GST: that damn tax and outstanding claims

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The Goods and Services Tax will come into effect from 1 July 2000. Will the new tax affect outstanding claims? Which classes of plaintiffs will be affected? Should claims be recalculated, and how?

Firstly, by no means will all claims will be affected. It is difficult to see how a claim for breach of contract, defamation or product liability would be different today from a year hence. Restitution of capital sums and pain and suffering awards seem immune to the coming tax changes.

Where a claim involves recovery in respect of future expenses or compensation for loss of future earning capacity, however, the quantum would clearly be different under a GST.

A lump sum paid in compensation of lost income is in fact an aggregation of purchasing power. That power will be reduced, sharply with respect to services, at midnight next June 30. The GST will affect the value of lump sums whether paid in respect of lost earning capacity or anticipated expenditure where either deals with the period beyond 1 July 2000.

Taking as our guide *Assessment of Damages* by Luntz (3rd ed, par 5.7.9, p262) and elsewhere, the GST is not speculative but has the force of law and should be considered in calculating damages. In other words, it's in.

How should plaintiffs with claims due for settlement beforehand be compensated for the legislated increases and decreases in prices? Does one attempt to predict post-GST prices as a basis for adjusting a claim? Is there a difference in treatment as between claim-related expenses and normal living expenses? How to deal with the anticipated spike in the inflation rate? And what about the new income tax rates?

Clear thinking is required.

The first consideration is that we are dealing in two periods, namely before and after 1 July 2000. No adjustment is required with respect to the early period because nothing changes.

In the next period, the final price of just about everything will change and, at the same time, so will the income tax rates. Leave those alone for the moment.

Expense side

On the expense side, there are two types of items to consider, being costs arising from the tort, and the rest. The former (notably domestic expenses under Griffith and Kirkemeyer) will already have been identified as part of a claim and should be individually adjusted to account for a GST. These items are relatively few and their plus-GST prices quite capable of calculation.

The other expenses appear problematical. Identifying each item a plaintiff may purchase in the normal course of living is impossible. Predicting prices is equally difficult and, falling as it must under the description of speculation, a court may be reluctant to allow recovery of a possible increase.

One could refer to Parliamentary papers such as Senate committee hearings on the effect of the GST on expenditures for the average household or a more highly specified one, but the problem remains: it's still speculation (or, as parties opposed to the one commissioning the particular model would protest, damn lies and propaganda) and not fit for the Court.

We are blessed, however, in that a thoughtful government has relieved us of our dilemma: the Court need not provide for price changes under the GST because the Government itself has done so through its "A New Tax System" (ANTS), as they would like to have us think of it. Income taxes are to be substantially restructured as from 1 July 2000, largely to compensate for the GST.

Income side

So to account for the new tax regime, the Forensic Accountant calculating loss of net income would apply existing tax rates while they exist and the new ones as from the date they will exist to arrive at the net income under either regime. Let the new income tax rates, which are known, compensate for the increased expenditure and let the plaintiff spend her/his money where s/he will.

Logic supports this approach. Take as an example a plaintiff whose loss of earnings is total and who was an apprentice before injury. Loss of earnings is calculated after tax. As the anticipated (lost) income rises over time, the applicable rate of income tax progresses. The various tax rates are incorporated in an after-tax assessment of loss. It is no less logical to incorporate in an assessment a future rate of tax where it is known. New income tax rates to be introduced with the GST have the force of legislation. They are, dare one say it, L.A.W.

As for the inflationary burst predicted to follow the GST's introduction, even by its admirers, one may safely ignore it. An increase in inflation will lead to a parallel increase in interest rates and/or dividends as well as a jump in the nominal value of all assets, including lump sum compensation payments. And if the plaintiff has not invested wisely but has instead splurged the proceeds before the GST hits, then that is her/his choice. S/he will find it harder to make ends meet after GST-day, though.

So what does it all mean in dollars

and cents to an individual plaintiff? Happily, new tax rates affect Forensic Accountants as rabbits affect fox terriers and, needing no bidding, our in-house number-fumblers have fallen on their computers and produced a great table, from which the accompanying extract provides some guidance.

Summary

Not all claims currently awaiting settlement will be affected by the ANTS package, and not all claims affected will be affected greatly. Claims most likely to require recalculation of damages are those with:

- loss of earning capacity well beyond 1 July 2000;
- lost income in excess of $20k pa;
- residual earning capacity; or
- a large Griffith and Kirkemeyer component, particularly for non-medical services.

From experience and analysis of awards reported Australia-wide, the average permanently-impaired plaintiff claiming compensation for loss of earning capacity will be able to substantiate an ANTS-related increase in her/his claim exceeding $10,000.

If you have outstanding claims meeting the above criteria, we suggest you consider the likely effect of a GST on tort-related expenses and the capital amount and recalculate prior to settlement. ■

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PRESENT VALUE OF "ANTS" INCOME TAX CUTS

$,000

Annual earnings \ Year of loss	5	10	20	30	40
20	2.4	4.3	6.9	8.5	9.5
30	3.7	6.7	10.8	13.3	14.9
40	6.3	11.3	18.2	22.5	25.1
50	10.7	21.6	34.9	43.0	48.0
70	14.3	25.6	41.3	50.9	56.8