IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

CIV 2004-442-571

UNDER	Part VIIIA of the Tax Administration Act 1994
IN THE MATTER OF	a challenge proceeding
BETWEEN	LEWIS GAIRE HERDMAN THOMPSON Plaintiff
AND	THE COMMISSIONER OF INLAND REVENUE Defendant

Hearing: 8-10 June 2009
(Heard at Wellington)

Counsel: G D Pearson and J K Scragg for plaintiff
A C Beck and K I S Naik-Leong for defendant

Judgment: 21 August 2009

RESERVED JUDGMENT OF DOBSON J

The context and the issue

[1] This is a dispute about Mr Thompson's liability for goods and services tax (GST). It arises in respect of the disposal of land holdings that constituted assets used in the business for which Mr Thompson was registered for GST purposes since the inception of the GST regime in 1986. In November 1999, he took initiatives to be de-registered. The defendant (the Commissioner/the IRD/the Department) initially accepted that application for de-registration from 30 November 1999 and conveyed that to him in December 1999. Mr Thompson then disposed of the relevant land in three transactions in December 1999, March and September 2000, without accounting for GST on any of them.

[2] The issue is the basis on which Mr Thompson is liable for GST on these transactions. Mr Thompson argues that they were only undertaken after he was de-registered, so that the GST liability was confined to a deemed disposition to himself in his unregistered capacity on which the output tax liability would only be one ninth of the original acquisition cost of the land.

[3] The Commissioner contends that the Goods and Services Tax Act 1985 (the Act) entitles him to revisit an approval to de-register for GST purposes where the Commissioner was not fully informed at the time of giving approval to de-register. The Commissioner argues that the circumstances of Mr Thompson's transactions in this case entitled him to treat Mr Thompson as re-registered until he had undertaken all the transactions. The consequence of this is that Mr Thompson has been assessed for output tax on the extent of the consideration involved in all three of the transactions, rather than the consideration of the original acquisition.

[4] Default assessments for GST in July 2004 of approximately $143,000 (for the six months to 31 July 2000), and a subsequent assessment issued in January 2005 for the GST period ending 31 January 2001 for $222,000 (being a total of actual GST in issue of some $365,000) have now mushroomed through late payment penalties and interest charges into $1.79 million.

[5] In March 2005, the Taxation Review Authority (TRA) upheld Mr Thompson's challenge to the decision of the Commissioner to re-register him for GST purposes. The TRA's core reasoning was that Mr Thompson was entitled to de-register when he requested to do so, on the basis that the scale of subsequent taxable activity was to be calculated by excluding dispositions of property. Having regard to Mr Thompson's intention to transfer the assets generating taxable supplies once he was de-registered, the TRA considered he was correct in projecting the scale of taxable activities as dropping below the threshold for registration which, at the time, was $30,000 per annum.

[6] The Commissioner appealed the TRA decision but, before it could be argued, the Court of Appeal delivered its decision in proceedings raising the same issues in *Lopas v Commissioner of Inland Revenue* (2006) 22 NZTC 19,726. Accordingly, when Miller J heard the Commissioner's appeal on 4 April 2007, it was common ground that the TRA had erred because the Court of Appeal found in *Lopas* that the projected extent of taxable supplies should include the value of deemed or actual dispositions of property that had been used in the GST-registered business.

[7] The current proceedings constitute in part an appeal from a further aspect of the decision of the TRA as to the date from which Mr Thompson was de-registered for GST purposes. It also constitutes a challenge proceeding in which Mr Thompson disputes the correctness of the GST assessments made against him.

The competing arguments

[8] Mr Thompson argues:

a) The *Lopas* decision is distinguishable because it dealt with cessation of business by the GST-registered taxpayers, rather than a winding-down over a period, which was Mr Thompson's situation. The distinction meant that a disposal of property occurring as part of a complete cessation is more readily assumed to be "carried out in the course or furtherance of the taxable activity" for the purposes of s 6(2) of the Act, and therefore assessed for GST output tax on the terms on

which it occurred. In contrast, where a lower level of activity will be continuing, it is appropriate to deem a disposition to the taxpayer in his unregistered status, so as to be assessable under s 5(3) of the Act. That has the advantage of enabling output tax to be assessed (in Mr Thompson's circumstances) at one ninth of the original acquisition price.

b) None of the three sales of property were "planned" in the sense used in *Lopas* at the time Mr Thompson requested to be de-registered, so their later occurrence did not afford grounds for re-opening the decision as to the date of de-registration.

c) Mr Thompson could accurately project that the value of his taxable supplies, excluding the disposal of assets, would be less than $30,000 in the 12 months following the end of November 1999.

d) Alternatively, the Commissioner is bound by his decision to de-register Mr Thompson from 31 July 2000. GST liabilities are particular to the period in which the taxable activity occurred and if the Commissioner is wrong as to the timing of a transaction, then there can be no liability.

e) Here, the latter two transactions were not undertaken for the purposes of the Act until after 31 July 2000, and therefore the Commissioner erred to the extent he treated the first of them as occurring before that date, and is now not able to assess Mr Thompson on the basis that they both occurred after that date.

[9] For the Commissioner, it is argued:

a) The *Lopas* decision applies so that the extent of prospective taxable activity in the ensuing 12 months, when considering Mr Thompson's de-registration, had to include the disposal of assets used in his GST-registered business.

b) There is no distinction in this regard between an immediate cessation of the GST-registered business and a "winding down" to a level projecting lower than the threshold ($30,000) for registration in the ensuing 12 months.

c) In any event, even excluding the disposal of the properties used in the business, on the correct mode of measurement the on-going supplies would reasonably be projected at more than $30,000 in the ensuing 12 months from 30 November 1999.

d) The Commissioner's conduct in extending the period of Mr Thompson's registration for GST purposes until all dispositions of property assets used in that business had been completed was lawful. The assessments could not be resisted on account of any deficiency in process because the disputable decision to extend the period of registration beyond 31 July 2000 was able to be raised in challenge proceedings disputing the assessment.

e) Alternatively, if Mr Thompson has procured de-registration in circumstances that avoided liability for output tax on the disposition of any of the properties, then the Commissioner could attribute that to a scheme or arrangement falling under the anti-avoidance provision in s 76 of the Act. The Commissioner was therefore entitled to assess such transactions as if they occurred within the period when Mr Thompson was registered.

De-registration request

[10] On 30 November 1999 Mr Thompson completed his own request of the IRD for de-registration for GST from that date. The IRD form posed a series of questions. Paragraph 4 stipulated that one of two conditions set out must apply to the applicant, namely "I have ceased all GST taxable activities" or "I am conducting a taxable activity but my turnover for the next 12 months will be under $30,000". Mr Thompson ticked the second of these. He then specified that he had sold the

business as a going concern to Rutherford Mews Limited and specified its GST number. He also specified a sale price of $35,000 and in brackets after that endorsed the words "property management & maintenance".

[11] The form also questioned "If you have ceased all business activities did you sell any business assets at that time?". Rather than ticking either the "Yes" or "No" boxes in response to this question, Mr Thompson endorsed "N/A".

[12] The form then asked "Will you be keeping any of the business assets when your registration ceases?", to which Mr Thompson ticked "Yes". In the spaces provided he then set out as follows:

Asset	**Lesser of cost or open market value**
Farm Railway Road Rolleston Canterbury	$280,000 *
Property at Atawhai Nelson	12,000 *
Addition to farm – Double Garage	4,500
" to Atawhai – two farm sheds	18,500

* Purchased prior to G.S.T. being introduced

[13] Mr Thompson then indicated that he had not filed his final return for the business and in response to a request to give any other information which may be relevant to the application, he wrote:

> My personal deregistration will simplify accounting, by having a Sept/March period and the accountant uses Rutherford Mews as the base account for doing the accounts.

[14] So far as I am aware, the evidence does not contain GST returns filed for Rutherford Mews Limited, a company controlled by Mr Thompson.

[15] On 22 December 1999, the IRD's Nelson office sent Mr Thompson a standard form notification of cancellation of his GST registration, with effect from 30 November 1999.

The land dealings

[16] Mr Thompson had owned certain properties that generated rental income in Christchurch and Nelson since before the introduction of GST in 1986. He was in the business of leasing those properties, and for that purpose had been registered for GST on a payments basis, making returns every six months. The properties comprised first, a farm at Rolleston near Christchurch, and secondly, two residential cottages and a commercial yard that adjoined Mr Thompson's own home in Nelson. An area of a little over one hectare including a house had been subdivided from the Rolleston property and sold in 1997. There were no relevant GST consequences from that transaction. At the same time, the balance of the property was split into two further new titles, CT39D/784 (some 15.21 hectares that had been zoned industrial), and CT39D/785 (comprising the balance of 186.89 hectares that remained zoned for farming purposes). Although it is not entirely clear, it appears that in 1998 all of the land in both these two titles (approximately 201 hectares) was leased for grazing purposes to a Mr Bell of Ravelston Properties Limited.

