order to facilitate an input tax claim instead of making an input claim using the adjustment provisions is not in itself a sufficient reason.

- **The amount of time between the date of application and the requested registration date.** The longer the time between the application date and the requested registration date, the less likely that the Commissioner will exercise the discretion. Ignorance of obligations, or failure to register over a long period of time would not be persuasive reasons.
- **The effect that a backdated registration would have on the administration of the Act.** This includes consideration of the effect the backdated registration is likely to have on other persons, including suppliers and recipients.

...

The list of factors set out above is not exhaustive. There may be other factors particular to the applicant's circumstances that are relevant and may influence the decision to allow the GST registration to be back-dated. Note that no one factor is determinative. In applying her discretion, the Commissioner will be careful that the person is not trying to use a legislative provision to their advantage. [Emphasis added]

- 5.53 The SPS states that the Commissioner may agree to a retrospective voluntary registration in "exceptional circumstances" and sets out some of the relevant criteria the Commissioner will consider in determining whether to agree to a retrospective voluntary registration.
- 5.54 By default, the SPS states that the date of the registration will be the date on which the Commissioner becomes satisfied that the person is eligible to be registration. In other words, the GST registration will generally be prospective from the date the application is considered and accepted.
- 5.55 This approach is consistent with the precursor to the SPS, an item in TIB Vol 7, No 3 (September 1995) titled *GST Registration – Effective date when applicant requests backdated voluntary registration (TIB)*. The TIB provides some further detail as to the relevance of these factors. Notably, the TIB states that the Commissioner "will only register a person retrospectively when the circumstances show that it would be unfair on the taxpayer for the registration not to be retrospective".
- 5.56 The factors set out in the SPS and TIB, while not based on any specified legislative provisions or case law, provide a framework for the Commissioner to ensure she is acting consistently with her obligations under ss 6 and 6A in applying the discretion in s 51(4)(a). These overriding obligations must be kept in mind in considering how these factors apply and what other information may be relevant in determining whether a retrospective registration is appropriate.
- 5.57 The following will briefly consider the relevance of some of these factors in relation to the Commissioner's obligations under ss 6 and 6A.

The reason why the applicant did not voluntarily register earlier

- 5.58 This states that the person must have been carrying on a taxable activity at that earlier date and have intended to register from that date, but circumstances prevented registration. The SPS refers to overseas absence, illness or tragedy. This factor is relevant because it may be unfair or inequitable to refuse a retrospective GST registration if the only reason the person did not register was because of circumstances outside their control. The TIB explicitly refers to the relevance of the circumstances being outside the person's control. In an example in the TIB, the relevant person did not register earlier as he had not sought professional advice. This was relevant in concluding the Commissioner would not backdate the person's GST registration.


Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered

- 5.59 This factor also focuses on the reasons for the failure to register. Presumably, the Commissioner considers that a person who failed to register due to a genuine belief that their activity was, for example, exempt, should not be treated the same as a person who failed to register due to something like inertia or poor planning.

The compliance cost difference between allowing a retrospective date and allowing a current date

- 5.60 This is a clear reference to the resources available to the Commissioner in s 6A(2)(a) and the compliance costs incurred by persons in s 6A(2)(c). The Commissioner is less likely to exercise her discretion where a retrospective registration would be resource-intensive for the Commissioner, or where the person could just claim inputs in a later return under the adjustment provisions.
- 5.61 The proviso to s 20(3) of the GST Act allows a person entitled to an input to deduct from an amount of output tax payable in a later taxable period, provided it has not been deducted previously and the later period is within two years of the earlier of the invoice or payment to which the input relates. If a person can claim the input in a later period, there would be no need to register the person retrospectively.

Not in scope



The amount of time between the date of application and the requested registration date

- 5.63 The SPS states that the longer the period of time between the application and the requested registration date, the less likely the Commissioner will be to exercise her discretion to backdate registration.
- 5.64 This factor also appears to be focused on the relative administrative and compliance costs associated with retrospective registration. This is because the more retrospective the registration, the more transactions would need to be revisited, the more returns would need to be filed, and the more assets would move into the GST net and need to be accounted for. In addition, there is an argument that the longer a person waits to apply for registration, the less fair or equitable it would be to backdate the registration.
- 5.65 As Wylie J observed in *Arai Korp*: "A taxpayer who has sat on his or her hands and done nothing, is not entitled to expect preferential treatment".⁸⁹ Allowing

⁸⁹ *Arai Korp Limited v Commissioner of Inland Revenue* [2013] NZHC 958, (2013) 26 NZTC 21,014 at [68]. While this case concerned the application of s 113 for a taxpayer who did not engage with the disputes process, the underlying sentiment concerns the Commissioner's obligation to treat taxpayers fairly and with no greater or lesser favour, which is equally applicable in this case.

retrospective registration for a person who took no action to register for a long time would potentially mean treating that taxpayer more advantageously than other taxpayers who diligently applied for GST registration and met their obligations in a timely manner.

- 5.66 Presumably, however, the first factors regarding the reason for the delay would also be relevant in assessing the relative importance of the length of the delay. The SPS refers to ignorance of obligations, or failure to register over a long period of time, as reasons that would not be persuasive for this purpose.

The effect that a backdated registration would have on the administration of the Act

- 5.67 The SPS states that this includes consideration of the effect backdated registration is likely to have on other persons, including suppliers and recipients.
- 5.68 It is considered this refers to both the retrospective impact of previous supplies, and the effect of backdating in light of the wider purpose of relevant provisions of the GST Act. The Commissioner would likely not be acting consistently with her obligations if she applied a discretion in circumstances where doing so frustrated the intent behind the provision which empowers the use of the discretion.
- 5.69 The Taxpayer referred to a passage in *LR McLean v CIR* concerning the purpose of the GST Act to tax the final consumer on the price, and for the tax paid by those earlier in the chain to be refunded to them:⁹⁰

No doubt the purpose and scheme of the [GST] Act is generally to tax the added value at each stage, and not to tax sales by unregistered persons. It is also, however, **to tax the ultimate consumer on the full price, and for the tax paid by those earlier in the chain to be refunded to them.** [Emphasis added]

- 5.70 The Taxpayer states that it is in keeping with the purpose of the GST Act to allow a person carrying on a taxable activity to claim inputs, as the tax is intended to be on the final consumer.■ While there is no dispute between the parties that GST is intended to be a tax on the final consumer, this paragraph takes the judgment in *LR McLean* somewhat out of context.
- 5.71 The *LR McLean* case concerned the ability for a person to claim a secondhand goods input tax credit for raw wool. Notably, the Court of Appeal concluded that the taxpayer in that case *was not entitled to a secondhand goods credit* for the wool as it was not within the ordinary meaning of “secondhand goods” by virtue of not being secondhand. The very same paragraph referred to above goes on to state the following regarding secondhand goods and the purpose of GST:

The appellants' argument, so far from amounting to double tax, would deprive the Revenue of tax on the full final price. Such an anomaly is allowed by the legislation in the exception created for secondhand goods, where only the added value is taxed. In the case of most secondhand goods, such as a motor car, tax will have been paid on the goods when they were bought as new. There is nothing in the purpose or scheme of the Act which would justify extending this exception to raw wool, and ignoring the ordinary meaning of the words “secondhand goods”.

⁹⁰ *LR McLean & Co Ltd v CIR* (1994) NZTC 11,211 (CA) at 11,219.

