GST – Current issues

An officials' issues paper

September 2015

Prepared by Policy and Strategy, Inland Revenue, and the Treasury

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GST – Current issues – an officials' issues paper.
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CHAPTER 1

Background

1.1 Goods and services tax (GST) taxes consumption in New Zealand. Consistent with New Zealand's tax policy settings, GST is imposed at a single rate of 15%, across a broad base of goods and services with few exemptions. Its purpose is to tax consumption of different goods and services evenly and efficiently, without distorting consumers' preferences between different goods and services.

1.2 As a tax on consumption, GST should not be a cost to businesses. Although businesses may be charged GST on goods and services they purchase, GST-registered businesses may recover this by deducting it against the GST they are liable to pay on their own sales. When a GST-registered business incurs more GST on these purchases than it is liable to pay on its own supplies, it will be refunded the difference.

1.3 GST is not intended to tax the consumption of goods and services outside New Zealand. Supplies exported and consumed offshore will typically be zero-rated – GST will not be charged on the supply.

1.4 While the GST system generally works well, a number of GST-related concerns have been raised by private-sector stakeholders and by officials since the last GST omnibus discussion document in 2012.[1] These concerns do not reflect issues with the policy underlying GST, but relate to areas where the legislation does not fully give effect to the policy intention, or areas where technical changes could improve the way the system operates.

1.5 A number of these concerns are discussed in this paper, and possible solutions suggested.

1.6 The key issues covered are:

- the deductibility of GST associated with the costs of raising capital;
- the eligibility of large, partially exempt, businesses to agree an alternative method of apportionment;
- the ability to take a deduction for secondhand goods, for goods composed partially of gold, silver and platinum; and
- the ability to zero-rate services provided in connection with land in New Zealand.

[1] *GST remedial issues*, 18 December 2012.

1.7 Some technical and remedial changes are also suggested. They include:

- providing more flexibility in the agency rules to agents acting on behalf of purchasers and their principals;
- providing for more consistent treatment of accounting for GST on supplies of goods and services where total consideration is not known at the time of supply;
- allowing zero-rating of goods and services that are provided in relation to ships and aircraft that are exported under their own power; and
- ensuring a person remains eligible to receive a refund for overpaid tax due to a clear mistake or simple oversight where they were in a tax payable position during the relevant period.

1.8 Subject to submissions on this issues paper, it is expected that the proposals would be included in the next available omnibus tax bill.

1.9 Your comments on the solutions suggested in this paper are welcomed. We would appreciate your submissions by 30 October 2015.

1.10 Submissions should include a brief summary of major points and recommendations. They should also indicate whether the authors are happy to be contacted by officials to discuss the points raised, if required.

1.11 Submissions should be addressed to:

GST – Current issues
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
P O Box 2198
Wellington 6140

Or email: policy.webmaster@ird.govt.nz with "GST – Current issues" in the subject line.

1.12 Responses to this paper may be the subject of a request under the Official Information Act 1982, which may result in their publication. The withholding of responses on the grounds of privacy, or for any other reason, will be determined in accordance with that Act. If you consider that any part of your letter should properly be withheld under the Act please clearly indicate this.

CHAPTER 2

Financial services

2.1 Supplies of financial services in New Zealand are generally exempt from GST, which means that GST is not charged on the value of the supply, and the supplier cannot claim input tax deductions in relation to that supply.

2.2 The policy rationale for this treatment is that the nature of financial services makes them difficult to integrate with the GST system, where liability for tax arises on a transaction-by-transaction basis throughout the production and distribution chain. This is because it is difficult to measure the amount paid for a financial service, as the financial services provider may be compensated through a margin or spread rather than an explicit fee. Due to the difficulty in taxing the value of services supplied by a financial service provider, the next best option is to effectively tax the supply by denying input tax deductions.

2.3 Since 1 January 2005, supplies of financial services to GST-registered persons whose taxable supplies equal or exceed 75 percent of their total supplies may be zero-rated when the financial services provider elects to do so. Allowing financial service providers to recover input tax in relation to their supplies to registered taxable businesses was intended to reduce the potential for tax cascades caused by the exempt treatment of financial services, where tax must either be absorbed or passed on by the business sector.

Costs associated with capital raising

2.4 A longstanding issue associated with the exempt treatment of financial services occurs when businesses that primarily provide taxable goods and services incur costs to raise capital, such as through the issuing of bonds or shares. Examples of the costs that can be incurred in this way include NZX listing fees, legal fees and costs associated with preparing a product disclosure statement. The GST incurred in relation to these costs will be unrecoverable because the provision of equity and debt securities is considered to be a supply of financial services.

2.5 It is arguable that the GST costs incurred in raising capital should be attributed to the business's broader taxable activity, rather than being viewed in isolation as relating to an exempt supply of financial services. This is because the purpose of capital raising by a regular taxable business is usually to further their taxable activity, and not to add value as a supplier of financial services.

2.6 This leads to the question of whether the deductibility of input tax in relation to a supply of financial services for capital or debt raising activities should be considered on a transaction-by-transaction basis, or whether the economic substance of the transaction in the context of a business's taxable activity should determine its deductibility.