[17] From July 1998 Mr Thompson was advised as to the means of minimising tax liabilities, in particular for GST but possibly also having a bearing on income tax, in respect of a business that included the development of land. On 24 July 1998, Mr Thompson's own Nelson accountants received advice from a practitioner in another accounting firm in respect of the prospect of Mr Thompson de-registering for GST purposes. That advice included the following:

> The benefit of de-registering prior to sale of the land is that Mr Thompson only has to pay back one ninth of the original (GST inclusive) cost of the land to the government. If the land was sold prior to de-registration, GST would be payable based upon its current market value.
>
> After de-registration, this land may be sold to an associated entity (e.g. development company) and a full GST input claimed by that company based on its current market value. No GST would be payable by Mr Thompson upon such a sale as he would not be registered for GST at the time of sale.
>
> …Finally, we believe there should be a period of time (say at least three months) between when Mr Thompson is de-registered for GST and the sale to an associated entity. This is to demonstrate a clear break between the supply (sale) of the land and Mr Thompson's previous taxable supplies while registered for GST. We consider the longer the time period the better and the less likely Inland Revenue may seek to challenge de-registration.

[18] At least in part, those conveying such advice to Mr Thompson were responding to a then proposed change to the Act. Mr Thompson produced in evidence an article published in May 1999 in *Law Talk*, a New Zealand Law Society publication, which said one possibility was that sales of land to an associated person would not result in an input tax claim.

[19] Mr Thompson accepted that he acted in accordance with the advice he had received. His evidence was that he wanted his de-registration to be effective before the sales took place. He also stated that he intended to transfer the land to companies, so was sure that a few months after de-registration he would be transferring the Rolleston land to a company.

[20] I can defer analysing the circumstances of the three transactions by which Mr Thompson sold various parts of the Rolleston property until considering whether their circumstances generate an output tax liability for GST purposes. It is sufficient at the moment to briefly summarise what occurred.

[21] First, an area of some 48.6 hectares to be subdivided out of the larger block in CT39D/785 was sold to interests associated with a Mr Horsbrugh. A conditional contract, eventually dated 8 December 1999, was completed by the parties to it on 3 December 1999. A condition requiring subdivisional consent was satisfied, and a deposit paid in February 2000, with eventual settlement in June 2000.

[22] Secondly, Mr Thompson concluded an agreement for sale and purchase with one of his family companies, Armagh Investments Limited (Armagh) on 31 March 2000. This related to the 15 hectares in CT39D/784. The purchaser assumed liability for rates and insurance from 1 April 2000 and was also granted the right to undertake subdivision and sale of the property from the date of the agreement. The purchase price was reflected in an acknowledgement of debt, operative from that date but only documented in September 2000.

[23] On 29 September 2000, Mr Thompson sold the remaining area in the larger title, also to Armagh. This comprised some 138 hectares after subdivision of the

area sold to Mr Horsbrugh's interests. Similarly, payment was effected by completion of an acknowledgement of debt.

[24] After a first interview with an IRD investigator on GST issues on 13 June 2000, Mr Thompson wrote to Mr Bell of Ravelston Properties Limited, the lessee of the Rolleston property. He enclosed a new invoice for the period from 1 November 1999 to 30 May 2000, in the name of another of his companies, Overview Holdings (No 11) Limited (Overview). The accompanying letter indicated:

> The other thing I was to sort out was the GST and who the rent cheque should be made out to – I have enclosed a new invoice as Overview Holdings No 11 Limited is the principal lessee – our company and will simplify things as I am personally deregistered but Armagh Investments which is buying the industrial [sic] is registered so this way you won't have to account for part paid to one being registered and part to another who isn't.

[25] On about 30 June 2000, Mr Thompson completed a six monthly GST return for Overview for the period to 31 May 2000. That included as taxable supplies all of the rent from the Rolleston and other properties that Mr Thompson had, until 30 November 1999, returned in his personal GST return. Overview's GST return claimed the outgoings incurred in relation to the management and maintenance of the properties, to offset the extent of GST payable by Overview. There does not appear to have been any attempt to document an entitlement for Overview to grant occupancy of the Rolleston property, or to collect rent for it.

IRD investigation

[26] On 10 August 2000, Mr Lee, the Christchurch-based IRD investigator involved, wrote to Mr Thompson advising that the Commissioner had exercised the power under s 51(4) of the Act to determine that Mr Thompson should have remained registered from 30 November 1999, and he had accordingly been re-registered from that date. The letter advised that Mr Thompson would be required to furnish a return for the period ended 31 July 2000 and that adjustments to the return for the period ended 31 January 2000 were being proposed by a separate notice. The Notice of Proposed Adjustment (NOPA) issued on 10 August 2000 re-assessed Mr Thompson on two items for the period ending 31 July 1999, with which I am not

concerned in these proceedings. The NOPA also attributed to Mr Thompson the rent from the Rolleston property for the months of December 1999 and January 2000, plus $100 for yard rental for the Nelson property at Atawhai. No off-setting adjustments for the expenses incurred in relation to those taxable supplies was acknowledged. The explanation for the adjustments included recognition of the decision to re-register on account of the turnover for the following 12 months being projected at more than $30,000.

[27] On 9 October 2000, advisers for Mr Thompson issued a Notice of Response (NOR) contesting the NOPA that assessed Mr Thompson for GST in the periods up to 31 January 2000. The NOR contended that the addition of GST to invoices had been in error, that the rental without GST was $2,667.09 per month, and that that sum had reduced after a reduction in the area of land leased to Ravelston Properties Limited. Mr Thompson requested that the GST overcharged in error by Overview be offset against GST overclaimed by the lessee so as to rectify the error. He contended that there was no loss to the IRD as a result of that error. On the same day, Mr Thompson's advisers issued a NOPA in respect of the disputable decision to re-register Mr Thompson for GST purposes from 30 November 1999. This raised the same ground that the projected taxable supplies for the ensuing 12 months would not be more than $30,000.

[28] The IRD's NOR responding to Mr Thompson's NOPA in respect of its disputable decision to re-register him for GST was issued on 29 November 2000. The IRD contended that Mr Thompson was deemed to have been registered pursuant to the provisions of s 27(6) of the Act because GST was added to the rental charged to Ravelston Property Limited. (That section deems any unregistered person who adds GST to an invoice to be registered in relation to the GST content of such invoices.) Further, it maintained its view that the taxable supplies for the following 12 months would have been in excess of $30,000. In the alternative, it was contended that Mr Thompson had entered into a scheme or arrangement to defeat the intent and application of the Act, and was accordingly assessable under an anti-avoidance provision in s 76 of the Act.

[29] The NOR then specified that if the Commissioner was wrong on both those counts, then Mr Thompson's final return for the period ended 31 January 2000 should have been adjusted to include certain assets that were retained by him on de-registration. These included the four items at the values specified by Mr Thompson in his request for de-registration (see [12] above), together with an office that had been incorporated in the home recently constructed in Nelson. The NOR calculated that GST of $36,666.67, together with a shortfall penalty on that sum, should be the adjusted return for the period to 31 January 2000. There does not appear to be any record of any attempt by Mr Thompson to resolve the dispute by acceptance of this last contention advanced for the Commissioner in the November 2000 NOR. Although Mr Thompson appears to have argued for a more advantageous position than that before the TRA, arguments on his behalf in this Court did not realistically contend for any liability less than that.

[30] In support of the decision to re-register, the Commissioner claimed not to have been fully informed at the time the IRD accepted Mr Thompson's request to de-register. Reference was made both to the extent of the rental income received, and the awareness attributed to Mr Thompson at the time of his request, that there would be property transactions undertaken.

[31] On 19 November 2002, a then adviser to Mr Thompson wrote to the IRD questioning the even-handedness with which IRD officers had dealt with Mr Thompson. He particularly instanced the successive communications from the IRD. First, in December 1999 it accepted cancellation of Mr Thompson's registration effective from 30 November 1999. Then in October 2002 it advised that cancellation of Mr Thompson's GST registration had been effected from 31 July 2000. A communication followed on 30 October 2002 with a request for an overdue GST return for the period ended 31 July 2000, to which Mr Thompson had personally responded questioning why that was demanded of him. The response from the IRD on 13 November 2002 had acknowledged that Mr Thompson was not required to file a return to 31 July 2000.

[32] The senior IRD officer in the South Island, Mr Consedine, responded to this criticism on 27 November 2002 explaining that the change of the cessation date to

31 July 2000 was "in line with the position being taken by the Commissioner". Mr Consedine gave assurances that there was nothing sinister or abnormal in the IRD's dealings with Mr Thompson. A suggestion that the files ought to be removed from the Nelson office was resisted.

[33] Exchanges of position in respect of the dispute continued, and eventually the Adjudications Unit of the IRD produced an adjudication report in March 2003. The adjudication report focused on whether the Commissioner was correct to re-register Mr Thompson from 30 November 1999. It concluded that the Commissioner was correct to have remade the de-registration decision, re-registering Mr Thompson from 1 December 1999 and de-registering him from 29 September 2000 (paragraph 4.95).

[34] The case for the IRD in its Statement of Position (SOP) was that, if it was correct in re-registering Mr Thompson from 1 December 1999, then he would be liable to file returns first for the period to 31 July 2000, which would include the sale to Mr Horsbrugh's interests for $461,250, plus rent from the Rolleston property and from the Atawhai yard in Nelson. The Commissioner's SOP also proposed that a return to 31 January 2001 should be filed following de-registration on 29 September 2000. That would require Mr Thompson to account for the two sales to Armagh for a total of $2.81 million.

The structure of liability for GST

[35] Section 8 of the Act imposes liability for GST only on those persons who are registered in terms of the Act, and then in relation to supplies in the course or furtherance of a taxable activity carried on by the registered person. Part VIII of the Act deals separately with the requirements for registration. Section 51 imposes a liability on those persons carrying on any taxable activity to be registered, once the value of supplies in the preceding 12 months exceeds $30,000, or if there are reasonable grounds for believing on a prospective basis that the value of supplies in the ensuing 12 months would exceed $30,000 (or, in each case, any other figure that might be substituted for that amount in the section).