5.72 Seen in context, McKay J was confirming that a person carrying on a taxable activity will not in all circumstances be entitled to an input tax credit. As McKay J states, in the case of most secondhand goods, tax will have been paid when they were bought as new. To claim an input tax credit in relation to an item for which no tax has previously been paid would generally not be consistent with the purpose of taxing the final consumer on the price. On the contrary, *LR McLean* highlights that in some circumstances, allowing an input tax claim would deprive Inland Revenue of tax on the final full price.

5.73 Blanchard J also addressed the intent of the GST system as a tax on final consumption in *Glenharrow Holdings v CIR* at [43] and [44]:⁹²

[43] GST utilises the invoice or credit-offset system. Consequently, and differing from other forms of consumption tax, GST is a multi-stage tax imposed on the value added at every stage of the business activity by which goods or services reach the ultimate consumer. **It is a tax on final consumption because it is the sum of the value added by firms at each stage of the supply chain that consumers ultimately purchase and consume. Registered persons producing taxable supplies effectively operate as tax collectors on behalf of the government and as such are not themselves subject to GST's economic incidence. That is of course consistent with the neutrality and efficiency of the revenue collection rationales that underlie the Act. The corollary is that registered persons should, by the same token, not obtain unacceptable windfall gains from the regime.**

[44] **From a reading of the Act as a whole it is clear that the legislature anticipated that, for a trader in goods and services, there will over time usually be some balancing out or netting off of the GST components of sales and purchases.** There will obviously be timing differences. Goods and services will frequently not be both bought and sold in the same GST period, but the Act appears to have been drafted with an anticipation that in the long run, and broadly speaking, appropriate offsetting will occur. In fairness, however, where a cost of acquisition precedes the return from a sale, a deduction is made available in advance of the arrival of that return. Where this occurs there is always the risk that the return which eventuates will not be as great as the cost of acquisition, or there will be a nil return. That is a risk which the Act requires IRD to accept as within a normal range of trading results, in the same way as it is able to take a greater benefit where a return from a business transaction is unusually large. The intent and the application of the Act accommodates such variables. [Emphasis added]

5.74 Broadly, GST consequences for registered persons are intended to balance out or net off over time, and registered persons should not obtain unacceptable windfall gains. For these reasons, it is considered that while it accords with the purpose of GST to tax the ultimate consumer on the price, this does not mean that it is necessarily inequitable for a person not to receive an input tax credit.

5.75 In the context of retrospective GST registration, it is considered that the Commissioner would be more likely to allow a retrospective GST registration where, for example, a person would otherwise be unable to claim inputs for expenditure related to supplies they are making or intend to make that give rise to output tax liabilities. This is because the supplier would be bearing the cost of the tax, rather than the ultimate consumer. Such a situation would arguably be "double taxation" as argued by the appellant in *LR McLean*. However, this would also need to be considered and weighed in light of the other factors above. In addition, it is noted that voluntary registration is, by its very nature, voluntary. A person in the above scenario could avoid output tax liability by keeping their activity outside the GST net.

⁹² *Glenharrow Holdings Ltd v C of IR* (2009) 24 NZTC 23,236 (SC).

Land transactions

- 5.76 The SPS states that the last factor is particularly important in respect of land transactions involving another GST registered party. This is because of the impact on the compulsory zero-rating rules for land.
- 5.77 Section 11(1)(mb) of the GST Act provides that a supply of goods is charged with GST at a rate of 0% where the supply wholly or partly consists of land if both parties are GST registered and the recipient intends to use the goods for making taxable supplies.
- 5.78 If a vendor is unregistered at the time of supply, but is later registered from an earlier date, the vendor will then be liable to account for GST at either 0% or 15% depending on whether the transaction is zero-rated. The SPS states that this situation would most likely arise in the case of required registrations as a person is unlikely to apply for a voluntary GST registration where this would impact on a past land transaction.

Other factors

- 5.79 The SPS states that there may be other factors particular to the person's circumstances that may influence a decision to backdate, and that no one factor is determinative.
- 5.80 It is considered that relevance and weighting given to any other factors will need to be considered in light of the Commissioner's overriding obligations in s 6 and 6A of the TAA.

Application to the facts

- 5.81 Section 51(4)(a) states that where a person has made an application under ss 51(2) or (3), and the Commissioner is satisfied that the person is eligible to be registered, that a person shall be registered for GST from such date as the Commissioner may determine.

Not in scope

Whether Taxpayer eligible to register for GST

Not in scope

Not in scope

Whether retrospective GST registration appropriate

5.87 Not in scope

the following will discuss whether the Commissioner was correct not to backdate GST registration, with regard to the factors listed in the SPS and the Commissioner's overarching obligations in ss 6 and 6A of the TAA.

The reason why the applicant did not voluntarily register earlier

5.88 The Taxpayer did not voluntarily register earlier as "they genuinely believed they were ineligible to register for GST until they had made taxable supplies". Consistent with the example in the TIB, the reason for the delay is not due to circumstances outside the Taxpayer's control. It was a simple failure to register due to lack of information.

5.89 This does not support the Taxpayer's view that registration should be backdated.

Whether the applicant proceeded in business in the genuine belief that they were ineligible to be registered

5.90 As above, the Taxpayer states that it genuinely believed it was ineligible to register. CCS states 18(c)(i) that it is "aware that other entities 18(c)(i) have registered in similar circumstances where no supplies have been made". Presumably, CCS's inference is that the Taxpayer ought to have known it could register, or, as the Taxpayer suggests, CCS believed there was some deliberate reason behind the delay.

18(c)(i)

- 5.91 Consistent with comments from the Taxpayer, there was no apparent benefit to the Taxpayer in delaying the application. On the basis that CCS accepts the Taxpayer had a taxable activity, there is no reason why a voluntary GST registration application would not have been accepted if the Taxpayer had applied when its taxable activity commenced. Failure to register earlier served no evident purpose except preventing the Taxpayer from being able to claim inputs in relation to the purchase and development of the Property.
- 5.92 CCS has not provided any information regarding other related entities and the situations in which they may have registered for GST. In light of the lack of any apparent benefit to the Taxpayer in delaying the registration, whether the Taxpayer ought to have known based on the activities of other associated entities is not considered persuasive.
- 5.93 The Taxpayer's genuine belief that they were unable to register may support a decision to backdate registration.

The compliance cost difference between allowing a retrospective date and allowing a current date

- 5.94 In this case, as the Taxpayer states, it would be "pointless" to allow a current date in this situation. As the Taxpayer ended its taxable activity prior to making the Application, it is considered it would not only be pointless but impossible for CCS to register the Taxpayer for GST prospectively as the requirements in s 51 would not be met. It is implied that the Taxpayer considers the inability to register prospectively would support a decision to backdate registration.
- 5.95 However, this factor seems to be concerned with the Commissioner's resources and compliance costs for taxpayers. The effect of the Taxpayer's inability to register will be considered further below regarding the effect of backdating on the administration of the GST Act.
- 5.96 The compliance cost of backdating on the facts of this dispute would not appear to be particularly high. The Taxpayer has provided some evidence in support of the inputs it would presumably claim if registered, 18(c)(i) [REDACTED]. The administrative cost to the Commissioner would presumably be limited to processing the GST returns and refunds in relation to the relevant taxable periods, and including the Supply in the GST net. Neither party has provided information regarding the compliance costs or administrative costs to them in backdating the registration, but nothing has been provided that would indicate it would be particularly burdensome.
- 5.97 The Taxpayer has stated that it would be happy to claim GST inputs under the adjustment provisions if this is what the Commissioner would be comfortable with. However, the Taxpayer would not be able to make an adjustment under the proviso to s 20(3) as prospective registration is not possible in this case. This means the Taxpayer will have no subsequent taxable periods in which to deduct the inputs. In addition, the Supply was made 18(c)(i) [REDACTED] so the Taxpayer would be out of time to make an adjustment in accordance with the two-year limit in the proviso to s 20(3).
- 5.98 The relevance of this factor is difficult to gauge on the specific facts of this dispute as the SPS assumes that the Commissioner will register prospectively if a backdated registration is not considered appropriate. Nevertheless, it is noted that the Taxpayer would not be able to claim the inputs in subsequent returns,

and the administrative or compliance costs for either party do not seem to be particularly high.