2.7 GST generally applies on a transaction-by-transaction basis – whether or not the supplier can deduct any cost incurred will ultimately depend on the GST treatment of the particular supply that the costs relate to, not the taxpayer's broader activity. Allowing deductions for exempt supplies on the basis that the business is primarily taxable would depart from this legislative framework.

2.8 From a policy perspective, exemption makes sense when a financial service provider is in the business of supplying financial services that might otherwise be difficult to tax because of the ease by which margins and fees may be substituted. The financial service provider is adding value to the services it provides, and since it is difficult to tax the value added, one option would be to deny deductions where the services are received by unregistered customers. However, it may not be appropriate to deny deductions when a regular taxable business supplies financial services to raise funds for furthering its taxable activity, particularly when the business is not seeking to add value to the supply of financial services.

2.9 Given that GST is a tax on consumers and not businesses, denying deductions in relation to raising capital in some contexts may be contrary to this principle. Denial of deductions may cause tax cascades in which a taxable business absorbs the GST cost or passes the cost on to its customers. A business that generally makes taxable supplies can also experience higher compliance costs when making exempt supplies to raise capital, as it will be necessary to apportion purchases between these activities when claiming input tax deductions.

2.10 On balance we consider that when a business raises capital to further its taxable activity, it is appropriate to disregard the exempt treatment arising from the capital raising and instead treat these costs as relating to the business's broader taxable activity.

How tax cascades arise

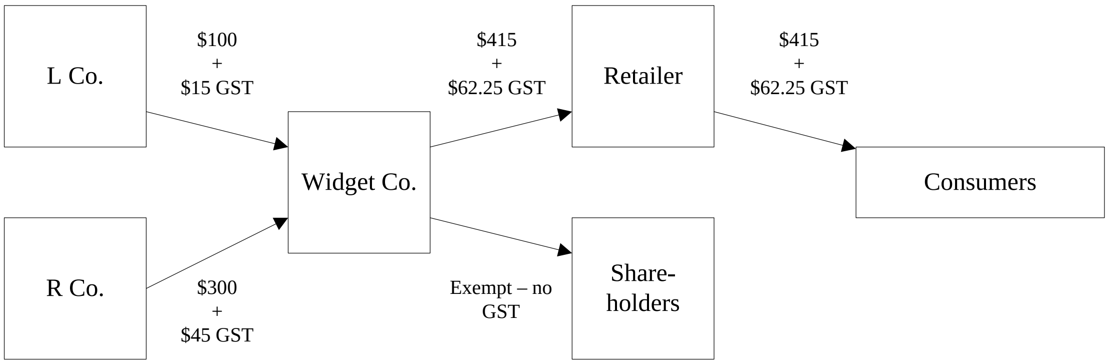
2.11 The following examples illustrate two ways in which a tax cascade can arise when a business is not entitled to deduct GST costs associated with raising capital. In the first example, the GST is passed on to others in the supply chain. In the second example, the GST cannot be passed on but is absorbed by the company. In practice, a combination of the two may occur.

Example: GST is passed on to others in the supply chain

In this example, Widget Co. pays $115 (including $15 GST) for services supplied by L Co. (in relation to issuing shares) and $345 (including $45 GST) for goods provided by R Co. (for use in manufacturing widgets). Widget Co bears a total cost of $415, as it deducts $45 GST, being the GST charged on the supplies used to make taxable supplies (widget sales).

Widget Co. is not able to deduct the $15 GST charged on the supply by L Co., as it was incurred to make an exempt supply – the issue of shares. Widget Co. passes this GST cost on to the retailer. The retailer pays Widget Co. $477.25 and deducts GST, bearing a total cost of $415, as it deducts the GST charged.

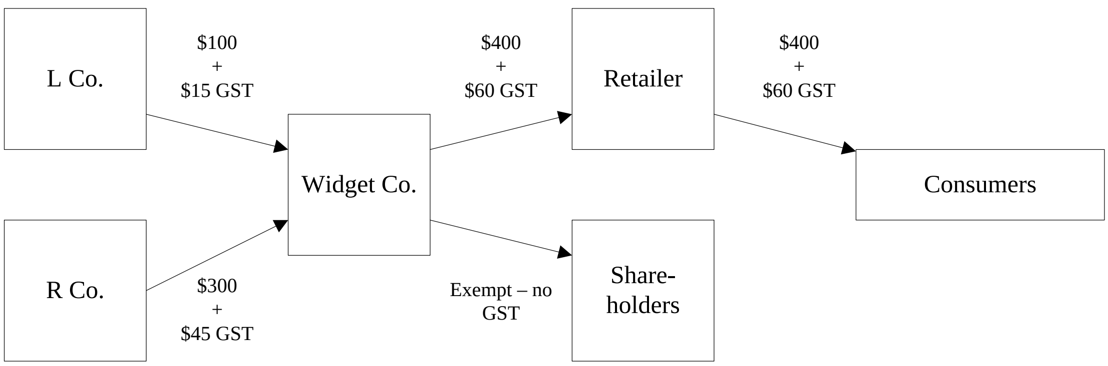
The retailer passes these costs on to the final consumers, in a taxable supply of $477.25 ($415 plus $62.25 GST). Consumers are unable to deduct this GST.