[36] The definition of "taxable activity" is expanded by the terms of s 6(2) of the Act. At the relevant time that included:

> Anything done in connection with the commencement or termination of a taxable activity shall be deemed to be carried out in the course or furtherance of that taxable activity.

The words "commencement or termination" have subsequently been amended to read "…the beginning or ending, including a premature ending…".

[37] The obvious intention is that transactions of a capital nature on setting up a business that is required to be GST registered, and then disposing of such assets on termination, are also subject to GST.

[38] Section 51(4) provides for the Commissioner to register persons, for the purposes of the Act, where they have made application and the Commissioner is satisfied they are eligible to be registered. It also provides that, where a person has not applied for registration but the Commissioner is satisfied that person is liable to be registered, the person shall be registered "with effect from the date on which that person first became liable to be registered under this Act". That provision is subject to a proviso that is not presently relevant.

[39] Thus the scheme of the Act suggests that a person has to have GST-registered status before the statute imposes a liability on that person to pay GST. However, for those with a scale of taxable supplies in excess of $30,000 per annum, status as a GST-registered person is mandatory. In the absence of an application to register, once the Commissioner is aware of a qualifying extent of taxable activities, he can effect registration from the appropriate date.

[40] Section 52 then provides for cancellation of registration. Its provisions include:

> **52 Cancellation of registration**
>
> (1) Subject to this Act, every registered person who carries on any taxable activity shall cease to be liable to be registered where at any time the Commissioner is satisfied that the value of that person's taxable supplies in the period of 12 months then beginning will be

not more than the amount specified for the purposes of section 51(1) of this Act.

(2) Every person who, by virtue of subsection (1) of this section, ceases to be liable to be registered may request the Commissioner in writing to cancel that person's registration, and if the Commissioner is at any time satisfied, as mentioned in subsection (1) of this section, the Commissioner shall cancel that person's registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of the registration takes effect.

(3) Every registered person who ceases to carry on all taxable activities shall notify the Commissioner of that fact within 21 days of the date of cessation and the Commissioner shall cancel the registration of any such person with effect from the last day of the taxable period during which all such taxable activities ceased, or from such other date as may be determined by the Commissioner:

Provided that the Commissioner shall not at any time cancel the registration of any such registered person if there are reasonable grounds for believing that the registered person will carry on any taxable activity at any time within 12 months from that date of cessation.

[41] The trigger for cessation of liability to be registered is prospective, in the sense of a present anticipation of a reduced level of supplies in the ensuing 12 months. Accordingly, it is not surprising that such prospective assessments are not left to be made autonomously by registered persons. Rather, the reduction in the scale of taxable supplies to below (relevantly) $30,000 in the ensuing 12 months is a matter on which the Commissioner is to be satisfied.

[42] The process provided for in s 52(2) contemplates four steps in the s 52(1) situation:

- a request from the registered person to the Commissioner to cancel;
- the Commissioner being satisfied that the value of the registered person's taxable supplies in the ensuing 12 months will be less than the limit;
- cancellation of the registration by the Commissioner;

- notification by the Commissioner to the person of the date on which the cancellation of registration is to take effect.

[43] Sections 52(1) and (2) contemplate the continuation of the provision of taxable supplies, but at a reduced level. The situation in which there will be no taxable supplies at all is specifically provided for in s 52(3). Whereas a request to cancel the registration is permissible for someone carrying on with a reduced scale of taxable supplies, s 52(3) imposes a mandatory obligation on registered persons who have ceased all taxable activity to notify the Commissioner within 21 days. The proviso to s 52(3) reserves to the Commissioner a discretion not to cancel if there are reasonable grounds for believing that there will be any taxable activity at any time within the ensuing 12 months.

[44] Section 5(3) of the Act is also relevant for its extended definition of the term "supply". It provides:

> **5 Meaning of term "supply"**
>
> …
>
> (3) For the purposes of this Act, where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that person shall be deemed to be supplied by that person in the course of that taxable activity at a time immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, pursuant to section 58 of this Act, is deemed to be a registered person.

[45] At the time of these transactions, s 10(8) of the Act permitted a registered person who was deemed to have supplied in the circumstances of s 5(3) to treat the price of that deemed supply at the lesser of the cost price or open market value of the supply at the time it was deemed to have been made. Importantly in cases such as the present, where the original acquisition was prior to the Act, the onward supply from the GST registered entity to the non-GST registered entity at that original price would substantially lessen the extent of the GST liability. It is, however, symmetrical with the absence of any input credit for the cost of the original acquisition, when the GST regime was first introduced.

The decision in *Lopas*

[46] In *Lopas*, two partners had registered for GST purposes in respect of their forestry activities, in October 1992. In a first GST return for the period ended 31 March 1999, the partnership claimed an input tax credit on the purchase of the relevant property. Then on 4 October 1999 the partners applied to de-register for GST purposes from 30 September 1999 on the basis that the partnership's taxable supplies for the ensuing 12 months would be less than $30,000. They invoked s 10(8) to attribute the original cost price of $115,000 to the deemed supply they made from themselves in their registered capacity to themselves in their unregistered capacity to comply with s 5(3) of the Act. The Commissioner cancelled the partnership's GST registration from 30 September 1999 but thereafter discovered that the partnership had arranged to sell the land to a partnership of trusts on 8 October 1999. Their on-sale to a trusts partnership eight days after de-registration was at $375,000. Once the IRD became aware of this transaction, the Commissioner revisited the de-registration date and moved it forward from 30 September to 30 November 1999 so as to include the sale to the trusts partnership as a taxable supply. The taxpayers challenged the Commissioner's entitlement to amend or remake the decision on the date of de-registration for GST purposes. Both the High Court and the Court of Appeal upheld the Commissioner's entitlement to remake that decision. Leave to appeal against the decision of the Court of Appeal to the Supreme Court was declined.

[47] The facts in *Lopas* are slightly different from those in the present case. In *Lopas*, the taxpayers acknowledged the obligation to treat the deemed disposition of the property as a taxable supply at the time of de-registration, but contended for the entitlement to account for it at cost price. Here, Mr Thompson did not account for the deemed or actual disposal of any of the properties, on any basis, at the time of de-registration.

[48] Mr Pearson argued that the Act contemplates a difference between de-registration occurring where the scale of taxable activities are being wound down to below the relevant limit, on the one hand, and where the taxpayer is ceasing forthwith all taxable activities at the time of proposed de-registration. He saw this

distinction in the different circumstances contemplated in s 52(1) where, in a winding down circumstance, the registered person "shall cease to be liable to be registered". He contrasted this with the terms of s 52(3) which imposes an obligation on every registered person who ceases to carry on all taxable activities, to notify the Commissioner within 21 days and the Commissioner shall cancel that person's registration.

[49] Mr Pearson argued those differences are to be read in light of the terms of s 6(2) where the definition of "taxable activity" extends to anything done in connection with both the commencement and "…termination of a taxable activity". His point here is that winding down to a level of taxable supplies below the limit specified in s 51 is not to be treated as "termination of a taxable activity".

[50] I am not persuaded as to the relevance of this distinction between cessation forthwith in s 52(3), and a reduction in the scale of a business so that it is less than the extent contemplated in s 51. Section 52(1) recognises the need for a difference in the process by which de-registration occurs, but that does not have any logical impact on the consequences for assets held at the time registration ceases. Mr Pearson did not suggest that his analysis of ss 52(1) and 6(2) afforded any basis for avoiding the effect of s 5(3). In present circumstances, s 5(3) is sufficient to trigger liability of the type I have described in respect of properties used in Mr Thompson's GST registered business, at the time of his de-registration.

[51] I agree with Mr Beck that the Court of Appeal's reasoning in *Lopas* does not recognise any material distinction between immediate cessation and a staged winding down of an about to be de-registered business. (See, for example, the analysis at [18] per Glazebrook J for the Court. It is the act of de-registration that triggers a deemed supply, not the circumstances in which that has occurred.) The provisions of s 5(3) of the Act apply, irrespective of whether the business is going to cease entirely forthwith upon de-registration, or continue in a reduced form so that there would be taxable supplies occurring, but at a level less than $30,000 for the ensuing 12 months.

[52] *Lopas* has more general relevance on two other points. First, the Court of Appeal considered the scope of the proviso to s 51(1). That excludes from those obliged to register for GST on account of conducting a level of taxable activities in excess of $30,000:

> …where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of –
>
> (c) Any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or…

[53] It had been argued in *Lopas* that when projecting the scale of their taxable activities for the ensuing 12 months, the partners were entitled to exclude the value of the deemed disposition of the property that would occur on their de-registration. However, the Court of Appeal interpreted the proviso as only applying in situations where an initial obligation to register would otherwise be triggered by the circumstances of cessation where the deemed disposal would for the first time push the scale of taxable activities over $30,000.

[54] The rationale for this is that there would be no point in requiring a trader to become registered at the point of cessation of business merely by virtue of the deemed dispositions involved in ceasing or reducing the scale of the business. Once the scale of either acquisitions or the on-going trading is sufficient to have required the registration of a trader, there is not the same reason to exclude the value of disposition of assets used to operate the business when assessing the entitlement to de-register.

[55] In the present circumstances, this means that the three land transactions are relevant to the projection of whether taxable activities would exceed $30,000 over the ensuing 12 months, on whatever basis they are to be valued.