The amount of time between the date of application and the requested registration date

- 5.99 The SPS states that the longer the time between the application date and the requested registration date, the less likely the Commissioner will exercise the discretion to backdate.
- 5.100 CCS relied on the 30-month delay in making the Application, and 7-month delay from the ending of the taxable activity in support of its decision not to backdate. CCS did not provide reasoning in support of the relevance of this factor, but it is considered that 30 months is a significant delay.
- 5.101 The Taxpayer states that the time lapse is arguably not sufficiently long to deny GST registration. It submits that CCS over-emphasised the importance of this factor relative to other factors favourable to the Taxpayer. The Taxpayer has also not provided any reasoning in support of this assertion, but it is noted that the SPS states that no one factor is determinative.⁹⁴
- 5.102 The SPS also states that ignorance of obligations or failure to register over a long period will not be persuasive. The analysis above suggests that this is based on the relative fairness of backdating GST registration several years, when other taxpayers are expected to be aware of their obligations and comply with them in a timely manner. In this case, it has already been established that the Taxpayer's failure to register was a result of ignorance regarding their ability to register while not making taxable supplies. However, the SPS factors also treat genuine belief that a person was ineligible to register as relevant, as discussed above.
- 5.103 CCS states 18(c)(i) that considering the factors in the SPS, the Commissioner's position is that at the time of the Application, the Taxpayer's taxable activity had ceased and it had not made, and would never make, any taxable supplies that would require the Taxpayer to register. Alongside the significant delay in applying, CCS appears to have relied on the lack of ongoing taxable activity and lack of taxable supplies as a primary reason for declining the Application.
- 5.104 This appears to be a conflation of the Taxpayer's eligibility to register with the Commissioner's discretion to backdate registration. Although 18(c)(i) CCS states that the factors in the SPS "do not support the GST registration of the [Taxpayer] nor the backdating of any such registration", indicating CCS is aware that these are not the same thing.
- 5.105 It has already been concluded that the Taxpayer was not eligible to register for GST at the time of the Application, as its taxable activity had already ceased. While this is not directly relevant to the factors in the SPS, it is considered that if the Taxpayer was eligible to register for GST, then the fact that its taxable activity had already ceased would be relevant to the consideration of the length of the delay in making the Application.

⁹⁴ SPS at [14].

- 5.106 This is because the reasons that make the delay factor in the SPS relevant are exacerbated by the lack of ongoing taxable activity. There will be no future outputs for which the Taxpayer would be denied inputs if not retrospectively registered, minimising the potential for unfairness resulting from not exercising the discretion. In addition, the Taxpayer carried on a taxable activity completely outside the GST net, and ceased that taxable activity without a liability to register ever arising.
- 5.107 It is arguable that allowing the Taxpayer to register for GST, not only over two years late but entirely after the fact would be treating the Taxpayer with greater favour than other taxpayers who applied for GST registration on commencement of their taxable activity and complied with the obligations in a timely manner. This is particularly so given the Commissioner is clear in the SPS that she will only backdate voluntary GST registration in exceptional circumstances. A taxpayer cannot sit on their hands and do nothing and expect preferential treatment.⁹⁵
- 5.108 Overall, it is considered that the 30-month delay is significant, and the cessation of the Taxpayer's taxable activity prior to making the Application exacerbates this issue. While it is acknowledged that this factor is not solely determinative, consistent with the Taxpayer's comments regarding CCS's reliance on the delay, it is considered that this provides significant support for the Commissioner's decision not to backdate registration.

The effect that a backdated registration would have on the administration of the Act

- 5.109 The Taxpayer states that retrospective registration would have no effect on the administration of the GST Act. This is because it would not change the GST consequences of any transactions the Taxpayer entered into. Any suppliers who transacted with the Taxpayer would have accounted for GST on those supplies, and the Taxpayer only made one supply, which would have been zero-rated, as discussed at [5.118] below. This is relevant as retrospective registration would have minimal effect on other persons, which provides some support for backdating registration.
- 5.110 The parties' primary disagreement regarding this factor is the equity of allowing backdated registration so that the Taxpayer can claim inputs in relation to its taxable activity. Specific details have not been provided regarding the amounts that the Taxpayer would be able to claim, and there have been no assessments made or returns filed in relation to any period. However, from the context of the dispute it appears as though the Taxpayer would be seeking to claim a secondhand input credit for the purchase of the Property and for the GST paid for goods and services relating to the initial development of the Property before it was sold. If the Taxpayer is not registered for GST, then it would be precluded from claiming inputs in relation to any of these expenses.
- 5.111 CCS considers there is no inequity in not allowing the Taxpayer to claim any inputs in relation to the purchase of the Property as the vendor was not GST registered and the Taxpayer did not pay any GST on the purchase of the Property.

⁹⁵ *Arai Korp* at [68].

- 5.112 The Taxpayer states that it would be equitable to retrospectively register it as the conceptual basis for the ability to claim a secondhand goods input tax credit is the introduction of that asset into the GST net. In this situation, the Taxpayer asserts that the good was introduced into the GST net, as the Company is charging GST on the lease of the Property, but no GST input credit has been granted. This is in accordance with s 3A(3) of the GST Act, which limits the availability of input credits for supplies between associated persons.⁹⁶ The Taxpayer considers the imbalance is inequitable, and the Commissioner is benefitting from the inequity.⁹⁷
- 5.113 The Taxpayer referred to *LR McLean* in support of this assertion, and a statement in that case regarding the purpose of GST to be a tax on the final consumer. However, it is considered in the analysis above that in *LR McLean* the availability of a secondhand input credit is based on the assumption that a secondhand good would have been subject to GST originally on purchase, and in that case it was found that a new good could not give rise to a secondhand goods credit.
- 5.114 While there does not seem to be any dispute that the Taxpayer would be able to claim a secondhand goods credit in relation to the purchase of the Property if registered, *LR McLean* highlights that the ability to claim inputs is generally linked to tax paid. It is therefore considered the Taxpayer's argument regarding *LR McLean* does not particularly assist in the context of a general consideration of the effect of registration on the administration of the GST Act, as the Taxpayer did not pay any GST in the acquisition of the Property.
- 5.115 It is noted that the Taxpayer would have paid GST in relation to goods and services related to the initial development of the Property before it was sold. There is perhaps a stronger argument that the Taxpayer should be able to register to claim these amounts, looking very broadly at the GST consequences to the Taxpayer. However, neither party has addressed this.

Not in scope

- 5.117 Overall, it appears as though the consequences of retrospective registration would not be significant from a compliance or administrative standpoint. However, in these specific circumstances, it would not necessarily be unfair or inequitable to refuse retrospective registration, particularly in relation to the Property. The Company's inability to claim an input credit for the Property is because of the rules regarding associated persons and the Taxpayer's decision to restructure for commercial reasons. The Commissioner has indicated she will only accept a backdated voluntary registration in exceptional circumstances or where it would be unfair to register prospectively. In accordance with the *Wednesbury* principles, the onus of proof rests with the person asserting that the

⁹⁶ Section 3A(3) limits the availability of input tax credits in supplies between associated persons.

