

Land zero rating...

By now you will probably be familiar with the new rules that apply to the transfer of land for GST purposes. These rules, which came into effect on 1 April 2011 zero rate most transfers of land that are made from one registered person to another. These rules are referred to as the compulsory zero rating (CZR) rules.

There are two interesting aspects to the CZR rules. The first is that where land is transferred together with a business, then CZR (zero rating) will automatically apply to the whole transaction. There is no longer any need to satisfy any going concern tests in these circumstances. That is the case no matter how small a component of the transaction the land sale comprises. CZR will for example apply to the whole transaction even where land is sold nominally for \$1 and a business is transferred for \$100,000.

The second interesting aspect of the CZR rules is their application where different parties are involved. For example, land might be owned by Party A and leased to Party B for use by Party B in its business. This separation of land from the business activity is common for example with retirement villages. Sale of the business will inevitably involve a supply by Party A (of the land) and by Party B (of the business). The land transaction in this example will qualify for CZR (assuming all other tests are met) but the business transaction will not. The business transaction might very well qualify for going concern treatment (and zero rating) in any event but care would need to be taken to achieve that result. Hence, two virtually identical fact scenarios here but with potentially different GST results which highlights the care required in applying the CZR rules and considering their scope.

Lastly, a big question is whether CZR applies to an assignment of a commercial lease from one registered person to another. I understand the IRD's view is that CZR applies here and I am aware of at least one other well respected tax adviser who shares that view. But it is not my view.

My view (absent any 25% or more prepayment of amounts under the lease) is that an assignment of a commercial lease does not attract CZR. That conclusion would appear to follow from the definition of land for these purposes which specifically carves out periodic leases. The assignment of a commercial lease is not therefore the transfer of an interest in land. A potential argument to the opposite exists where the lease contains an option to purchase on expiry, as such an option clearly creates an interest in land. But even then I do not think CZR treatment applies. Food for thought, I welcome your views on this.