

15 May 2017

Policy and Strategy
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Draft Questions We've Been Asked – Goods and Services Tax – Unit Trusts PUB00277aa and PUB00277bb

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on:
 - PUB00277aa “Goods and Services Tax – GST Treatment of Fees Payable to Manager of a Unit Trust” (the *Manager QWBA*); and
 - PUB00277bb “Goods and Services Tax – GST Treatment of Outsourced Services in Relation to a Unit Trust” (the *Outsourced Services QWBA*).
2. Our comments are set out below. All statutory references are to the Goods and Services Tax Act 1985 (the Act).

Comments

The Manager QWBA

3. The Law Society generally agrees with the QWBA's conclusions. In particular, we agree that:
 - issuing, redeeming or re-purchasing units;
 - paying to the trustee amounts received for the issue of units;
 - collecting and distributing amounts in respect of investments or units; and
 - administering the unit trust;should be treated as exempt financial services for GST purposes, or incidental to the supply of exempt financial services provided by the manager.
4. The GST treatment of investment management services is potentially more complex. It is possible that a “typical consumer” could view the research and market analysis component of investment management services as a separate aim that is not merely a means of enjoying a supply that has the dominant nature of an exempt supply. This could support the treatment of research and market analysis services as a separate taxable supply (see paragraph 44 of Interpretation Statement IS 17/03 *Goods and Services Tax – Single Supply or Multiple Supplies*). On balance, the Law Society considers this is not the correct approach and agrees with the conclusions reached on this point in the Manager QWBA. We note also the practical difficulties that would arise if a contrary view was taken.

The Outsourced Services QWBA

5. The Law Society considers that the Outsourced Services QWBA takes a view of the financial services exemption that is too narrow in some situations and appears inconsistent with the Manager QWBA.
6. We agree that the supply of administrative services by an outsourced provider would generally be a taxable supply (and particularly where only administrative services are provided). However, we consider that the supply of those services, together with other exempt supplies, could permit the administrative services to be treated as exempt on the same basis as the Manager QWBA.
7. Under the Manager QWBA, the supply of administrative services will be an exempt supply if the services are supplied by the manager and reasonably incidental and necessary to the supply of financial services by the manager.
8. In a case where substantially all services provided by a manager are outsourced to the same outsourced provider, we consider that the outsourced administration services may be part of a broader exempt supply.
9. In relation to investment management services, the Outsourced Services QWBA interprets “arranging” narrowly to conclude that an investment manager’s activities will not constitute arranging the transfer of securities unless the investment manager has full authority both to make and carry out investment decisions.
10. The Outsourced Services QWBA states that:

... the investment manager will not supply an arranging service where the manager need not accept decisions made by an investment manager and the investment manager does not have authority to give instructions to the trustee (who holds the assets of the unit trust) for the acquisition or sale of securities.
11. This analysis may result in different GST consequences in circumstances where there is no real practical difference in the outsourced services provided. For example:
 - A full outsourcing with delegated authority to make and carry out investment activities would be exempt.
 - An outsourcing of investment management services with trades subject to a “rubber stamp” by the manager would be taxable.
12. In our view, it is not obvious that “arranging” should be interpreted as narrowly as it has been in the Outsourced Services QWBA and, despite foreign case law, there is scope for a wider purposive interpretation of “arranging” to at least encompass the scenario in (b).
13. Finally, we note that the conclusions reached in the Outsourced Services QWBA may incentivise the bringing in-house of administration and investment management activities. This may not be in the best interests of investors in unit trusts. We acknowledge that this is a policy issue, so not of direct relevance to the technical analysis in the QWBA.

Conclusion

14. This submission has been prepared with the assistance of the Law Society's Tax Law Committee. If you wish to discuss this further please contact the convenor Neil Russ, via the committee secretary Jo Holland (04 463 2967), jo.holland@lawsociety.org.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President