Not in scope

18(c)(i)

person exercising the discretion contravened the law, not with the person who exercised the discretion. It is not considered that the Taxpayer has discharged this onus.

Land transactions – zero-rated supply

- 5.118 If the Taxpayer were registered for GST at the time of the Supply, then it is considered the compulsory zero-rating rules in s 11(1)(mb) would apply. This is because the recipient, the Company, is also GST registered. On the facts provided, the Company intended to use the Property for carrying on taxable supplies 18(c)(i) Not in scope

- 5.119 The SPS states that in land transactions, if a vendor subsequently applies for GST registration and this is backdated to before settlement, GST will retrospectively apply to the transaction either at 0% or 15%. As s 11(1)(mb) would apply to the transaction, the rate would be 0%. Therefore, while backdating registration would change the GST consequences of a land transaction, the effect of this would seem to be minimal given the Supply would be zero-rated.

- 5.120 CCS states 18(c)(i) that the Commissioner will typically not backdate a voluntary registration where it would change the GST consequences of a transaction. It is considered that while changing the GST consequences of a transaction may be relevant for compliance cost and administrative reasons, the consequences appear to be minimal where the transaction is zero-rated, as there is no GST that needs to be accounted for. It would only need to be included in the return for the relevant taxable period.

- 5.121 Again, the apparently minimal impact on the administration of the GST Act may support the Taxpayer's argument for retrospective registration. However, the fact that the Supply would be zero-rated also supports CCS's argument that not backdating registration would not be unfair or inequitable for the Taxpayer. It would not be able to claim inputs but also would not be required to account for any outputs.

Conclusion on factors in SPS

- 5.122 Considering the factors in the SPS together with the Commissioner's overarching obligations under ss 6 and 6A of the TAA, it is considered that while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances. In accordance with the *Wednesbury* principles, the onus of proof rests with the person asserting that the person exercising the discretion contravened the law, not with the person who exercised the discretion. The Taxpayer has not discharged this onus.

Not in scope

Conclusion

Not in scope

- 5.127 Not in scope it is considered that CCS's decision 18(c)(i) not to retrospectively register the Taxpayer was consistent with the Commissioner's obligations. Weighing up the factors in the SPS and the Commissioner's overarching obligations under ss 6 and 6A of the TAA, while there would be little effect on the compliance costs, administrative costs, or the administration of the GST Act, the delay in making the Application was significant, and there is also little to suggest that it would be inequitable not to retrospectively register the Taxpayer. The Commissioner is not obligated to exercise the discretion to backdate and has stated she will only do so in exceptional circumstances or where it would be unfair not to backdate in the particular circumstances.

Not in scope

7. Signed

Authors

All issues raised and arguments made by the parties in their respective Statements of Position and subsequent correspondence received by Tax Counsel Office (as well as any issues or arguments that can reasonably be inferred from those Statements of Position and correspondence), have been considered and addressed in this issues report.

Signed, subject only to any comments as listed below:

9(2)(a)



Liam McCaffery
Tax Counsel 1
Tax Counsel Office

Date: 19/05/2021

9(2)(a)



Albert Lim
Tax Counsel 3
Tax Counsel Office

Date: 19/05/2021

Sign-off

I approve the recommendations made, subject to any comments below.

9(2)(a)



Tania Sauvao
Acting Group Leader
Tax Counsel Office

Date: 19/05/2021



ADJUDICATION REPORT | PŪRONGO WHAKAWĀ

18(c)(i)

Issued | Tukuna: 16 January 2024

Use of this report | Whakamahinga o tēnei pūrongo

The analysis and decisions recorded in this report reflect the facts and legal arguments put forward by the parties to this dispute. Consequently:

- this report is not a statement of general Inland Revenue policy on any issue;
- the decisions recorded in this report, and the reasons for these decisions, are not precedential for other taxpayers or other periods.

Legislative references | Tohutoro whakatureture

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

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Not in scope

1. Decisions | Whakatau

- 1.1 It is decided 18(c)(i) (the Taxpayer) was not liable to be registered for GST, so the Taxpayer’s application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration.
- 1.2 It is decided that CCS’s decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

Reasons for decisions | Pūnga o ngā whakatau

■ Not in scope
[Redacted]

■ [Redacted]

■ [Redacted]

- 1.6 Therefore, the application for registration was a voluntary registration. This means that CCS was able to determine the effective date of registration.
- 1.7 The GST Act does not provide much guidance on how CCS should determine the effective date of registration. Section 51(4)(a) simply states that a person shall be a registered person for the purposes of the GST Act “with effect from such date as the Commissioner may determine”. This gives the Commissioner a wide discretion to determine the effective date of registration.
- 1.8 Overall, it is concluded that CCS’s decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.
- 1.9 One of the reasons for this conclusion is the length of time between the effective registration date requested by the Taxpayer 18(c)(i) and the date on which the Taxpayer applied for registration 18(c)(i). Although the Taxpayer made an earlier application on 18(c)(i) (which might suggest the delay was not as great), the Taxpayer failed to provide information requested by CCS to support that application. Therefore, little weight can be placed on the 18(c)(i) application.
- 1.10 Backdating would also create administrative cost for the Commissioner and there is no clear benefit to the Taxpayer in being able to claim input tax deductions in earlier periods rather than claiming deductions in an adjustment period under s 21B.

- 1.11 It is considered that little weight should be placed on the fact that the Taxpayer was registered for GST on incorporation before being deregistered. The Taxpayer has not provided any evidence to support the argument that the deregistration was a mistake. Even if it was accepted that deregistration was a mistake, it is considered that a failure by an agent to consider the client's requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence are not strong reasons for the Commissioner to backdate a GST registration.

Outcome | Putanga

- 1.12 The Tax Counsel Office has decided in CCS's favour.
- 1.13 The Tax Counsel Office confirms that CCS's 18(c)(i) of 18(c)(i) concerning the effective date of registration 18(c)(i) was correct and will not be changed.

9(2)(a)

Albert Lim

Tax Counsel | Rōia Tāke

Tax Counsel Office | Te Tari Tohutohu Tāke

2. Background | Horopaki

Facts | Meka

Taxpayer

- The Taxpayer, 18(c)(i) was incorporated on 18(c)(i) Not in scope
- Not in scope

Tax agents

- 2.3 Inland Revenue records indicate that 18(c)(i) (the first tax agent) was given access to the Taxpayer's information and accounts with Inland Revenue on 18(c)(i)
- 2.4 On 18(c)(i) the first agent's access was removed, and access was given to 18(c)(i) (the second tax agent).

Property purchases

- 2.5 The Taxpayer signed a sale and purchase agreement on 18(c)(i) to purchase 18(c)(i). Settlement occurred on 18(c)(i). The Taxpayer also purchased 18(c)(i). Settlement of this purchase occurred on 18(c)(i).
- 2.6 The properties at 18(c)(i) contained existing residential homes, which the Taxpayer rented out.
- 2.7 The Taxpayer had plans prepared for a development of the properties involving the removal of the existing structures, subdivision of the site into 18(c)(i) new lots and the construction of a unit on each lot.

GST applications and registration

First GST registration application

- 2.8 On 18(c)(i) as part of the Taxpayer's Companies Office registration, the Taxpayer applied to be GST registered with an activity of "Building, house construction".
- 2.9 Based on this first GST registration, the first GST return for the two-month period ending 18(c)(i) would have been due on 18(c)(i).
- 2.10 This return was never filed because the Taxpayer's first tax agent requested to deregister the Taxpayer from GST on 18(c)(i) (the same date they gained access to the Taxpayer's

information and accounts with Inland Revenue), and the deregistration took effect from 18(c)(i) (the date the Taxpayer was registered as part of the Companies Office registration). A GST cancellation letter was issued by IR.