The total GST paid in this supply chain is $77.25. This is made up of $60 charged on the $400 of goods and services that were supplied to consumers, the $15 Widget Co. was unable to deduct, and $2.25 in GST charged when the embedded GST was recovered through a taxable supply.

Example: GST cannot be passed on but is absorbed by the company

In this example, Widget Co. is unable to pass the GST cost along the supply chain, and instead it bears this cost. The GST is effectively being paid by Widget Co. through reduced profits, rather than being shifted onto the price of the goods and services that are supplied to final consumers.



The total GST paid in this supply chain is $75. This is made up of $60 charged on the $400 of goods and services that were supplied to consumers, and the $15 Widget Co. was unable to deduct.

When should an input tax deduction be available for capital-raising activities?

2.12 The ability to claim input tax deductions for the cost of raising capital should, however, only be available to the extent that the taxpayer makes taxable supplies of goods and services. Allowing a deduction for capital raising costs incurred for a taxpayer to further their exempt supplies would be contrary to the policy objective of the exemption, which is to effectively tax these supplies by denying deductions.

2.13 Consequently, for registered businesses that incur GST costs in raising capital, the exempt treatment of the supply should be disregarded, with the costs incurred being deductible to the extent that the taxpayer makes taxable supplies as a proportion of their total supplies.

2.14 Apportioning input tax deductions according to the extent to which a taxpayer makes taxable supplies is a pragmatic way to provide certainty on the extent to which capital raising costs are deductible. It is proposed that businesses would not be able to attribute the cost of raising capital to a particular activity. As money is fungible between activities, it may otherwise be difficult to determine the extent to which capital is being raised to finance the taxpayer's taxable, as opposed to exempt, activities. The proposed solution would instead result in the taxpayer apportioning their capital-raising costs in the same manner as other costs that relate to their business as a whole, as they are not attributable to a particular part of the business.

2.15 Limiting input tax deductions to the extent that the capital raising costs are incurred to further the making of taxable supplies, and not exempt supplies, follows the approaches adopted in other jurisdictions.[2]

2.16 We recognise that, in some cases, the direct attribution of costs may be more appropriate – such as if costs relate solely to the taxable part of a business – and would welcome submissions on this point.

Example

C Co. is a property developer, which makes 80 percent taxable supplies and 20 percent exempt supplies. It issues a bond to raise capital in order to finance the purchase of land. In issuing the bond, it spends $10,000 on legal fees.

The suggested approach would treat these costs as being attributable to C Co.'s broader taxable activity, rather than to an exempt financial supply. This means that C Co. would be able to deduct 80 percent of the GST costs incurred.

[2] The leading European case on the issue is *Kretztechnik AG v Finanzamt Linz* (Case C-465/03). The case established the principle in Europe that businesses are entitled to recover input tax incurred on the costs of issuing shares to the extent that they make taxable supplies.

Should the approach suggested apply to financial service providers?

2.17 The business-to-business financial services rules allow financial service providers to recover input tax in relation to their supplies of financial services to other registered businesses that predominantly make taxable supplies. Taxpayers that principally provide financial services are able to enter into an agreement with the Commissioner on a fair and reasonable method to apportion their costs between their taxable and exempt activities.

2.18 The costs incurred by financial service providers in issuing shares, bonds and debentures would generally be apportioned according to the extent to which the financial service provider makes taxable supplies. This is consistent with the principle that would apply to regular taxable businesses under the suggested approach.

2.19 It is questionable whether the proposal therefore needs to extend to registered persons that principally make financial supplies. In particular, as financial service providers issue securities as an integral part of their business in intermediating between borrowers and lenders, it may be difficult to draw a distinction between capital raising costs that relate to their broader activities, and other circumstances.

2.20 Submissions are sought however on whether any concerns arise for financial service providers in relation to the deductibility of GST costs incurred in raising capital, and if so, how these concerns may be addressed.

Which supplies of financial services should be included?

2.21 As we have outlined, a registered person must have a taxable activity to deduct costs incurred in capital raising. This means the registered person must carry out the activity continuously or regularly, and supply or intend to supply goods and services for consideration.

2.22 Section 3(1) defines "financial services" as including:

> (c) The issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security;
>
> (d) The issue, allotment, or transfer of ownership of an equity security or a participatory security.

2.23 The key financial services that a business may supply when raising capital are the "issue" or "allotment" of a security. The issue of a security involves the delivery of a document or an act that establishes the title of the holder of a security. The allotment of a security occurs when the person offering a security (the issuer) accepts a subscriber's offer to purchase the security, which is generally when the contract for the issue of the security is formed.

2.24 For example, this would mean that when issuing a debt or equity security, a business would be able to recover the GST on expenses such as legal and advisory fees, the costs of preparing a product disclosure statement or other documents, valuation fees, printing and advertising.

2.25 This approach would not affect the current treatment of financial services supplied to a non-resident who is outside New Zealand at the time the services are performed, as they will continue to be zero-rated.

