



Sir Nagora Bogan
Chairman
Taxation Review Committee
P.O. Box 542
WAIGANI

By hand and email

24 August 2015

Dear Sir

Goods and Service Tax and Educational Services

We are writing on behalf of our client International Education Agency of Papua New Guinea Limited (IEA PNG) in respect of the application of Goods and Services Tax (GST) to the operations of the IEA and in respect of the application of GST to the provision of educational services generally.

Background

IEA PNG is an entity established for the purpose of education and does not carry on activities for a profit. The company was incorporated in 1977 and has since then owned and operated schools which were previously operated by the State and has throughout this time concentrated its activities on the advancement of education in PNG. This is evidenced by the Objects of the Company as set out in Clause 1 of the Constitution of IEA PNG which provides:

'The business the Company is authorised to carry on is to build, buy, own and operate educational institutions; including schools, colleges and all other education facilities of any type whatever; to do all things necessary and incidental to further that intent and purpose, including but not limited to property development and other investments and related activities of a commercial nature, and at least 80% of the income shall be utilised for that purpose.'

The education services performed by the IEA is provided throughout the country in twenty schools and TAFE colleges providing employment to skilled PNG citizen teachers and providing education to PNG citizen students which represent 90% of the student population (with annual enrolments of over six thousand students).

Goods and Services Tax - Educational Supplies

The *Goods and Services Tax Act 2000* (the GST Act) provides that the supply of educational services by an educational institution is an exempt supply. The consequence of a supply being an exempt

PricewaterhouseCoopers

PwC Haus, Level 6, Harbour City, Konedobu. PO Box 484, PORT MORESBY, PAPUA NEW GUINEA
T: (675) 321 1500 / (675) 305 3100, F: (675) 321 1428, www.pwc.com.pg



supply is that input tax relating directly or indirectly to the supply cannot be claimed as an input tax credit. Consequently, unlike a business making taxable supplies GST on inputs is a cost to the person making taxable supplies. This means the supplier needs to charge their customer more to recover the total cost of their operations.

In the context of educational institutions, which are not charity organisations, Section 31(16) of the GST Act provides the educational institution *'shall be entitled to deduct input taxes paid in respect of the supply, to the educational institution, of text books, writing materials and other educational materials reasonably relevant for the purpose of education'*. This provides some measure of relief from the additional impost of GST on inputs to the supply of educational services. However, GST remains a hidden cost of the provision of education. In addition, determining what constitutes *'other educational materials reasonably relevant for the purpose of education'* adds an unnecessary layer of complexity and opens the door to differences of interpretation between taxpayers and the Internal Revenue Commission.

On the other hand the GST Act provides that supplies to a charity organisation are zero-rated for GST purposes and Section 91A(1) of the GST Act makes it clear if the charity organisation is charged GST the Commissioner General is obligated to refund the GST. The relevant provisions are contained in Section 21(1)(e) of the GST Act which provides that a supply shall be at the rate of zero percent where:

'the supply is the supply of goods and services to a non-profit body, being a—

- (i) religious organisation; or*
- (ii) charity organisation; or*
- (iii) community organisation,*

in each case carrying on charitable activities and approved by the Commissioner for the purposes of this Act, to the extent that those supplies or those services are not for use in carrying on a profit making taxable activity as defined in this Act.'

For a number of years IEA PNG has requested the Commissioner General to confirm supplies to IEA PNG are zero rated in accordance with Section 21(1)(e) on the following basis:

- IEA PNG is a non-profit body in accordance with its constitution.
- IEA PNG is a charity organisation being an organisation established for the advancement of education.

Although the analysis of the status of the IEA for GST purposes is consistent with the Commissioner General's analysis in Value Added Tax Technical Ruling No 2 the Commissioner General has refused to provide the necessary approval under Section 21(1)(e). In considering the meaning of 'Charitable Activity' the Commissioner General noted in Value Added Tax Technical Ruling No 2 :

'In the absence of a definition of charitable activity, we are required to use the strict technical legal meaning of the term, which under common law has four recognised heads, defined as follows-

An institution will be "charitable" if its objectives are directed to the public benefit through



- *the relief of poverty*
- *the advancement of education*
- *the advancement of religion*
- *or other purposes beneficial to the community.'*

The Technical Ruling goes on to note that *'private schools, private universities and residential university colleges established or conducted by religious institutions are not themselves religious institutions'*. However, it is noted that *'as they provide for the advancement of education they are charitable bodies in their own right under the broad definition of charity and therefore fall under paragraph (2) of the Gazette Notice'*.

The discussions with the Commissioner General in relation to the status of the IEA will continue. However, it seems to us and IEA PNG that in the meantime the treatment of the supply of educational services as exempt from GST should be reviewed by your Committee.