- 2.11 On the same date 18(c)(i) the first tax agent also submitted a Non-active company declaration (IR433).

Second GST registration application

- 2.12 As noted above, the Taxpayer's first tax agent was replaced on 18(c)(i)
- 2.13 On 18(c)(i) the second tax agent applied to register the Taxpayer for GST, requesting that registration be backdated to 18(c)(i) (the date the Taxpayer was incorporated).
- 2.14 CCS requested more information in support of the application. As of 18(c)(i) the information had not been provided, so CCS rejected the second GST registration application. The record associated with the application also highlights that the company was "Non-active".

Re-activation of company

- 2.15 As noted above, the company was recorded as being a non-active company (because of the non-active company declaration submitted by the initial tax agent on 18(c)(i)
- 2.16 The second agent requested CCS reactivate 18(c)(i)
- 2.17 On 18(c)(i) CCS reactivated 18(c)(i) with a "reactivation date" of 18(c)(i). CCS sent a letter dated 18(c)(i) confirming the reactivation from 18(c)(i).

Third GST registration application

- 2.18 On 18(c)(i) CCS received a third GST registration application, again requesting a retrospective commencement date of 18(c)(i) (the date the Taxpayer was incorporated).
- 2.19 On 18(c)(i) the Taxpayer provided the following information in support of the application:
- invoice from 18(c)(i) dated 18(c)(i) for 18(c)(i) (invoice number 18(c)(i) for landscape investigation and design;
 - invoice from 18(c)(i) dated 18(c)(i) for 18(c)(i) (invoice number 18(c)(i) for progress payment for survey and design work;
 - fee estimate from 18(c)(i) dated 18(c)(i) (Geotechnical Investigation Fee) disclosing an estimated fee of 18(c)(i); and
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- 2.20 On 18(c)(i) the Taxpayer provided the following additional information:

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2.21 The Taxpayer provided bank statements and the following invoices with the 18(c)(i)

- invoice from 18(c)(i) dated 18(c)(i) to amend the subdivision scheme plan;
- invoice from 18(c)(i) dated 18(c)(i) to update "RC" documentations & co-ordinate with consultants to Council's approval; and
- invoice from 18(c)(i) dated 18(c)(i) for a review of the updated site and earthwork plans.

GST registration application accepted but not backdated

2.22 On 18(c)(i), CCS registered 18(c)(i) for GST but did not backdate the registration as requested. Registration was effective from 18(c)(i), being the date the third GST registration application was received by CCS.

2.23 In an email dated 18(c)(i), CCS informed the Taxpayer of the decision and also referred to adjustments that could be made under s 21B.

2.24 The agent asked CCS several times to reconsider the decision. CCS refused.

2.25 The last email from CCS concerning the decision (before the Taxpayer issued its 18(c)(i) was dated 18(c)(i)

Dispute

Not in scope

Not in scope

Issues | Take

2.29 CCS states the issue as:

Whether the Commissioner's decision not to grant a retrospective GST registration date to 18(c)(i) was a valid decision by the Commissioner.

2.30 The Taxpayer states the issue as:

Whether, pursuant to s 51(1)(b) of the Goods and Services Tax Act 1985 ('GST Act'), 18(c) was liable to be registered for GST as at 18(c)(i)

2.31 The issue concerns the effective date of registration for the Taxpayer. The answer to this issue turns on whether the Taxpayer's application for registration was a voluntary registration or whether the Taxpayer was liable to register for GST in 18(c)(i). If the application was voluntary, the question becomes whether CCS's decision not to backdate the registration to a date in 18(c)(i) was a valid exercise of the Commissioner's discretion under s 51(4)(a).

3. Effective date of GST registration

3.1 The issue concerns the effective date of GST registration for the Taxpayer. The determination of the effective date of registration turns on whether the Taxpayer's application for registration was a voluntary registration or whether the Taxpayer was liable to register for GST on 18(c)(i) (or earlier in 18(c)(i)). If the application was voluntary, the question becomes whether CCS's decision not to backdate the registration to a date in 18(c)(i) was a valid exercise of the Commissioner's discretion under s 51(4)(a).

■ Not in scope [Redacted]

■ [Redacted]

[Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

Not in scope [Redacted]

Not in scope

- 3.24 Therefore, the application for registration was a voluntary registration. This means that CCS was able to determine the effective date of registration. Whether CCS properly exercised its discretion to determine the effective date of registration is considered next.

Whether CCS has properly exercised its discretion in determining the effective registration date

- 3.25 It is concluded above that the Taxpayer's registration for GST was voluntary. Therefore, the CCS had a discretion to determine the effective date of registration.
- 3.26 The GST Act does not provide much guidance on how CCS should determine the effective date of registration. Section 51(4)(a) simply states that the person shall be a registered person for the purposes of the GST Act "with effect from such date as the Commissioner may determine".
- 3.27 This gives the Commissioner a wide discretion to determine the effective date of registration. However, as with any administrative discretion, the Commissioner is obliged to exercise the discretion reasonably and with a proper purpose, taking into account relevant factors and not taking into account irrelevant factors.⁸
- 3.28 CCS has referred to [SPS 18/03: Effective date of GST registration](#)⁹, which sets out seven factors to consider when determining whether a backdated GST registration should be approved. Standard practice statements such as SPS 18/03 describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts. However, a standard practice statements is not authoritative. Also, as SPS 18/03 itself states (at [14]), the factors set out in the statement are not exhaustive. There may be other factors particular to the applicant's circumstances that are relevant and that may influence the decision to allow the GST registration to be backdated. Also, no one factor is determinative.
- 3.29 The decision made in this Adjudication report is based on the factors that are considered to be relevant in this dispute.

Original registration and deregistration

- 3.30 The Taxpayer argues it was registered for GST from incorporation and the first agent's deregistration of the Taxpayer in 18(c)(i) was a mistake.

⁸ *Laws of New Zealand: Administrative Law* (LexisNexis, online): [26].

⁹ *Tax Information Bulletin* Vol 30, No 8 (September 2018).

- 3.31 There may be some cases where an agent mistakenly deregistering a person from GST could be a relevant factor to consider in determining the effective date of registration (when the person applies to be re-registered). However, the relevance of this factor would depend on the nature and circumstances of the mistake. Further, this factor might not be determinative. Other factors such as delay, administrative cost and the consequences for the Taxpayer may still suggest that the effective date of registration not be backdated.
- 3.32 In an email dated 18(c)(i) the second agent stated that the first agent completely ignored the client's requirement. In another email dated 18(c)(i), the second agent stated that their understanding was that for some reason the first agent had wrongly represented to CCS that the Taxpayer was not engaged in a taxable activity. In a letter dated 18(c)(i), the second agent describes the first agent's deregistration of the Taxpayer as inappropriate and professional negligence that prejudiced the Taxpayer.
- 3.33 The Taxpayer has not provided any evidence to support these statements. For example, the Taxpayer has not provided any instructions or other correspondence between them and the first agent or provided any statement from the first agent about the alleged mistake. It is possible the deregistration action was taken in 18(c)(i) intentionally with a view to reapplying once the Taxpayer had entered the sale and purchase agreements and started acquiring goods and services.
- 3.34 Even if the second agent's comments about the first agent's deregistration of the Taxpayer were accepted, it is considered that a failure by an agent to consider the clients requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence, are not strong reasons for the Commissioner to backdate a GST registration.
- 3.35 Therefore, it is considered that little weight should be placed on the fact that the Taxpayer was registered for GST from incorporation before being deregistered.