Example D Co., a manufacturing company, plans to issue shares to raise capital for expansion of its operations. In issuing the shares, D Co. incurs expenses such as legal and accounting fees, advertising and printing. Under the suggested approach, the exempt treatment of the issue of equity security would be disregarded, and the costs would be attributed to D Co.'s broader taxable activity. If when disregarding the issue of shares, D Co. only makes taxable supplies, it can deduct all of the GST costs incurred in issuing the shares.

Suggested solution

2.26 An amendment could be made to disregard the exempt treatment of the issue or allotment of an equity or debt security by a registered person when considering whether the costs relating to this activity are deductible. Instead, these costs would be considered to relate to the registered person's broader taxable activity, with the costs being deductible to the extent that the registered person makes taxable supplies as a proportion of their total supplies by value.

2.27 Officials consider that it may be appropriate to exclude taxpayers that principally make supplies of financial services from this rule, as they are able to apportion capital-raising costs under the current legislation.

2.28 The amendment would apply from 1 April 2017.

CHAPTER 3

Compliance costs of apportionment for large businesses

3.1 The current apportionment and adjustment rules were introduced in the Taxation (GST and Remedial Matters) Act 2010. Under the apportionment rules, input tax may be deducted to the extent that goods and services acquired are used or available for use in making taxable supplies. In the event that acquisitions will be used in making both taxable and non-taxable supplies, input tax needs to be apportioned initially and actual use is subsequently periodically assessed and adjustments made to the apportioned deduction.

3.2 During consideration by the select committee, public submissions identified financial service providers as a group who would potentially incur significant compliance costs in applying the new apportionment rules, for little additional value. Consequently, amendments were made to allow a person principally making supplies of financial services to use a "fair and reasonable" method of apportionment, and of adjustment, as agreed with the Commissioner and having regard to the tenor of the apportionment rules. This is contained in sections 20(3E), 20E(b) and 21(4).

3.3 At the time, the property sector was identified as potentially being another industry which makes a mix of taxable and exempt supplies, such as the taxable sale of a newly constructed dwelling which has been rented out, producing some exempt supplies prior to sale. However, the rules for the concurrent use of land, in section 21E, were intended to specifically deal with this situation.

3.4 It is evident that retirement village operators and conceivably other kinds of larger business who make mixed supplies may also experience substantial compliance costs, in addition to those covered by section 20(3E), in applying the apportionment rules. Current difficulties are discussed below.

Activities of a retirement village

3.5 Retirement village operators provide both accommodation and a number of assisted living services to residents of their villages. There are a number of legal forms that are used to provide accommodation and related services. Accommodation may be supplied to a resident by way of a lease or other right to occupy the unit. A resident will be entitled to use certain shared facilities, such as the grounds and common areas, as well as residing in the unit. Alternatively, the village operator may sell a unit to a resident, coupled with an arrangement or option to repurchase it at the end of the resident's stay.

3.6 When a resident ceases to use a unit, it will be supplied to a new resident. The new resident may acquire the unit on different terms to the original resident. For example, a resident who received a package including accommodation and full care services may be replaced by a new resident who only acquires the accommodation.

3.7 Retirement village operators may also provide residents with a wide variety of assisted living services, including nursing services, medical care, transport, group activities, and assistance with living, such as laundry, cleaning and meals. The level of assistance required will vary among residents, and not all residents will require the same services. In some cases, these services will be included with the accommodation, and in other cases some services may be optional additions that a resident can choose to acquire.

Retirement villages and the GST rules

3.8 The GST treatment of accommodation provided by a village operator will vary depending on the terms of the contract for the supply, rather than be based solely around the structure in which the accommodation is provided. In particular, leased or licensed accommodation will be exempt when it is provided in a "dwelling" or taxable if it is provided in a "commercial dwelling". What would ordinarily be a commercial dwelling may instead become a dwelling, if the consideration is for the right to occupy the unit.

Example

B Co., a retirement village operator, offers individual apartments to residents for a weekly charge. The weekly charge entitles the resident to the exclusive use of their apartment, and to use shared facilities, such as the grounds, and common rooms. Residents may opt to acquire additional services – such as cleaning, rubbish disposal, eligibility to take part in organised outings, and nursing care – separately for an additional charge. However, there is no obligation to acquire these services.

The supply of the apartment is GST-exempt (as accommodation in a dwelling). If a resident chooses to acquire the additional services, the supply of those additional services will be taxable and will not alter the GST treatment of the accommodation.

C Co., another retirement village operator, offers care apartments to residents for a weekly charge. The care apartments are supplied as part of a larger package that also includes the use of shared facilities, meals, the periodic cleaning of the apartment, rubbish disposal, eligibility to take part in organised outings, and regular visits from a nurse.

The supply of accommodation in the care apartment is taxable, as the supply will not be the supply of accommodation in a "dwelling".

3.9 The treatment of a number of incidental services, such as use of the grounds, will depend on the treatment of the accommodation. Both taxable and exempt accommodation may be provided within the same building, and residents of each kind may share the use of the same shared facilities.

3.10 The supply of care services such as cleaning, nursing or medical services, is generally taxable, although some goods and services (including the right to occupy the premises) supplied may be "domestic goods and services" and when provided in a commercial dwelling, be subject to an effectively lower rate of GST.[3] This recognises that they are close substitutes for exempt residential accommodation.