[56] The second relevant point considered in *Lopas* is the stage a transaction needs to have reached, as at the date on which the taxpayer seeks to be de-registered, for it to be treated as part of the taxable activities of the GST-registered business. In *Lopas*, the facts enabled the Court to find that the sale of the land to the trusts partnership was planned at the time of the application for de-registration, with

"major steps" having been taken in relation to the sale ([52]). The Court inferred that the consummation of that sale was merely awaiting the de-registration of the partnership. Because the transaction was "planned", it was treated as part of the activity of the registered entity.

[57] Mr Beck suggested the Court of Appeal's test used "in contemplation" as another reflection of how advanced a transaction needed to be. Mr Pearson contested this, pointing out that the relevant passage in the Court of Appeal's reasoning did not go beyond the notion of the transaction being "planned". I accept Mr Pearson's point. The test requires a fact-specific assessment in each case. If the transaction is planned in a sufficiently choate way that it is to be seen as connected with the conduct of the business, even when it is being downsized, then it is to be accounted for, on its terms, as a part of the business. The Court of Appeal's approach suggests that an intention to sell will not be enough. Ascertainment of intention in the context of land acquired for the purpose of resale has proved somewhat fraught in income tax law. The rationale here is that if a registered person has plans, probably partly in place, at the time that person seeks to de-register, then the planned transaction will require de-registration to be deferred until the planned transaction has been accounted for on its terms.

[58] In *Lopas*, the Court had no difficulty in confirming the power of the Commissioner, once fully informed, to remake the decision as to the date from which the partnership should be de-registered. It was moved forward two months to encompass assessment of the partnership for the sale to the trusts partnership on the terms that occurred (i.e. the higher figure of $375,000).

[59] Although the Commissioner could not rely upon the approach directed by the Court of Appeal in *Lopas* when the present assessments were made, Mr Beck's argument in defending the assessments adopted the same approach. At the date Mr Thompson sought de-registration, the Commissioner considers that there were already firm plans to effect sales of the property as subsequently occurred. Accordingly, if he had been fully informed the Commissioner would not have consented to Mr Thompson's request for de-registration. On that basis, the Commissioner was entitled to remake that decision at a date that catches the

consummation of the planned transactions. Consequently, Mr Thompson has been assessed for output tax at the prices applying to the taxable supplies subsequently made by him.

[60] To test this, each of the transactions needs to be considered in its own factual context. Before doing so, however, I need to acknowledge a distinct ground relied on by the Commissioner for revisiting the date of Mr Thompson's de-registration for GST purposes. When Mr Thompson applied for de-registration at the end of November 1999, he could only do so on the basis that matters would promptly be put in train so that someone else was the recipient of the rents from the Rolleston property, or he took an initiative to reduce the rent being received. Enquiries by the Department in respect of the first six months of 2000 suggested that neither such change had occurred. Records obtained from accountants for Ravelston Properties Limited showed that monthly payments of $2,997.10 continued to be paid in precisely the same way as before. Mr Thompson's only initiative to change this was the 13 June 2000 letter quoted at [24] above, after his first interview with Mr Lee.

[61] I do not accept that Mr Thompson could retrospectively "reallocate" in some informal way the entity entitled to the rent. Nor do I accept that the level had reduced because GST continued to be charged "by mistake". Section 10 of the Act makes it clear that the value of goods or services supplied is to have the amount of tax charged added to it.

[62] Even without the rates, a base rental of $29,000 excluding GST amounted to more than the level of supplies requiring registration. Mr Beck pursued a further argument that the lessee's obligations to pay rates should also be included. Were it necessary to do so, I would find that s 105 of the then Property Law Act 1952 applied in the relevant period, so that the informal leasing arrangement was running on, on what is to be deemed a month by month basis. In that event, the owner would be deemed to be the occupier for the purposes of the s 121 of the Rating Powers Act 1988, so that discharge of the owner's obligation to pay rates by the lessee is to be added to the extent of consideration payable to the owner.

[63] The Department focused first upon this on-going level of rental income, rather than the status of the property transactions, as the ground for revisiting the original approval of Mr Thompson's de-registration for GST purposes. On the circumstances as they unfolded, that basis would have justified a re-opening of the GST liability until steps were taken in June with the lessee to alter the arrangements. However, as the dispute evolved, the focus has turned more to the rationale for extending the period of GST registration by virtue of the property transactions, and I turn now to consider those.

First transaction: sale to Horsbrugh interests

[64] In July 1999, a Christchurch real estate agency had advertised the Rolleston land on their website. Mr Thompson was adamant that this step occurred without his instructions. However, he acknowledged that the agent was familiar with Mr Thompson's conduct of his business, and that promoting a potential sale of the property in the hope of attracting a buyer on terms that would then be acceptable to Mr Thompson was not something Mr Thompson was likely to object to. Certainly, in the various dealings that ensued, there was never a suggestion of any protest by Mr Thompson that the agent had represented the property was available for sale without authority to do so. By the end of July 1999, the agent's efforts had produced a proposal for subdivision of some 48.6 hectares out of the larger title for the Rolleston property, and its sale to a company associated with Mr Horsbrugh. That went through numerous iterations in the following months, with Mr Thompson participating by way of a counter-offer, first at the end of July 1999, and thereafter responding to fresh initiatives on behalf of Mr Horsbrugh. On 29 September 1999, a hand-written letter from Mr Thompson to the agent advised:

> I had a good session with Brian Nelson [Mr Thompson's Nelson solicitor] late yesterday as a result I am going to probably sell the whole farm*– to my associated company to fix the GST problem and avoid me becoming personally a developer.

(*The margin of the copy of the letter produced is indistinct and the word "farm" may equally have been "land" or "block". It is clear that it refers to the Rolleston land that the agent had taken the initiative to promote for sale.)

[65] On 3 November 1999, Mr Thompson wrote to the Christchurch agent in the following terms:

> Further to my phone call earlier today when I suggested that to save time and assist Andrew [Mr Horsbrugh] and myself that if he proceeded to get the soil tests done on the 120 acre block that he is interested in purchasing that should a sale not proceed through any action on my part then I would reimburse him for the cost of soil tests.
>
> I trust that this can be done promptly.

[66] By 26 November 1999, an agreement on all the terms eventually agreed to, with one exception, was signed by Mr Horsbrugh. Thereafter, Mr Thompson proposed a reduction in the time allowed for the purchaser to obtain finance. This was accepted, and I find that both parties had signed by about 3 December, with the agent endorsing the date of 6 December 1999 (subsequently altered to 8 December 1999). The price was $461,500 including GST. The agreement was subject to the purchaser arranging satisfactory finance within five days, and was also subject to the purchaser, in consultation with the vendor, being able to obtain resource consent for the proposed subdivision. Thereafter there were certain issues as between Mr Horsbrugh and Mr Thompson, and also issues in relation to completion of easements and such matters. A deposit was paid on 8 February 2000 and on 7 June 2000 a settlement statement was despatched by Mr Thompson's solicitors for settlement on 16 June 2000.

[67] In relatively late drafts of the agreement for sale and purchase, either the agents or Mr Horsbrugh stipulated the price as $410,000, in a blank where the next printed words were "Plus GST (if any)". That form of words was replaced in the version signed by Mr Thompson to read "$461,250 including GST", with the words "Plus GST" scratched out. I infer from that change that Mr Thompson wanted the transaction completed at a price treated as inclusive of GST.

[68] I am satisfied that these circumstances clearly render the sale to Mr Horsbrugh's interests one that was "planned", in the sense intended by the Court of Appeal in *Lopas*, by the end of November 1999. Mr Horsbrugh had signed an offer on the material terms on which the transaction subsequently settled, except for the period of time reserved for his interests to procure finance. Mr Thompson was

very shortly to propose what was effectively a counter-offer by accepting all those terms, except for a reduction in the period within which the purchaser could approve its finance. That is more tactical than suggesting a reservation as to whether he would sell. If anything, it suggested an imperative to have that aspect confirmed as a matter of urgency. Because both parties recognised that the sale was subject to subdivisional consent, and must have realised that condition would inevitably take longer to satisfy, the time allowed to find finance was hardly critical.

[69] The purchasers moved promptly to get local authority consent to the subdivision involved, and as soon as that was available on 8 February 2000 paid the deposit. There were numerous delays thereafter, but settlement did ensue as soon as the new titles were available in June 2000. It is agreed on the pleadings that 9 February 2000 is the time of supply for GST purposes in relation to this transaction.

[70] The periods of time that elapsed between 3 December 1999 and, first, payment of the deposit and, secondly, completion of settlement do not lessen the extent to which this transaction was "planned" as at 30 November 1999. Certainly, there may have been circumstances beyond the control of either vendor or purchaser that may have caused it not to settle, so that Mr Thompson is right in claiming that completion of that transaction was not a certainty at 30 November 1999 or shortly thereafter. Those uncertainties out of the control of both parties are always inherent in a sale of land involving matters such as resource consent, and cannot take the transaction outside the category of those that are "planned" on the test in *Lopas*.

[71] Accordingly, I accept that had Mr Thompson advised the Commissioner of the stage reached with negotiations for the sale to Horsbrugh interests on 30 November 1999, he would reasonably have declined consent for de-registration until output tax on the sale to the Horsbrugh interests had been accounted for.

[72] Mr Thompson was registered to account for GST on a payments basis, which meant that under s 20(4)(b) of the Act he had to account for output tax in the taxable period in which he received payment for the supply. The assessments made by the Commissioner covered the periods 1 August 1999 to 31 January 2000, and then

1 February to 31 July 2000. Mr Thompson was assessed for output tax on the sale to the Horsbrugh interests in this latter period. That captures payment of a deposit in early February and settlement of the balance in June 2000. I consider that aspect of the challenged assessments to be correct.