Non-active company declaration

- 3.36 The Taxpayer's first agent also submitted a non-active company declaration on 18(c)(i)
- 3.37 The application for non-active status implies that the Taxpayer did not expect to derive any income or be allowed any income tax deductions for the year for which the status applies.¹⁰ The non-active company declaration form does not mention GST. There is not necessarily any inconsistency between completing a non-active company declaration for income tax purposes and carrying on a taxable activity or intending to carry on a taxable activity from a specified date for GST purposes. A person does not need to currently be making taxable supplies or deriving income to be registered for GST on a voluntary basis. It is sufficient that the person is carrying on a taxable activity with an intention to make taxable supplies in the future.
- 3.38 Therefore, it is considered that little weight should be placed on the non-active company declaration.

¹⁰ See s 43A of the Tax Administration Act 1994 and IR433: Non-active company declaration form, [Complete a Non-active company declaration \(ird.govt.nz\)](https://www.ird.govt.nz/complete-a-non-active-company-declaration).

The Taxpayer applied to be re-registered on 18(c)(i)

- 3.39 The Taxpayer applied to be re-registered on 18(c)(i)
- 3.40 In response to the Taxpayer's 18(c)(i) application, CCS requested more information to support the application. As of 18(c)(i) no information had been received by CCS, so CCS rejected the application. CCS's decision to reject the application also appears to have been based on the Taxpayer's non-active status.
- 3.41 Without the requested supporting information, CCS could not have been satisfied that the Taxpayer was carrying on a taxable activity, or intended to do so from a specified date, and therefore that the Taxpayer was entitled to be registered (whether voluntarily or otherwise).
- 3.42 It is considered that an earlier attempt to register for GST could be a relevant factor in determining whether to backdate registration. However, in this dispute, the weight that can be placed on the Taxpayer's earlier application is reduced given the Taxpayer's failure to provide the information requested in support of the earlier application.
- 3.43 The Taxpayer has not argued (in the alternative to arguing that the effective registration date should be a date in 18(c)(i) that the GST registration should be backdated to 18(c)(i) This is perhaps because it would make little difference to the timing of adjustments compared to registration as of 18(c)(i) . Whether the effective registration was 18(c)(i) or 18(c)(i) , the first adjustment period under s 21B(2) would be a period ended 18(c)(i)

Delay between 18(c)(i) application and 18(c)(i) application

- 3.44 CCS argues that the Taxpayer did not follow up on the request for registration until 18(c)(i)
- 3.45 The Taxpayer did take some steps after 18(c)(i) including having the company's non-active status cancelled. The non-active status appears to have been one of the reasons for CCS rejecting the 18(c)(i) application, although it is not clear from the evidence whether this was communicated to the Taxpayer at the time. In any event, the Taxpayer may have viewed the reactivation as a necessary prerequisite for registering for GST. This potential issue was resolved by 18(c)(i) when a letter was issued to the Taxpayer confirming the reactivation.
- 3.46 The reason for any further delay is not clear. The Taxpayer has not provided any explanation for the delay (for example, illness, personal tragedy or disruption caused by natural disaster).
- 3.47 It is considered that the delay in reapplying is a factor that supports CCS's decision not to backdate the registration.

Whether backdating registration would cause any compliance or administrative difficulties

- 3.48 The Taxpayer has not made any supplies, so if GST registration was backdated, no amendments would be required to the tax treatment of any supplies.

- 3.49 The Taxpayer has incurred expenditure and will have paid GST input tax as part of the consideration paid for goods and services acquired. The Taxpayer appears to have invoices for this expenditure so there does not appear to be any issue with identifying the deductions to be claimed.
- 3.50 Backdating the effective date of registration would mean that GST returns would need to be filed for the taxable periods ending between the effective date of registration and the present.
- 3.51 As argued by CCS, the processing of multiple GST returns would mean additional administrative cost for the Commissioner. The Taxpayer has not disputed this.
- 3.52 It is considered that additional administrative cost is a relevant factor to take into account in determining the effective date of registration.

The benefit to the Taxpayer of backdating is not clear

- 3.53 The benefit to the Taxpayer of having a backdated effective registration date is not clear. As noted by the Taxpayer in its 18(c)(i) [REDACTED], this dispute is not based on an assessment and no disputed amount has been quantified yet. The dispute concerns the timing of GST registration.
- 3.54 If the effective registration date was backdated, input tax deductions could be claimed for goods or services in the taxable periods in which they were acquired (between 18(c)(i) [REDACTED] and the present. If there is no backdating, the input tax deductions would all be claimed in the first adjustment period ended 18(c)(i) [REDACTED]. Either way it appears that a refund would arise for the Taxpayer.
- 3.55 The Taxpayer stated that its proposed timing of registration compared to CCS's proposed timing will result in a difference in GST assessment for various periods. However, it is not clear whether the difference in GST assessment the Taxpayer mentions is anything other than a timing difference in terms of which taxable periods input tax deductions are claimed in. It is not clear what benefit there would be to the Taxpayer in being able to claim input tax deductions in earlier periods rather than claiming them in the adjustment period under s 21B.
- 3.56 The absence of a clear benefit to the Taxpayer of backdating supports the decision to not backdate.

Conclusion

- 3.57 It was concluded in the previous section of this report that the Taxpayer was not liable to be registered for GST and the Taxpayer's application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration. Section 51(4)(a) simply states that the person shall be a registered person for the purposes of the GST Act "with effect from such date as the Commissioner may determine". This gives the Commissioner a wide discretion to determine the effective date of registration.
- 3.58 Overall, it is concluded that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

- 3.59 One of the reasons for this conclusion is the length of time between the effective registration date requested by the Taxpayer (18(c)(i)) and the date on which the Taxpayer applied for registration (18(c)(i)). Although the Taxpayer made an earlier application on 18(c)(i) (which might suggest the delay was not as great), the Taxpayer failed to provide information requested by CCS to support that application. Therefore, little weight can be placed on the 18(c)(i) application.
- 3.60 Backdating would also create administrative cost for the Commissioner and there is no clear benefit to the Taxpayer in being able to claim input tax deductions in earlier periods rather than claiming deductions in an adjustment period under s 21B.
- 3.61 It is considered that little weight should be placed on the fact that the Taxpayer was registered for GST on incorporation before being deregistered. The Taxpayer has not provided any evidence to support the argument that the deregistration was a mistake. Even if it was accepted that deregistration was a mistake, it is considered that a failure by an agent to consider the client's requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence are not strong reasons for the Commissioner to backdate a GST registration.

Conclusion | Whakataunga

- 3.62 The Taxpayer was not liable to be registered for GST, so the Taxpayer's application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration.
- 3.63 It is concluded that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

Authors Kaituhi:	Braedon McPhee, Tax Counsel Rōia Tāke, Tax Counsel Office Te Tari Tohutohu Tāke)
Reviewers Kaiarotake:	Albert Lim Tax Counsel Rōia Tāke, Tax Counsel Office Te Tari Tohutohu Tāke)
Subjects Kaupapa:	Short description of subjects in no more than two lines
Legislative provisions Whakaritenga whakatureture:	ss 6, 14, 21B, 51, GST Act 1985
Words/phrases Kupu/Kianga¹	

ISSUES REPORT | PŪRONGO TAKE

18(c)(i)

Issued | Tukuna: 15 January 2024

ADJ01495

Use of this report | Whakamahinga o tēnei pūrongo

The analysis and decisions recorded in this report reflect the facts and legal arguments put forward by the parties to this dispute. Consequently:

- this report is not a statement of general Inland Revenue policy on any issue;
- the decisions recorded in this report, and the reasons for these decisions, are not precedential for other taxpayers or other periods.