An example of a government recognising the importance of not imposing a tax on education is contained in the Australian GST system which treats education as a GST-free supply (the same as zero-rated in PNG). The Australian policy recognises that the encouragement of educational pursuits, whether at primary or secondary school, tertiary education, or technical college or similar institution is desirable for the country and its people, and therefore education should not be taxed. In particular, the Australian policy notes that the application of GST to education would discriminate against private providers, and it is acknowledged that private education is an important component of the education system.

Section 38.85 of A New Tax System (Goods and Services Tax) Act 1999 (the Australian GST ACT) provides that:

"A supply is GST-free if it is a supply of:

(a) an education course; or

(b) administrative services directly related to the supply of such a course, but only if they are supplied by the supplier of the course."

For this purpose Section 195 of the Australian GST Act defines education course widely and in particular provides:

"education course " means:

(a) a pre-school course; or

(b) a primary course; or

(c) a secondary course; or

(d) a tertiary course; or

(f) a special education course; or

(g) an adult and community education course; or

(h) an English language course for overseas students; or

(i) a first aid or life saving course; or

(j) a professional or trade course; or



(k) a tertiary residential college course.”

It seems clear that schools in Australia providing the same education services as IEA PNG and other privately operated schools in PNG are providing those education services on a GST free basis.

In particular, it is noted the Australian system acknowledges that the service provided by private institutions is one which would otherwise be provided by the public system, or perhaps not at all. We submit this would also be appropriate policy in PNG. While there is presumably a cost to the revenue in treating supplies by private educational institutions as zero-rated supplies, we understand that no public funding is currently provided to private educational institutions in PNG, and these institutions are providing a service which would in the alternative be provided by, and at the cost of, the PNG Government (or not provided at all). Clearly the revenue loss from zero-rating educational services is less than the cost of the same services being provided by the public system. We would also submit that the alternative of the services not being provided at all is a greater cost to PNG than the revenue loss from a tax benefit afforded to the providers.

While there may be some perception that an exempt supply, which is not expressly charged with GST is not “taxed”, in reality this is not the case. Because of the nature of the GST being levied at each stage of the supply process, and the denial of a deduction for input taxes paid by the provider of an exempt supply, the pricing of that supply is necessarily inclusive of the GST paid by the provider. Accordingly, the classification of education as an exempt supply in PNG means that education is taxed, and therefore this classification affects the affordability of education in PNG to potential consumers.

National Education Policy

It is considered the issues raised in this letter and the resolution of these issues is consistent with the objects of the National Education Policy as set out in Section 4 of the Education Act 1995:

Bearing in mind the National Goals and Directive Principles of the Constitution, the objects and purposes of the National Education System, by maximum involvement and co-operative effort by persons and bodies interested in education in the country, and the maximum utilization of the resources available from all sources, are:

- 1. for the integral human development of the person*
- 2. to develop and encourage the development of a system of education fitted to the requirements of the country and its people*
- 3. to establish, preserve and improve standards of education throughout the country*
- 4. to make the benefits as widely available as possible*
- 5. to make education accessible to the poor and the physically, mentally and socially handicapped as well as to those who are educationally disadvantaged as far as this can be done by legislative and administrative measures, and in such a way as to foster among other things a sense of common purpose and nationhood and the importance and value of education at all its various levels.*



It is submitted the importance of education of the children of PNG for the future of PNG is recognised by all and at all levels of Government. The role that IEA PNG has in the education of PNG's children was established by the Government when the schools and the operation of the schools was handed over to IEA PNG in 1977.

Submission

As noted above, while the discussions with the Commissioner General will continue it seems to us and IEA PNG that in the meantime the treatment of the supply of educational services as exempt from GST should be reviewed by your Committee. The characterisation of the supply of educational services as exempt means the GST inclusive cost of inputs, other than certain educational materials, is a cost to the educational institution which increases the cost of education. In addition, the existing mechanism to allow some input tax is unnecessarily complex and leads to uncertainty in determining what is meant by other educational materials.

In our view it is appropriate policy for a socially desirable service such as education to be zero rated for GST purposes.

Against this background, it is submitted the following sections of the GST Act be amended:

- amend Section 21 to provide that the supply of educational services is zero rated; and
- repeal Section 25(5) and Section 31(16).

You will appreciate it is not possible to provide all the background as to why it is considered an amendment is necessary and we also appreciate that some of the issues raised are quite complex. As such we would be happy to meet with you to explain further the background and the amendments we are suggesting in this submission. In the meantime, should you have any questions regarding the above, please contact David Caradus or Alanne Godden.

Yours faithfully

A handwritten signature in black ink that reads 'David Caradus'. The signature is written in a cursive style and is positioned above a horizontal line.

David Caradus
Partner