Second transaction

[73] On 31 March 2000, Mr Thompson completed an agreement for sale and purchase in respect of CT39D/784, being the 15 hectare part of the Rolleston property that was zoned industrial. The purchaser was Armagh. The agreement made provision for a deposit of $1,000, with the balance of the $810,000 purchase price to be left owing "upon demand" with interest payable at 5% per annum if demanded by the first day of September in each year. Although the date for possession was specified as 1 September 2000 "or earlier by mutual agreement", the terms of the agreement gave the purchaser the right to undertake subdivision and sale of the property from the date of the agreement, and the purchaser was to pay rates and insurance from 1 April 2000. The agreement also gave the purchaser a right of first refusal over the vendor's land in Certificate of Title 39D/785 "(or the balance then remaining)", that being the part of the Rolleston property from which the land being sold to Mr Horsbrugh was to be subdivided.

[74] Armagh was registered to pay GST on an invoice basis, and it sought the benefit of an input credit for assuming the commitment under this agreement for sale and purchase in its return for the period including 31 March 2000. However, the IRD withheld the refund that would be due to Armagh on the basis of that return, pending further enquiries. Dialogue between the IRD and Mr Thompson focused on the adequacy of proof of the assumption of the purchaser's obligation by Armagh under the contract, subsequently leading to the completion of a separate acknowledgement of debt concluded as at 31 March 2000.

[75] Mr Thompson's evidence before me was to the effect that the commitment as between himself and Armagh was, for their own purposes, sufficiently recorded without the formal acknowledgement of debt, and that it was completed because of the requirements of the IRD before they would accept the genuineness of the input

credit claimed on behalf of Armagh. Shortly before the hearing before me, Mr Thompson's Nelson solicitor apparently located a further file in relation to these matters that included items tending to establish execution of the acknowledgement of debt on 4 September 2000. In the absence of any other evidence, I find that it was completed on that date. Its terms reflected the assumption of an obligation on 31 March 2000. However, given the circumstances in which it was prepared only to satisfy the IRD, I accept Mr Thompson's evidence that it was not intended to be used to found a misrepresentation that the obligation had been assumed pursuant to that document on 31 March 2000.

[76] On 19 April 2000, Mr Thompson received a valuation report in respect of the 15 hectare block in CT39D/784. Christchurch valuers, Binns Barber & Keenan, valued the property at $720,000 plus GST, which is the same as the GST inclusive price of $810,000 stipulated in the 31 March 2000 agreement for sale and purchase. Again, implicit in Mr Thompson's reliance on that valuation as being the equivalent of the transaction as documented, is an intention that it be concluded on a GST inclusive basis.

[77] So far as Armagh is concerned, after the Commissioner had issued a NOPA disallowing the refund of $90,000 in terms of Armagh's return for the period ending 31 March 2000, advisers on behalf of Mr Thompson served a NOR in which it was asserted that the deposit of $1,000 was paid by a legally enforceable acknowledgement of debt, and that payment in full had been made by virtue of the deed of acknowledgement of debt for the total purchase price of $810,000 "as at 31 March 2000".

[78] Some argument focused on relatively how likely the second transaction was as at the date of Mr Thompson's request to de-register on 30 November 1999 and whether it could be characterised as "planned" in the sense used in *Lopas*. However, once the circumstances of the first transaction disentitle Mr Thompson to de-register as at 30 November 1999, one possible approach in respect of the second transaction is to enquire as to its status within the next GST period for which the first transaction renders Mr Thompson liable to complete a return. An alternative approach would be to consider the status of any proposals for disposal of all the land used in the GST

registered business, at the date of Mr Thompson's request to de-register. If there were sufficiently choate plans for disposal on terms that subsequently ensued in respect of all the land, then a simpler approach may be to recognise the period during which those plans were put into action, and require re-registration of Mr Thompson for whatever period is necessary to catch all of them.

[79] However, applying the first approach for the moment, I consider what the status in respect of the second transaction (being the first sale to Armagh, of the industrially zoned land) was in the period up to the end of July 2000, for which period Mr Thompson was liable to be registered because of the first transaction involving sale to Mr Horsbrugh's interests.

[80] Mr Thompson has changed his position on how he characterises the elements of this transaction since the outset of his dealings with the IRD, and the hearing before the TRA. Initially, when his primary focus would have been on securing the credit for input tax claimed by Armagh in its GST return for the period to 31 March 2000, Mr Thompson represented to the IRD that a deposit of $1,000 had been paid, and that the balance of the purchase price was secured by an informal acknowledgement of debt.

[81] When the IRD challenged this characterisation of the associated party transaction as arranged and controlled by Mr Thompson, he completed an acknowledgement of debt on behalf of Armagh in early September 2000, dated as at 31 March 2000.

[82] Now Mr Thompson denies that the deposit was paid, and submits that the IRD cannot prove the $1,000 deposit was paid on completion of the agreement at the end of March 2000. I took Mr Pearson's argument to also deny that the acknowledgement of debt had any sufficient standing as a legal obligation until it was documented in September 2000.

[83] The point of changing position on these elements of the transaction is to advance an argument that Mr Thompson was not liable to return output tax on the first sale to Armagh until he completed the acknowledgement of debt in September

2000. That would place the transaction in the GST period subsequent to that ending on 31 July 2000, in which he has been assessed. Mr Pearson argued that timing is critical, with the IRD rigorously enforcing the consequences of error by taxpayers in accounting for either inputs or outputs in the wrong period. He therefore argued that the Commissioner's assessment was in error for assessing the output tax on the second transaction in the period to 31 July 2000, with the consequence that that aspect of the challenge should succeed.

[84] The IRD eventually accepted Armagh's claim for an input tax credit. It is a fair inference that in doing so, the IRD accepted and relied on Mr Thompson's representations as to the character and timing of his sale to Armagh. Mr Beck did not raise any notion of estoppel against Mr Thompson to resist Mr Thompson's about-face on the characterisation of the transaction. However, there is a natural reluctance to permit any party, in any form of litigation, to cast its own previous conduct in one way to its advantage and, having procured that advantage, then to assert a contradictory position. That is barely more than common sense. The case for holding a party to a dispute to a clear statement of position must apply with greatest force where it relates to factual matters going to that party's own conduct and therefore within its control.

[85] On the basis of Mr Thompson's representations when pursuing the IRD for an input tax credit for Armagh, this transaction was concluded on terms involving deemed payment by Armagh in the period ending 31 July 2000 by virtue of Armagh's acknowledgement of its debt owed to Mr Thompson. When that arrangement was formalised to meet the IRD's concerns in September 2000, it was treated as an obligation that had arisen on 31 March 2000. In circumstances where both parties to that transaction were under Mr Thompson's control, I am not prepared to make a factual finding that depends upon his resiling from that position. In challenge proceedings, the onus is on the taxpayer to establish that the assessment is wrong and, if so, by how much. For instance, it does not avail Mr Thompson to argue that the Department has found no evidence of payment of the $1,000 deposit when he represented that the parties under his control had performed the terms of the agreement that provided for it, and the Department has reasonably relied upon that, with his change of heart coming many years later.

[86] In the proceedings before me, Mr Pearson acknowledged that Mr Thompson did not resile from the evidence he had earlier given at the TRA hearing. His stance at that time was entirely consistent with the first sale to Armagh having been effected in terms of the agreement for sale and purchase on 31 March 2000. A disrupted answer to a question about settlement of the transaction on 31 March 2000 included Mr Thompson commenting that *"most of the money was left in by me as a loan for the company"*. That can only have been intended to convey that a small part of the money had, in fact, been paid by Armagh, consistently with the then representation that a deposit of $1,000 had been paid. Mr Thompson's evidence continued that the loan, whenever documented by his solicitor, was in the books at the end of the tax year (i.e. 31 March 2000). To emphasise the extent to which the transaction had been completed, Mr Thompson stated:

> From my point of view GST invoices and costs and revenues from 1 April onwards were with Armagh investments.

[87] Accordingly, I consider the assessment of the output tax on the second transaction on the terms on which it occurred, and in the period to 31 July 2000, was correct.

[88] If I am wrong in having regard to the first transaction as denying Mr Thompson the entitlement to de-register from 30 November 1999, so that the circumstances of the second transaction would be assessed standing on their own as at 30 November 1999, then I would be inclined to find that transaction not "planned" at that date in the sense used in *Lopas*. I infer from all of the evidence that at the end of November 1999, Mr Thompson intended deferring doing anything about the transfer of the remaining parts of the Rolleston farm property for some months. He intended to allow a period of time to elapse between securing his de-registration for GST purposes, and then transferring ownership of the rest of the Rolleston land, in one or more transactions, to companies with which he was associated. His intention to defer dealing with the land was motivated at least in part by his wish to minimise the GST consequences, but that cannot of itself constitute a plan for the transaction in the form it was subsequently arranged.