Legislative references | Tohutoro whakatureture

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

¹ Only those defined or discussed in detail.

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1. Recommended decisions | Whakatau tūtohu

- 1.1 It is decided 18(c)(i) (the Taxpayer) was not liable to be registered for GST, so the Taxpayer's application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration.
- 1.2 It is decided that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

Reasons for decisions | Pūnga o ngā whakatau

- Not in scope
-
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- 1.6 Therefore, the application for registration was a voluntary registration. This means that CCS was able to determine the effective date of registration.
- 1.7 The GST Act does not provide much guidance on how CCS should determine the effective date of registration. Section 51(4)(a) simply states that a person shall be a registered person for the purposes of the GST Act "with effect from such date as the Commissioner may determine". This gives the Commissioner a wide discretion to determine the effective date of registration.
- 1.8 Overall, it is concluded that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.
- 1.9 One of the reasons for this conclusion is the length of time between the effective registration date requested by the Taxpayer (18(c)(i)) and the date on which the Taxpayer applied for registration (18(c)(i)). Although the Taxpayer made an earlier application on 18(c)(i) (which might suggest the delay was not as great), the Taxpayer failed to provide information requested by CCS to support that application. Therefore, little weight can be placed on the 18(c)(i) application.
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Outcome | Putanga

- 1.12 The effective date of registration (18(c)(i)) determined by CCS will not be changed.

2. Background | Horopaki

Facts | Meka

Taxpayer

- 2.1 The Taxpayer, 18(c)(i) was incorporated on 18(c)(i) Not in scope
- 2.2 Not in scope

Tax agents

- 2.3 Inland Revenue records indicate that 18(c)(i) (the first tax agent) was given access to the Taxpayer's information and accounts with Inland Revenue on 18(c)(i)
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First GST registration application

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- 2.10 This return was never filed because the Taxpayer's first tax agent requested to deregister the Taxpayer from GST on 18(c)(i) (the same date they gained access to the Taxpayer's

information and accounts with Inland Revenue), and the deregistration took effect from 18(c)(i) (the date the Taxpayer was registered as part of the Companies Office registration). A GST cancellation letter was issued by IR.

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2.22 On 18(c)(i), CCS registered 18(c)(i) for GST but did not backdate the registration as requested. Registration was effective from 18(c)(i), being the date the third GST registration application was received by CCS.

2.23 In an email dated 18(c)(i), CCS informed the Taxpayer of the decision and also referred to adjustments that could be made under s 21B.

2.24 The agent asked CCS several times to reconsider the decision. CCS refused.

2.25 The last email from CCS concerning the decision (before the Taxpayer issued its 18(c)(i) was dated 18(c)(i)

Dispute

Not in scope

Not in scope

Issues | Take

2.29 CCS states the issue as:

Whether the Commissioner's decision not to grant a retrospective GST registration date to 18(c)(i) was a valid decision by the Commissioner.

2.30 The Taxpayer states the issue as:

Whether, pursuant to s 51(1)(b) of the Goods and Services Tax Act 1985 ('GST Act'), 18(c) was liable to be registered for GST as at 18(c)(i)

2.31 The issue concerns the effective date of registration for the Taxpayer. The answer to this issue turns on whether the Taxpayer's application for registration was a voluntary registration or whether the Taxpayer was liable to register for GST in 18(c)(i). If the application was voluntary, the question becomes whether CCS's decision not to backdate the registration to a date in 18(c)(i) was a valid exercise of the Commissioner's discretion under s 51(4)(a).

Time bar | Wā aukati

Not in scope

3. Effective date of GST registration

3.1 The issue concerns the effective date of GST registration for the Taxpayer. The determination of the effective date of registration turns on whether the Taxpayer's application for registration was a voluntary registration or whether the Taxpayer was liable to register for GST on 18(c)(i) (or earlier in 18(c)(i)). If the application was voluntary, the question becomes whether CCS's decision not to backdate the registration to a date in 18(c)(i) was a valid exercise of the Commissioner's discretion under s 51(4)(a).

■ Not in scope

■

Not in scope

■ Not in scope

■

■

Not in scope

Not in scope

- 3.24 Therefore, the application for registration was a voluntary registration. This means that CCS was able to determine the effective date of registration. Whether CCS properly exercised its discretion to determine the effective date of registration is considered next.

Whether CCS has properly exercised its discretion in determining the effective registration date

- 3.25 It is concluded above that the Taxpayer's registration for GST was voluntary. Therefore, the CCS had a discretion to determine the effective date of registration.
- 3.26 The GST Act does not provide much guidance on how CCS should determine the effective date of registration. Section 51(4)(a) simply states that the person shall be a registered person for the purposes of the GST Act "with effect from such date as the Commissioner may determine".
- 3.27 This gives the Commissioner a wide discretion to determine the effective date of registration. However, as with any administrative discretion, the Commissioner is obliged to exercise the discretion reasonably and with a proper purpose, taking into account relevant factors and not taking into account irrelevant factors.⁹
- 3.28 CCS has referred to [SPS 18/03: Effective date of GST registration](#)¹⁰, which sets out seven factors to consider when determining whether a backdated GST registration should be approved. Standard practice statements such as SPS 18/03 describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts. However, a standard practice statements is not authoritative. Also, as SPS 18/03 itself states (at [14]), the factors set out in the statement are not exhaustive. There may be other factors particular to the applicant's circumstances that are relevant and that may influence the decision to allow the GST registration to be backdated. Also, no one factor is determinative.
- 3.29 The decision made in this Adjudication report is based on the factors that are considered to be relevant in this dispute.

Original registration and deregistration

- 3.30 The Taxpayer argues it was registered for GST from incorporation and the first agent's deregistration of the Taxpayer in 18(c)(i) was a mistake.

⁹ *Laws of New Zealand: Administrative Law* (LexisNexis, online): [26].

¹⁰ *Tax Information Bulletin* Vol 30, No 8 (September 2018).

- 3.31 There may be some cases where an agent mistakenly deregistering a person from GST could be a relevant factor to consider in determining the effective date of registration (when the person applies to be re-registered). However, the relevance of this factor would depend on the nature and circumstances of the mistake. Further, this factor might not be determinative. Other factors such as delay, administrative cost and the consequences for the Taxpayer may still suggest that the effective date of registration not be backdated.
- 3.32 In an email dated 18(c)(i) the second agent stated that the first agent completely ignored the client's requirement. In another email dated 18(c)(i), the second agent stated that their understanding was that for some reason the first agent had wrongly represented to CCS that the Taxpayer was not engaged in a taxable activity. In a letter dated 18(c)(i), the second agent describes the first agent's deregistration of the Taxpayer as inappropriate and professional negligence that prejudiced the Taxpayer.
- 3.33 The Taxpayer has not provided any evidence to support these statements. For example, the Taxpayer has not provided any instructions or other correspondence between them and the first agent or provided any statement from the first agent about the alleged mistake. It is possible the deregistration action was taken in 18(c)(i) intentionally with a view to reapplying once the Taxpayer had entered the sale and purchase agreements and started acquiring goods and services.
- 3.34 Even if the second agent's comments about the first agent's deregistration of the Taxpayer were accepted, it is considered that a failure by an agent to consider the clients requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence, are not strong reasons for the Commissioner to backdate a GST registration.
- 3.35 Therefore, it is considered that little weight should be placed on the fact that the Taxpayer was registered for GST from incorporation before being deregistered.