3.11 The proportion of taxable to exempt use of goods and services within a retirement village will likely vary depending on which part of the village is being used and what goods and services are supplied. This proportion will also vary over time. A retirement village operator will need to apply the apportionment and adjustment rules.[4]

Compliance costs in applying the apportionment and adjustment rules

3.12 When goods or services are acquired, a retirement village operator must deduct tax charged on those goods or services, based on its estimated use of those goods and services in making taxable supplies (the "intended use"), using a determination method that provides a fair and reasonable result.

3.13 Officials have been advised that this leads to significant compliance costs as follows:

- When goods and services used within different parts of the village have different intended uses, multiple apportionment rates need to be determined, applied and tracked. For example, head office expenses may relate to the entire business activity, including multiple villages, and other costs may relate to a specific part of a village with its own unique proportion of taxable/exempt supplies.
- During the construction phase of a village, costs may relate to the construction of "exempt" units, "taxable" units, and shared facilities. It may be difficult to determine the relative proportion of any particular invoice relating to constructing each of these items and what the overall apportionment should be.
- The use of facilities in making taxable supplies also continuously varies, as the services provided to residents change over the lifespan of the village. Ongoing calculations are required to determine any adjustments required.
- The use of supplies may not have been able to be accurately determined at the time of apportionment. For example, when an apartment may be acquired by a resident either as independent living accommodation (exempt) or as part of a care package (taxable), the GST treatment will depend on this choice.
- When the use of a good or service in an early adjustment period differs from its use in subsequent adjustment periods, incremental adjustments may be required in the subsequent periods, as the use in the early periods progressively becomes a smaller proportion of actual use.

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[3] Through the operation of section 10(6).

[4] The Commissioner's view of the GST treatment of retirement villages is being considered in the Public Rulings' project PUB00201. It is expected that the Interpretation Statement for this project will be published shortly.

3.14 As a result, a retirement village operator may need to apply multiple apportionment rates to different invoices and track these invoices so that subsequent adjustments can be made. The retirement village operator will need to calculate if adjustments are required in relation to these supplies.

Policy considerations

3.15 The apportionment rules are intended to ensure that when a business makes exempt supplies (or the goods and services are privately consumed), deductions are not available. This ensures that exempt supplies and private consumption are still effectively taxed.

3.16 The rules were intended to be relatively simple to comply with, and provide certainty for taxpayers. This has largely been achieved, as most taxpayers are able to undertake an initial apportionment and then make limited further changes if there is little change to the relative taxable and exempt use. However, for some larger taxpayers (such as retirement village operators) apportionment, as shown, is complicated. This is undesirable.

3.17 As exempt supplies are taxed by denying deductions, it is important that any change does not affect the overall proportion of input tax that may be deducted. If the proportion of input tax that may be deducted varies from the use of the goods or services in making taxable supplies, the result would be under- or over-taxation.

Suggested solution

3.18 On balance, officials consider that the ability to agree a similar alternative method to the apportionment rules with the Commissioner, could be extended to a wider group of taxpayers, beyond the financial services sector, subject to certain restrictions to ensure administration costs are kept relatively low. This would provide the necessary flexibility to address the specific circumstances and difficulties faced by taxpayers most affected.

3.19 While officials are only aware of difficulties within the retirement village sector, in theory any larger business making both taxable and exempt supplies could experience similar issues.

3.20 Relief from high compliance costs could be provided by a more aggregated approach to estimating the amount of input tax that may be deducted, which takes into account the specific business circumstances of the taxpayer and reaches a similar overall outcome to that which would be available by applying the apportionment and adjustment rules.

Proposed method

3.21 It is expected that the agreement would provide alternatives to applying the rules on a supply-by-supply basis, the number of periods for which adjustments may be required to be made, and the way the adjustment rules closely follow the actual use of the goods or services over their current life.

3.22 It is not intended to codify matters any agreement with the Commissioner must consider. It is anticipated that an alternative method would need to be fair and reasonable after taking account of the specific business circumstances of a taxpayer. However, it is expected that agreements would usually set out the following:

- all relevant business activities of the applicant;
- the methodology proposed (for example, calculation based on turnover, floor space, time spent, number of transactions or cost allocations);
- categories of costs that can be directly attributed to either taxable or non-taxable supplies, and categories of costs that relate to both taxable and non-taxable supplies;
- the methodology proposed for significant one-off acquisitions such as land;
- the method by which disposals of assets will be dealt with (for example, what input tax adjustments will be made);
- any adjustments that will be made in relation to goods and services that have already been acquired, including those that are subject to the current apportionment rules, transitional rules or old apportionment rules;
- details of any proposed variations to the minimum number of adjustment periods for which adjustments will be made;
- details of any proposed variations to the period in which adjustments will be returned; and
- an explanation of why the proposed methodology is fair and reasonable, and how it reflects the outcomes that would be reached under the apportionment rules.

3.23 Approval could be granted subject to conditions. These might include the methodology being subject to regular review by the Commissioner (such as every three years) and the taxpayer being required to notify the Commissioner of the GST recovery position taken in relation to high-value acquisitions (such as land).