[89] There is no satisfactory explanation as to why Mr Thompson did not account for output tax on the land retained in his personal capacity at the time he de-registered. The matter was not tested in evidence before me and Mr Thompson's evidence on the point before the TRA is unsatisfactory. In that forum he suggested that listing the properties being retained in the IRD form when he applied for de-registration, as quoted in [12] above, was sufficient because he thought the IRD would then assess him in the way it considered appropriate, on the basis of that information. Even allowing for the fact that Mr Thompson apparently prepared the final return himself, rather than getting it done by an adviser, the suggestion that he could omit accounting for output tax entirely until questioned about it by the Department is difficult to accept. It is inconsistent with the original advice received in July 1998, to the effect that he would have to account for GST on the land at the time of de-registration, to the extent of one ninth of the original purchase price. (That advice is quoted at [17] above.) Having received that advice, there is a lack of logic in Mr Thompson considering he was free to deal with the land in his de-registered capacity, without having accounted for the assets when they passed out of the GST-registered business. In the end, Mr Thompson accepted in cross-examination before the TRA that he had got it wrong in not accounting for the deemed disposal of the land in his final GST return.

[90] That conduct does not necessarily have a bearing on the extent to which Mr Thompson had plans as at 30 November 1999 to dispose of the land to an associated company. If anything, however, it is consistent with his deferring the arrangements as to how, when and on what terms such disposal would take place, until the dust had settled on his de-registration.

[91] The intentions recorded in Mr Thompson's 29 September 1999 letter (see [64] above) had not been progressed in respect of the rest of the land by 30 November 1999 to a stage where the first of the transfers as subsequently occurred on 31 March 2000 could be said to have been "planned". I consider that more would need to have been done by 30 November 1999 for it to be "planned" in the sense used in *Lopas*. On this analysis, Mr Thompson was liable on a deemed disposition at the point of de-registration, which he could have accounted for at one ninth of the apportioned cost of acquisition of that part of the land.

[92] However, I do not accept that each transaction can be viewed in isolation. Once disentitled to de-register because of the first transaction, then the second transaction is to be assessed as it occurred within the following six month period.

Third transaction

[93] In an agreement dated 29 September 2000 Mr Thompson purported to sell to Armagh the 186 hectares in CT39D/785. The purchase price for the 186 hectares was $2 million. However, that was the title that had been subdivided to sell some 48.6 hectares to Mr Horsbrugh's interests in the first transaction, so it appears common ground that this second sale to Armagh could only relate to the balance of some 138 hectares. A deed of acknowledgement of debt was completed by Mr Thompson on behalf of Armagh, in favour of himself in his personal capacity. That deed recorded that the amount was repayable upon demand and pending demand to bear interest at 6% per annum if demanded by the lender by 29 September in each year. The parties are agreed that 29 September 2000 is the time of supply for GST purposes.

[94] The matter was not traversed in evidence, but the reasonable inference is that these transfers by Mr Thompson to associated entities were stipulated at the highest prices he considered were justifiable to pass them into the ownership of entities that were likely to undertake development and on-sale of the land. This is because he or his advisers anticipated that the transferees would then be liable for tax on profits made from the development of the land. In contrast, Mr Thompson appears to have portrayed himself as holding the Rolleston property as a long-term investor, so that the profit he would report relative to the purchase price many years previously would be treated on capital account and not taxable.

[95] I am satisfied that the third transaction was not "planned" at the end of July 2000. I find that Mr Thompson was proceeding with transfers of property from his personal capacity to companies associated with him on a piecemeal basis. It may be that he was effecting transfers in stages, hoping that that would lessen the prospect of his coming to the attention of the IRD. Certainly, in financial terms, the focus would have been on effecting the transfers in a way that maximised the prospect for a

prompt input tax credit to his companies that were the transferees, as much as casting the transaction in a way that minimised his personal liability for the GST output tax. Prior to the Court of Appeal decision in *Lopas*, there would not have been any focus on whether the prospect of a later transfer was sufficiently "planned" so as to be treated as an extension of the GST-registered business. It is more likely that Mr Thompson would have focused on getting it done before a then proposed change prevented him claiming an input tax credit on behalf of a transferee that was an associated person.

[96] It could be argued that there was a pattern of conduct, consistent with:

- the comment in Mr Thompson's letter to the Christchurch real estate agent at the end of September 1999 that he was probably going to sell the whole farm to an associated company to fix the GST problem ([65] above);

- the lapses of time permitted between completing the terms of the deal with Mr Horsbrugh's interests to create a distance between his de-registration, the first and subsequent transfers for the purposes of minimising liability for GST;

- the first transfer to Armagh at the end of March 2000; and

- the second transfer to Armagh some six months later.

[97] I am also conscious that this was an "internal" transaction, in that it occurred between associated parties so that there was no need for dialogue or negotiation between parties at arm's length. Accordingly, there was not the same opportunity for a document trail to develop identifying the genesis of the vendor's offer to sell and then settling on a price and negotiating other terms with an arm's length purchaser. Rather, the transfer is likely to have occurred at the maximum price justifiable to the IRD. The formality of an agreement was needed to prove its terms to the IRD, rather than to record the commitment between the parties to it.

[98] Notwithstanding all of that, I am satisfied that this third transaction was not "planned" as at 31 July 2000. Rather, it was a likely further step that would occur at some subsequent point in time, to complete the process by which Mr Thompson extricated himself from personal ownership of these assets. Its date and terms were by no means certain. Mr Thompson may well have chosen one of the different companies with which he was associated, rather than Armagh. The justifiable price may well have been fluctuating quite quickly. I accept that such suggestions are speculative. The point is that the requirement for a transaction to be "planned" in the sense used in *Lopas* contemplates something more choate and defined than the evidence establishes in respect of this third transaction, as at the end of July 2000.

[99] I also accept that to focus narrowly on what is "planned" in this context may lead to abuse. There will be situations in which taxpayers "plan" to leave transactions for six, nine or 12 months after de-registration to enable them to account for output tax under s 5(3), instead of s 6(2). Each case is to be tested on its own facts, and the mere passage of time from de-registration to subsequent dealing will not be the only factor in analysing the existence of a requisite plan.

[100] The consequence of this third transaction not being "planned" is that the output tax obligation arising on Mr Thompson's de-registration, as deemed to occur on 31 July 2000, is to be dealt with under s 5(3) of the Act, triggering the entitlement to opt for original purchase cost, as provided for by s 10(8).

Summary of GST liability on the three transactions

[101] Accordingly, I find that Mr Thompson was not entitled to de-register until 31 July 2000. In his return for the six months to that date, he was obliged to account for output tax for GST purposes on the sale to Mr Horsbrugh's interests, and the first of his sales to Armagh on the consideration stipulated in the respective agreements for sale and purchase. As he moved into a de-registered status at that time, he was obliged also to account for output tax on the asset retained which was the balance of the Rolleston property, at whatever is established as the apportioned component of the original acquisition price of that block of land.

[102] Mr Thompson's Second Amended Statement of Claim sought a formal declaration as to the date from which he was entitled to be de-registered for GST. That was sought in relation to challenges to the conduct of the Commissioner that, in the end, are not determinative of this date. I am not persuaded that a specific declaration is necessary.

[103] The way in which the law applies to these transactions also renders it unnecessary for me to resolve a further substantive and procedural dispute between the parties. In the course of the hearing, Mr Beck raised, first by reliance on evidence led from Mr Lee, and then in argument, the prospect of fixing the date on which liability for GST in respect of the second and third transactions would arise, by reliance on the provisions in the Act governing transactions between associated persons. Predictably, the Act makes provision for the treatment of transactions between associated persons where the usual commercial tensions applying between parties to a transaction at arm's length do not occur.

[104] As a matter of procedure, Mr Pearson objected to this being raised as it was, contending it was precluded by authorities such as *Commissioner of Inland Revenue v V H Farnsworth Ltd* [1984] 1 NZLR 428. Mr Beck's rejoinder on the procedural protest was that on the authority of *Commissioner of Inland Revenue v Zentrum* [2007] 1 NZLR 145 (CA) and *Beckham v Commissioner of Inland Revenue* (2008) 23 NZTC 22,066 (CA), such alternative argument was open to the Commissioner.

[105] In the circumstances, I find it unnecessary to resolve either the entitlement of the Commissioner to raise the argument (although I would have been inclined to permit that), or the substantive application of the associated person rules to the second and third transactions.

Alleged inadequacies in re-registration for subsequent periods

[106] The focus of the dispute for a substantial period of time was distracted by arguments over the adequacy of steps taken in the name of the Commissioner to de-register and re-register Mr Thompson for GST purposes.

[107] In addition to Mr Thompson's challenge to the grounds for the Commissioner's decision to re-register him from 1 December 1999, there is a separate challenge to the adequacy of steps taken on behalf of the Commissioner in the purported further re-registration to dates beyond 31 July 2000. This was because the IRD had formally committed itself, in its dealings with Mr Thompson on a supposedly fully informed basis, to the new de-registration date of 31 July 2000. Any further decision to extend the period of his registration arguably involved the same process as had occurred in relation to the IRD's decision to revisit the acceptance of 30 November 1999 as Mr Thompson's de-registration date. Mr Pearson argued that the "second re-registration", to have effect from 31 July 2000, required the same steps, including communication to Mr Thompson of that decision as a disputable one, as had occurred with the original decision. Since those steps were not taken, any second "re-registration" to prolong the period of his registration beyond 31 July 2000 was argued as ineffective.

[108] On the view I have taken of the correct assessment of the three property transactions, it is unnecessary for the purpose of an amended assessment consistent with my findings to resolve the lawfulness of the Department's steps to treat Mr Thompson as registered beyond 31 July 2000. However, in case I am incorrect and also because of the prospect that the merits of these arguments may have some bearing on other issues, I turn to address Mr Thompson's criticism of the IRD's conduct.

[109] A brief summary of the steps taken in relation to Mr Thompson's GST registration is appropriate.