Non-active company declaration

- 3.36 The Taxpayer's first agent also submitted a non-active company declaration on 18(c)(i)
- 3.37 The application for non-active status implies that the Taxpayer did not expect to derive any income or be allowed any income tax deductions for the year for which the status applies.¹¹ The non-active company declaration form does not mention GST. There is not necessarily any inconsistency between completing a non-active company declaration for income tax purposes and carrying on a taxable activity or intending to carry on a taxable activity from a specified date for GST purposes. A person does not need to currently be making taxable supplies or deriving income to be registered for GST on a voluntary basis. It is sufficient that the person is carrying on a taxable activity with an intention to make taxable supplies in the future.
- 3.38 Therefore, it is considered that little weight should be placed on the non-active company declaration.

¹¹ See s 43A of the Tax Administration Act 1994 and IR433: Non-active company declaration form, [Complete a Non-active company declaration \(ird.govt.nz\)](https://www.ird.govt.nz/complete-a-non-active-company-declaration).

The Taxpayer applied to be re-registered on 18(c)(i)

- 3.39 The Taxpayer applied to be re-registered on 18(c)(i)
- 3.40 In response to the Taxpayer's 18(c)(i) application, CCS requested more information to support the application. As of 18(c)(i), no information had been received by CCS, so CCS rejected the application. CCS's decision to reject the application also appears to have been based on the Taxpayer's non-active status.
- 3.41 Without the requested supporting information, CCS could not have been satisfied that the Taxpayer was carrying on a taxable activity, or intended to do so from a specified date, and therefore that the Taxpayer was entitled to be registered (whether voluntarily or otherwise).
- 3.42 It is considered that an earlier attempt to register for GST could be a relevant factor in determining whether to backdate registration. However, in this dispute, the weight that can be placed on the Taxpayer's earlier application is reduced given the Taxpayer's failure to provide the information requested in support of the earlier application.
- 3.43 The Taxpayer has not argued (in the alternative to arguing that the effective registration date should be a date in 18(c)(i)) that the GST registration should be backdated to 18(c)(i). This is perhaps because it would make little difference to the timing of adjustments compared to registration as of 18(c)(i). Whether the effective registration was 18(c)(i) or 18(c)(i), the first adjustment period under s 21B(2) would be a period ended 18(c)(i).

Delay between 18(c)(i) application and 18(c)(i) application

- 3.44 CCS argues that the Taxpayer did not follow up on the request for registration until 18(c)(i)
- 3.45 The Taxpayer did take some steps after 18(c)(i), including having the company's non-active status cancelled. The non-active status appears to have been one of the reasons for CCS rejecting the 18(c)(i) application, although it is not clear from the evidence whether this was communicated to the Taxpayer at the time. In any event, the Taxpayer may have viewed the reactivation as a necessary prerequisite for registering for GST. This potential issue was resolved by 18(c)(i) when a letter was issued to the Taxpayer confirming the reactivation.
- 3.46 The reason for any further delay is not clear. The Taxpayer has not provided any explanation for the delay (for example, illness, personal tragedy or disruption caused by natural disaster).
- 3.47 It is considered that the delay in reapplying is a factor that supports CCS's decision not to backdate the registration.

Whether backdating registration would cause any compliance or administrative difficulties

- 3.48 The Taxpayer has not made any supplies, so if GST registration was backdated, no amendments would be required to the tax treatment of any supplies.

- 3.49 The Taxpayer has incurred expenditure and will have paid GST input tax as part of the consideration paid for goods and services acquired. The Taxpayer appears to have invoices for this expenditure so there does not appear to be any issue with identifying the deductions to be claimed.
- 3.50 Backdating the effective date of registration would mean that GST returns would need to be filed for the taxable periods ending between the effective date of registration and the present.
- 3.51 As argued by CCS, the processing of multiple GST returns would mean additional administrative cost for the Commissioner. The Taxpayer has not disputed this.
- 3.52 It is considered that additional administrative cost is a relevant factor to take into account in determining the effective date of registration.

The benefit to the Taxpayer of backdating is not clear

- 3.53 The benefit to the Taxpayer of having a backdated effective registration date is not clear. As noted by the Taxpayer in its 18(c)(i), this dispute is not based on an assessment and no disputed amount has been quantified yet. The dispute concerns the timing of GST registration.
- 3.54 If the effective registration date was backdated, input tax deductions could be claimed for goods or services in the taxable periods in which they were acquired (between 18(c)(i) and the present. If there is no backdating, the input tax deductions would all be claimed in the first adjustment period ended 18(c)(i). Either way it appears that a refund would arise for the Taxpayer.
- 3.55 The Taxpayer stated that its proposed timing of registration compared to CCS's proposed timing will result in a difference in GST assessment for various periods. However, it is not clear whether the difference in GST assessment the Taxpayer mentions is anything other than a timing difference in terms of which taxable periods input tax deductions are claimed in. It is not clear what benefit there would be to the Taxpayer in being able to claim input tax deductions in earlier periods rather than claiming them in the adjustment period under s 21B.
- 3.56 The absence of a clear benefit to the Taxpayer of backdating supports the decision to not backdate.

Conclusion

- 3.57 It was concluded in the previous section of this report that the Taxpayer was not liable to be registered for GST and the Taxpayer's application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration. Section 51(4)(a) simply states that the person shall be a registered person for the purposes of the GST Act "with effect from such date as the Commissioner may determine". This gives the Commissioner a wide discretion to determine the effective date of registration.
- 3.58 Overall, it is concluded that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

- 3.59 One of the reasons for this conclusion is the length of time [17 months] between the effective registration date requested by the Taxpayer (18(c)(i)) and the date on which the Taxpayer applied for registration (18(c)(i)). Although the Taxpayer made an earlier application on (18(c)(i)) (which might suggest the delay was not as great), the Taxpayer failed to provide information requested by CCS to support that application. Therefore, little weight can be placed on the (18(c)(i)) application.
- 3.60 Backdating would also create administrative cost for the Commissioner and there is no clear benefit to the Taxpayer in being able to claim input tax deductions in earlier periods rather than claiming deductions in an adjustment period under s 21B.
- 3.61 It is considered that little weight should be placed on the fact that the Taxpayer was registered for GST on incorporation before being deregistered. The Taxpayer has not provided any evidence to support the argument that the deregistration was a mistake. Even if it was accepted that deregistration was a mistake, it is considered that a failure by an agent to consider the client's requirements, a misunderstanding by an agent about whether the client is carrying on a taxable activity, or professional negligence are not strong reasons for the Commissioner to backdate a GST registration.

Conclusion | Whakataunga

- 3.62 The Taxpayer was not liable to be registered for GST, so the Taxpayer's application for registration was voluntary. This means that under s 51(4)(a) CCS had a discretion to determine the effective date of registration.
- 3.63 It is concluded that CCS's decision not to backdate the effective date of registration was the correct decision based on the facts of this dispute.

5. Signed | Waitohua

Authors | Kaituhi

All issues raised and arguments made by the parties in their respective Statements of Position and subsequent correspondence received by Tax Counsel Office (as well as any issues or arguments that can reasonably be inferred from those Statements of Position and correspondence), have been considered and addressed in this issues report.

Signed, subject only to any comments as listed below:

9(2)(a)



Braedon McPhee

Tax Counsel | Rōia Tāke

Tax Counsel Office | Te Tari Tohutohu Tāke

Date: 15 January 2024

Reviewers | Kaiarotake

I agree with the recommendations made, subject to any comments below.

9(2)(a)



Albert Lim

Tax Counsel | Rōia Tāke

Tax Counsel Office | Te Tari Tohutohu Tāke

Date: 15 January 2024