3.24 The period over which any agreed approach applied would need to be considered, as just looking at an annual position could misrepresent the degree of relative accuracy between the agreed approach and the more literal application of the legislation. For example, consider the situation of a good which is initially used to only make exempt supplies in the first adjustment period, before being applied to make taxable supplies in subsequent adjustment periods. An incrementally larger input tax deduction may be available in these subsequent adjustment periods, as the earlier exempt use becomes a lower proportion of its actual use. A method that based the deduction on the planned long-term actual use of the goods and services in making taxable supplies would bring the deduction forward (compared with the adjustment rules being applied) and could produce a timing advantage. An alternative method would need to take this timing difference into account, if material.

Scope of eligibility

3.25 The issues discussed arise in relation to larger taxpayers (including registered groups), who make both taxable and exempt supplies as these businesses have a greater number of transactions and more complex transactions.

3.26 To help ensure that an alternative agreement produces a net benefit, a threshold would restrict eligibility to taxpayers who make a large volume of supplies. We suggest that this threshold be aligned to the requirement mandating a 1-month taxable period – registered persons whose turnover in a 12-month period is $24 million or more, or expected to be $24 million or more, once their business activities fully commence.

3.27 Financial service providers covered by the existing ability to reach an apportionment agreement would not be covered by this proposed new rule.

3.28 The Commissioner could refuse to enter into agreements when the benefits arising under an agreement, such as compliance cost savings, would not justify the administrative cost of agreeing upon, and maintaining, an alternative methodology.

CHAPTER 4

GST treatment of alloy gold

4.1 The GST treatment of gold, silver and platinum depends on their purity. Gold, silver and platinum[5] are a "fine metal", when they are in any form having a fineness of not less than a certain specified percentage (99.5%, 99.9% and 99.0% respectively). A supply of fine metal is generally exempt, but in certain circumstances may be zero-rated. This includes both exported fine metal, and the first supply of new fine metal to a dealer for the purpose of supply as an investment item. In addition, GST is not charged on fine metal when it is imported.

4.2 In contrast, gold, silver or platinum (collectively referred to as "gold") in a form having a lower purity are not a "fine metal", and will generally be subject to the same GST treatment as other goods. However, one area where different rules will apply is in allowing deductions for secondhand goods. Deductions are not allowed to the extent secondhand goods are manufactured or made of gold.

Reasons for the current treatment of gold

4.3 This treatment dates back to an amendment made through the Goods and Services Tax Amendment Act 1986, after the Goods and Services Tax Act 1985 received Royal assent, but before GST began to be imposed on supplies of goods and services in New Zealand.

4.4 Previously, the Goods and Services Tax Act 1985 did not contain rules providing for any special treatment for supplies of gold. A supply of gold would be taxable under the ordinary rules. However, a number of concerns were raised about this treatment, as a result of fine gold also being used for investment purposes.

4.5 A major concern was that the price of gold in New Zealand would increase when GST came into force on 1 October 1986 by 10% (the rate of GST at the time) over the internationally set price. This would produce a windfall gain for persons holding gold at this time (if not required to register for GST) as they would be able to sell their gold for this increased price (as a registered purchaser would receive an input tax credit for secondhand goods), but not return any GST. The person could take further advantage of this rule by acquiring gold before 1 October, including by importing additional gold, to take advantage of this potential windfall, at the expense of government revenue.

4.6 Other concerns included the mismatch in treatment with paper dealings in gold, which were arguably an exempt financial service, the risk that gold could be treated as "money", and that taxing gold would create a tax incentive for investment gold to be exported or held offshore.