Date	Event
30 November 1999	Mr Thompson applied for de-registration.
22 December 1999	IRD advised Mr Thompson that his registration was cancelled from 30 November 1999.
10 May 2000	Internal IRD action note reflecting enquiries that Mr Thompson was currently leasing the Rolleston property for $2,297.12 including GST per month and "this means the de-registration should not have proceeded".

Date	Event
10 August 2000	IRD notified Mr Thompson that the Commissioner had re-registered him for GST under s 51(4) of the Act. The letter acknowledged that the decision to re-register was a disputable one that could be challenged by Mr Thompson.
10 August 2000	IRD issued a NOPA making adjustments to Mr Thompson's return for the period ended 31 July 1999 and re-assessing him for the period ending on 31 January 2000. The assessment included rental from the Rolleston property and from his Nelson yard at Atawhai.
9 October 2000	Mr Thompson despatched a NOR to IRD disputing the re-registration decision. (Armagh was also disputing disallowance of its input claim for the second transaction.)
22 October 2002	IRD despatched notice of cancellation of Mr Thompson's GST registration with effect from the period ending 31 July 2000. By faxed return Mr Thompson questioned that notice.
30 October 2002	IRD sent Mr Thompson a notice that his GST return for the period ending 31 July 2000 was then overdue. Again, Mr Thompson responded by handwritten note endorsed on the bottom of the IRD notice and faxed it back to them.
13 November 2002	IRD processing centre despatched an acknowledgement of Mr Thompson's advice that he was not required to file a return for GST to 31 July 2000, and confirming that IRD would update its records to show that a return was not required.
19 November 2002	These October and November 2002 communications were the subject of a letter on Mr Thompson's behalf to Mr Consedine in Christchurch, complaining at the IRD's conduct and requesting an explanation.
27 November 2002	Mr Consedine advised that changing the cessation date to 31 July 2000 was in line with the position being taken by the Commissioner.
18 March 2003	IRD adjudication report confirmed the correctness of the Commissioner re-taking the de-registration decision in light of new facts not known in December 1999. Concluded that the position specified in the IRD's statement of position in the adjudication process, namely for de-registering Mr Thompson from 29 September 2000, was correct.
26 January 2005	IRD advised Mr Thompson of GST assessment for the period ending 31 January 2001. IRD asserts entitlement to remake the decision as to registration under ss 51 and 52, and to change the effective date of cancellation to 31 January 2001.

[110] The short point argued for Mr Thompson was that, on the terms of its own correspondence to him, the IRD accepted that any decision to re-register a person for

GST is a disputable decision that has to be conveyed to the taxpayer in terms affording an opportunity that it be challenged. The various communications in October and November 2002 unequivocally committed the IRD to de-registering Mr Thompson from 31 July 2000. Any subsequent decision to revisit that, and re-register him from that point up to either 20 September 2000 or 31 January 2001, had to follow the same process. It had not. Indeed, Mr Pearson characterised the IRD's case on this point as a simple denial that de-registration from 31 July 2000 had occurred at all. He pressed the IRD officers in cross-examination to acknowledge that the effect of the communications in October and November 2002 reflected a decision to de-register from 31 July 2000, and that such decision was unequivocally conveyed to the taxpayer. That conclusion is inescapable on the evidence.

[111] Mr Beck submitted for the Commissioner that there was an onus on Mr Thompson to establish that a decision to de-register him from 31 July 2000 had in fact been made, and that such onus had not been discharged. He dismissed the 22 October 2002 unequivocal statement of cancellation of the GST registration from the period ending 31 July 2000 as *"a computer-generated letter that was the result of an internal process in the IRD"*. He further suggested that Mr Consedine's 27 November 2002 letter was consistent with this characterisation that something less than a decision to de-register was conveyed in the 22 October 2002 letter. However, Mr Consedine's letter could hardly have been clearer. It stated:

> This required changing the cessation date to 31 July 2000 in line with the position being taken by the Commissioner. The system then automatically generates a new cessation date and notifies the customer. This also generates a request for a GST return for that period which required notification that Mr Thompson was not required to file a return.

[112] Mr Beck also argued that any further decision to de-register from 31 July 2000 would have required a request from Mr Thompson, and then evidence that the Commissioner had been "satisfied" that Mr Thompson was no longer liable to be registered. His argument depended on the wording of s 52(1) of the Act, and although s 52(2) contemplates a process being initiated by a registered taxpayer, that is not in fact a pre-requisite to the Commissioner coming to a view under s 52(1).

[113] Further, the notion that a taxpayer receiving a letter from the Department that should be discerned to be in a standard form, should then appreciate that it is "computer-generated" and might therefore not be able to be relied upon, is untenable. Obviously the discharge of all the Department's obligations would be impossible without the assistance of computerised systems. However, that practical necessity does not exonerate the Commissioner from the consequences of statements clearly conveyed to taxpayers. I reject the argument for the Commissioner that no decision to de-register Mr Thompson for GST purposes from 31 July 2000 was conveyed.

[114] However, the more material issue is what adverse consequences, if any, flow for the Commissioner from his having conveyed that Mr Thompson was de-registered with effect from 31 July 2000. The Courts are relatively tolerant of the consequences of administrative error by the Commissioner, because it is generally not recognised as preventing him discharging his statutory obligation in respect of collection of the correct amount of tax, and certainly, in other circumstances, it has been held that there is nothing in the nature of an estoppel against the Commissioner. See generally *Brierley Investments Ltd v Bouzaid* [1993] 3 NZLR 655 (CA).

[115] A thorough analysis of the consequences of the IRD purporting to issue an assessment for a period in respect of which it has confirmed the taxpayer is de-registered for GST purposes raises a number of issues that were not traversed in argument. I understood Mr Beck's alternative response to this criticism to be that a decision by the Commissioner to re-register a person for GST purposes, although separately disputable, is one that can be made at the same time as an assessment in respect of the extent of GST liability for such a re-registered period. The entitlement of the taxpayer to dispute the grounds for a re-registration decision are not compromised simply because it has to be disputed at the same time as challenging the correctness of the assessment. Particularly if the Commissioner considers he may be facing a time bar, or there is other prejudice to his task in collecting the correct amount of tax, then the imperative is to re-register and assess, even if his process has been less than ideal.

[116] Mr Beck did not cite any authority for that approach, but it tends to be supported by decisions confining the prospects for challenge on traditional administrative law grounds, when raised in relation to deficiencies in process by the Commissioner. (See, for example, *Commissioner of Inland Revenue v Canterbury Frozen Meat Co Ltd* [1994] 2 NZLR 681 (CA), *Lemmington Holdings Ltd v Commissioner of Inland Revenue* [1984] 2 NZLR 214 and *Commissioner of Inland Revenue v New Zealand Wool Board* (1999) 19 NZTC 15,476 (CA).) Generally, the rights of challenge to the correctness of the Commissioner's quantification decision in an assessment are likely to cure deficiencies in the process leading up to the issue of an assessment. In the case of GST, the Commissioner has the power under s 51(4) of the Act to determine the registration status for any person from the date on which that person was first liable to be registered. (The Commissioner does have a discretion to nominate registration from a later date where the Commissioner considers that equitable.) *Lopas* confirms that the Commissioner can re-make decisions as to registration, and there is no statutory constraint on the circumstances in which he could do so, apart from the lack of utility in respect of periods that have become time-barred.

[117] If the Commissioner arrives at a decision that a person ought to have been registered in a period when he was not, then a fresh decision is to be made. Whether the taxpayer's liability to be registered in the relevant period is correct, is a matter for challenge proceedings. If particular damage has been suffered by the taxpayer because of reliance on the earlier decision to de-register that taxpayer, then a claim may be conceivable. However, if in the end the taxpayer was liable to be registered, then there can be no loss suffered merely because the taxpayer was led to believe there was no liability for GST, when the law, correctly applied, does entail such a liability. There will generally also be issues as to whether the Department was fully informed when making the earlier decision. Any new material information would generally provide justification for a change in the decision on registration.

[118] A decision on the consequences of subsequently revisiting the decision to de-register as at 31 July 2000 is not required. I incline to the view that although inconsistencies in communications from the Department are unfair, they could not be sufficient to deprive an assessment for a subsequent period of its lawful effect. Most

taxpayers would certainly agree with Mr Thompson in his attempts to hold the Department to the clear messages conveyed in standard form communications, particularly when confirmed by the separate communication from a senior officer in the Department. However, on the view I take, it cannot affect the extent of basic GST for which he is liable.

Correctness of the assessments

[119] As Mr Lee described the process of issuing a default assessment against Mr Thompson for the period to 31 July 2000, I find that the assessment included liability for output tax on the rentals received from Ravelston Properties Limited. Mr Lee accepted that, at the time the default assessment issued, the Department had received a return for another of Mr Thompson's entities, Overview. In that return, the full extent of those rentals had been accounted for, together with off-setting input tax credits for the expenses incurred, in relation to that income. Mr Lee accepted that:

- the Department had the breakdown filed with the return on behalf of Overview of the extent of expenses deductible from the relevant income; and

- the extent of GST payable on the rental income had been received in a timely way by the Department, even though it was accounted for by Overview, rather than by Mr Thompson.

[120] Mr Lee also accepted that this situation would result in a *"credit back to Mr Thompson at some stage and it can be done"*. I found Mr Lee somewhat cavalier in accepting the inevitability that a default assessment issued on the terms he was responsible for would lead to a challenge, because the assessment failed to give credit for the input tax able to be claimed on the expenses incurred in the same period, and also because the Department had already received the GST on the income.