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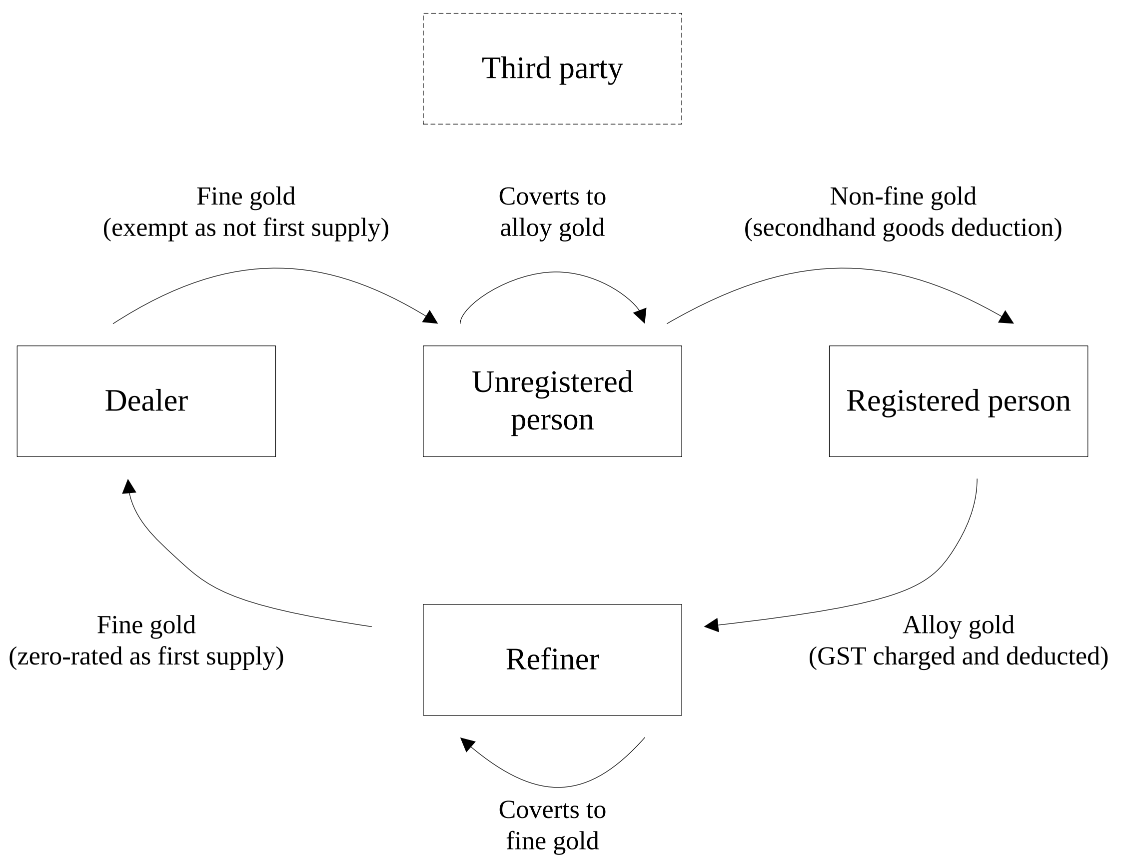
[5] Other substances can also be declared to be a fine metal by Order in Council.

4.7 As a consequence of these concerns, the supply of fine gold was made exempt, with a special rule zero-rating the first supply of new fine gold used for investment purposes. The effect of these rules was that GST would not be charged on or embedded in fine gold – while exemption normally effectively taxes a supply by denying deductions, zero-rating the first supply addressed the issue of embedded GST. This is because the refiner may recover GST charged when it purchases non-fine gold to be refined, with subsequent supplies of the fine gold being exempt.

4.8 Concerns remained, however, about allowing deductions for secondhand goods supplied by a non-registered to a registered person such as a refiner. These arose because, for example, an unregistered person could acquire fine gold, and turn it into a non-fine gold alloy. The gold alloy could be supplied to a registered person who would claim an input tax deduction in respect of the purchase. The registered person could then either export it (as a zero-rated supply) to be refined overseas,[6] or potentially sell the gold to a refiner, who would deduct the GST charged. The alloy could then be refined to extract the gold component, as fine gold (and reimported without GST, if applicable), and the cycle could begin again. An example of this is shown below. Completion of this cycle would result in one more deduction than corresponding GST paid. (Note that these concerns reflect the GST rules as they were at the time GST was introduced.)

Example: Carousel fraud involving gold



[6] This requires supply to another registered person, who exports it, due to limitations on zero-rating exported goods where a secondhand goods deduction has been claimed.

4.9 This concern was addressed by preventing input tax deductions from being taken for the gold component of secondhand goods. This was achieved by amending the definition of "secondhand goods" to exclude secondhand goods consisting of fine metal, and secondhand goods to the extent they are manufactured or made from gold.

Industry concerns

4.10 Industry representatives have expressed their concern with this treatment, as it does not provide relief for GST embedded in alloy gold, which becomes a cost borne by registered persons in the industry, contrary to the intention underlying GST as a tax on consumption.

4.11 It is argued that the rules in this area are poorly understood, and that practice between businesses varies. In particular, some businesses may be unaware of the special rules for gold, and may be claiming deductions for secondhand goods. This is said to distort competition between businesses which claim a deduction, and those that do not, as businesses taking the deductions bear a relatively lower cost in purchasing these goods, which can allow them to offer a higher price for secondhand gold. Therefore a business taking a deduction could have a significant advantage over its competitors.

4.12 Industry representatives have raised other concerns with the current treatment. The approach of excluding goods from the treatment is said to result in high compliance costs, as the gold component must be determined and valued, so that the deductible portion can be determined. It has been noted that the rules do not recognise the widespread use of gold in a variety of consumer goods, such as in electronics.

4.13 The treatment furthermore produces an incentive for unregistered persons to transact directly with each other, or for a registered person to act as agent of the seller, rather than purchasing the goods themselves.

Policy considerations

4.14 Allowing deductions for secondhand goods recognises GST that is embedded in the price paid for these goods. A GST-registered business that acquires secondhand goods from a consumer will need to return GST when they resupply those goods; however, the goods have already been taxed when they were acquired by the consumer (who could not deduct GST). The effect is that, in the absence of this deduction, the secondhand goods will be taxed twice. Allowing a deduction results in a single layer of tax on these goods, while also taxing the value added by the business.

4.15 As discussed above, the exclusion of gold from the definition of "secondhand goods" reflects the fraud risk stemming from the difference in treatment of fine and non-fine gold, and the ability to convert these metals from a fine form to a non-fine form and back again. Officials understand that the costs involved in carrying out this conversion do not necessarily outweigh the value of the deduction, and the scheme remains theoretically possible. This is because of the relative ease with which gold can be altered from a fine to a non-fine state.