[121] These matters of detail were not at the forefront of Mr Thompson's case, and the analysis I have undertaken is very much confined to the factual circumstances in which these particular assessments issued. However, it does lead to the conclusion that the assessment for the period to 31 July 2000 was in error by the extent of the omission of amounts of the input tax.

[122] In the same way, I consider that on the facts of this particular case, the further default assessment for the period to 31 January 2001 was wrong by virtue of the inclusion of the second sale to Armagh as if undertaken when Mr Thompson was registered. A further extension of his re-registration beyond 31 July 2000 was not warranted in the absence of a "planned" transaction for that land when the projection of other taxable supplies was very much reduced, being well below $30,000. This is because by 31 July 2000 another entity had either become, or would become, entitled to the rental income from the remaining part of the Rolleston property. Accordingly, I order that the GST assessment for the prior period to 31 July 2000 is to be increased by output tax on the deemed disposition of the portion of the property subsequently transferred pursuant to the 29 September 2000 agreement at one ninth of the proportionate part of the original purchase price of that land. The consequence of that amended assessment is that the assessment for the later period from 1 August 2000 is wrong and is to be cancelled.

Commissioner's alternative – s 76 anti-avoidance provision

[123] Mr Beck acknowledged that the Commissioner need only resort to the anti-avoidance provision in the event that he was not permitted to extend the period in which Mr Thompson was registered for GST purposes from 30 November 1999.

[124] On the view I have come to as to the correct mode of assessment of the relevant transactions for GST purposes, it becomes unnecessary to consider whether the Commissioner could resort to the anti-avoidance provision in the present circumstances.

[125] There is a further parallel with the circumstances in *Lopas*. One of the concluding paragraphs of the Court of Appeal's judgment observed:

> [54] We are conscious that the taxpayers may, in this case, not have sold the land to the Trusts Partnership (at least at the time they did) had they known that the value of supplies in connection with the cessation of their taxable activity were to be taken into account in calculating the $30,000 threshold. The fact that the taxpayers were acting under a misapprehension as to the law (or the fact that this may perhaps have been shared by the Commissioner - see at (15) above) cannot, however, affect the interpretation of s 52(1) or the outcome of the appeal and cross-appeal.

[126] So, too, in the present circumstances Mr Thompson's strategy for cessation of the GST-registered business in his personal capacity, and transfer of the business and asserts pertaining to it to family companies, may well have proceeded on a material misunderstanding as to how the Act applied to the activities involved. To the extent the advice he relied upon is disclosed, it contemplated at least a measure of liability, when Mr Thompson did not account for any liability at all. In the outcome, as the Court of Appeal makes clear, the law is to be applied irrespective of any misapprehensions about it.

Penalties and interest

[127] Mr Pearson's last plea was that if the substantive outcome produced any different amount from that assessed by the Commissioner, and in particular if my finding was that the extent of the assessment ought to be lower than that issued by the Commissioner, then the powers of the Court as a hearing authority under s 138P of the Tax Administration Act 1994 extend to making any assessment which the Commissioner was able to make at the time the Commissioner made the assessment to which the challenge relates, or indeed to direct that the Commissioner make such an assessment. By that route, Mr Pearson invited the Court to ameliorate what he characterised as the Draconian consequences of interest and late payment penalties, by ordering, as an ingredient in any new assessment, a new due date for the extent of GST assessed.

[128] Factors going to the merits of imposing a more recent date and thereby reducing the interest and penalties include the circumstances of the issuance of the second default assessment for the period to 31 January 2001. That occurred during the hearing of the dispute before the TRA. Presumably anticipating that the Department might make a further assessment in respect of the third transaction,

Mr Pearson had written to the Department volunteering to waive the time bar, and inviting the Department to defer the issue of any further assessment pending resolution of the argument that was then being heard by the TRA.

[129] Notwithstanding that waiver, the Commissioner proceeded to issue the further default assessment, triggering a further liability for GST back-dated to February 2001. The evidence on the point was inconclusive, but I do not consider the Commissioner could treat the need for the further assessment at that time as urgent. Given the waiver of the time bar, there were opportunities to defer the issue of the assessment.

[130] However, there can be no quibble with the lawfulness of what the Commissioner did. Mr Pearson's complaint is about the perceived unreasonableness of it in the circumstances at the time.

[131] Additional considerations as to the appropriate date from which penalties ought to have run include the following:

a) Mr Lee issued the default assessment for the period to 31 July 2000 knowing that a challenge to it was inevitable because it was incomplete having omitted the expenses matched to the rental income, the input tax credit on which would have reduced the extent of the assessment, as it related to rental income.

b) Further, that aspect of the assessment related to GST that had already been paid by another of Mr Thompson's entities, so that it would ultimately be enforced only on terms whereby an equivalent credit was provided to the associated taxpayer that had paid the relevant GST.

c) Mr Pearson's cross-examination of Mr Lee elicited acknowledgements that Mr Lee was well aware of the consequences in terms of interest and penalties arising from the date attributed to the assessment, and that those additional liabilities were something borne

by taxpayers who decided to challenge assessments. If challenge proceedings were pursued and lost, then the additional liability for penalties and interest were treated as an appropriate "punishment". Mr Pearson submitted such an attitude was vindictive and unreasonable.

d) The early years of this dispute up to and including the argument before, and decision of, the TRA were distracted by the inconsistent communications from the Department to Mr Thompson as to the dates on which it treated him as respectively de-registered and re-registered for GST purposes. In the end, I am satisfied that that issue is not determinative of the extent of his liability. However, it is readily understandable that the inconsistent communications despatched by the Department and the unrealistic denial of what had been conveyed by their terms would encourage a reasonable taxpayer in Mr Thompson's position to challenge what the Department was doing.

[132] All of that changed once the Court of Appeal decision in *Lopas* was delivered at the end of November 2005. That decision clarified the scope of the Commissioner's powers, and the way in which de-registration or any re-registration decisions are to be approached. As against all of these factors in his favour, Mr Thompson had not accounted for any GST on any basis for the transfer of the three properties. He could at any time have made payment of the GST in issue without prejudice to his challenge, and thereby avoided the imposition of penalties and interest. Instead, he has elected to take the risk of succeeding. Weighing all these matters up, if the Court had jurisdiction to reconsider the extent of interest and late payment penalties, I would be inclined to substitute a liability for them from 1 December 2005, for the reasons just reviewed.

[133] However, I am satisfied that the Court does not have the power to make such orders. Mr Pearson submitted that the terms of s 138P of the Tax Administration Act could be read so as to extend to such a variation in the previous assessment,

provided the imposition of late payment penalties was treated as an element of the assessment. It is not.

[134] In a somewhat different context, the Court has found that due date for payment of an assessment is set by the terms of the statute, thereby excluding it from the elements of the assessment made. See *Commissioner of Inland Revenue v Allen* (2003) 21 NZTC 18,137 (HC) ([47]). There, O'Regan J was dealing with a default assessment for income tax in circumstances where the taxpayers sought to avoid the enforceable status of the assessment by the subsequent filing of a tax return reporting nil income for the relevant period. The Court rejected a challenge that the Commissioner's default assessment did not nominate valid due dates, because of the procedural consequences of the subsequent filing of tax returns by the taxpayers.

[135] By analogy here, Mr Beck argued that the due date for payment of the GST is imposed by the Act in ss 16 and 23. The effect of those provisions is that the GST is payable on the 28th of the month following the end of the taxable period.

[136] Excluding the due date from the content of the assessment on the basis that this element is stipulated by the statute itself is also consistent with the recognition in s 120I of the Tax Administration Act. That section specifies that a taxpayer does not have any right to object to, or challenge, the imposition of interest payable by virtue of the late payment of tax. Mr Pearson accepted that Mr Thompson has no right to challenge the imposition of interest.

[137] Accordingly, I do not have jurisdiction to vary the extent of the penalties assessed for late payment of tax, or interest.

[138] I consider the appropriate course is to invite the Commissioner, as a consequence of the fresh assessments I direct should be issued under s 138P(1)(b), to exercise his discretion to remit the taxpayer's liability for late payment penalties under s 183D of the Tax Administration Act on the extent of the GST assessed for the period up to 1 December 2005.

Summary

[139] I find that Mr Thompson was liable to account for output tax in the GST period to 31 July 2000, for the first transaction (sale to the Horsbrugh interests) and the second transaction (the first sale by Mr Thompson to Armagh) on the price at on which those transactions were effected. The assessment for the period to 31 July 2000 was in error because the rental income on which output tax was assessed ought to have been off-set by the expenses incurred in the earning of that rental income.

[140] Mr Thompson was entitled to de-register for GST purposes from 31 July 2000 by virtue of the factual circumstances applying at that time. As a consequence, he is liable to account for the deemed disposition of the balance of Rolleston property (as subsequently transferred in the third transaction being the second sale to Armagh) under ss 5(3) and 10(8) of the Act, so that deemed disposal is to be included in the amended assessment for the period to 31 July 2000.

[141] Had the circumstances of Mr Thompson's dealing with the third transaction been "planned" by 31 July 2000, then the Commissioner would have been entitled to extend his GST registration beyond that date, and would not have been held to 31 July 2000 as the final de-registration date by virtue of the Department's conduct.

[142] I have no jurisdiction to alter the imposition of interest and late payment penalties. For the reasons traversed in [128] to [132] above, I would recommend that the Commissioner consider an extent of remission of these items.

Costs

[143] Both sides have had partial success in this matter. I consider it appropriate that costs lie where they fall.

Dobson J

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