4.16 However, conversion into alloy gold goods that would actually be supplied to consumers (such as jewellery) is a more expensive process. Therefore, the non-fine gold produced by the carousel arrangement would not be in the form of these manufactured goods, but instead be in an unprocessed state. Consumers are not expected to acquire gold in such a form.

4.17 This distinction could allow secondhand goods deductions for alloy gold goods, or goods with an alloy gold component. Secondhand goods could include goods that have been manufactured from alloy gold, such as jewellery or electronic circuitry, but exclude alloy gold that has not undergone a manufacturing process since being produced.

4.18 While there may be real commercial reasons for gold to be in such an unprocessed form – for example, gold filings from the production of jewellery may be collected and melted together before sale to a refiner – officials understand that in these cases, the supplier is likely to be GST-registered. Therefore, GST will be returned and deducted on the supply, and the rules for secondhand goods will not apply.

Suggested solution

4.19 An amendment could be made to allow a deduction in respect of secondhand goods that are manufactured from non-fine gold, silver or platinum. This would exclude non-fine gold, silver and platinum that has not undergone additional manufacturing processes, and therefore still poses a fraud risk. In that case a deduction would still be unavailable.

4.20 This would recognise embedded GST, and reduce compliance costs by removing the need to determine the gold, silver and/or platinum content of those goods.

Timing

4.21 An important question is the timing of any amendment. It has been argued that the rules are unclear. The unavailability of a deduction is in contrast to the normal position for secondhand goods, and is one of a limited number of exceptions to the rule ordinarily permitting a deduction.

4.22 The Commissioner has previously published her view on the treatment of gold, silver and platinum, in *Tax Information Bulletin* Volume 5, Number 13, "Gold and other fine metal – secondhand goods credit". That article discusses a hypothetical scenario of a jeweller acquiring jewellery composed of non-fine gold, and only taking a deduction in respect of other metals mixed with gold to make the jewellery. However, it has been claimed that the exception could be interpreted as referring to the industry meaning of "gold", "silver" and "platinum", which is the fine metal form. This would exclude the fine metal component of a good that is not composed entirely of fine metal, but allow a deduction for non-fine metal. It has been suggested that a number of businesses may have already claimed deductions on this basis.

4.23 It is likely that in some cases these transactions may not have been economic in the absence of a deduction, and would not have been entered into. The unexpected liability to repay these amounts may have a significant effect on their business. As a deduction is only denied in respect of the gold component, it may also be difficult to determine the extent to which a deduction would have been available in respect of the other components of the good.

4.24 However, it is also important that any amendment be equitable between taxpayers. Officials suggest that any amendment be retrospective by four years before the date of enactment. This would provide certainty to taxpayers by allowing previously claimed deductions, while ensuring compliant taxpayers are not disadvantaged, by being able to claim deductions within the four-year period.

CHAPTER 5

Services directly in connection with land

5.1 New Zealand's GST system is based on the destination principle, under which supplies of goods and services are taxed in the jurisdiction where the goods and services are consumed. This means services supplied to non-residents who are outside New Zealand will generally be zero-rated, as the services will be consumed overseas.

5.2 An exception applies where the service supplied is so closely connected with land that the location of the land is the most appropriate place of taxation. Section 11A(1)(k) zero-rates services supplied to non-residents who are outside New Zealand at the time the services are performed, unless the services are directly in connection with land or moveable personal property situated in New Zealand. Similarly, services that are supplied directly in connection with land situated outside New Zealand will be zero-rated under section 11A(1)(e).

5.3 It should be noted that owning land in New Zealand can, in certain circumstances, affect the residence status of a person receiving services. This is because the definition of "resident" for GST purposes includes a person that carries on a taxable activity or any other activity in New Zealand, while having a fixed or permanent place in New Zealand relating to that activity. For example, a person who carries on an activity of developing, dividing or dealing in land, or residential or commercial rental of a property, will be deemed to be resident in New Zealand for GST purposes.

5.4 It is clear that services will be supplied directly in connection with land when they have a direct physical effect on land, such as the construction, repair or maintenance of a building. It has been less clear how the test applies to supplies of professional or other services that do not in themselves have a direct physical effect on land.

5.5 Leading cases on the meaning of "directly in connection with" include *Malololailai Interval Holidays New Zealand Ltd v CIR*[7] and *Wilson & Horton Ltd v CIR*[8]. The courts have found that a service is not supplied directly in connection with land when it merely brings about or facilitates a transaction with a direct effect on land, or when the service could be described as being "one step removed" from such a transaction.

5.6 In light of these principles, Inland Revenue issued a Public Ruling on legal services provided to non-residents relating to transactions involving land in New Zealand, which concluded that these services are zero-rated.[9] This includes legal services relating to transactions that involve the change of ownership of land, such as the drafting of agreements for the sale and purchase of land.

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[7] (1997) 18 NZTC 13,137.

[8] (1994) 16 NZTC 11,221.

[9] BR Pub 15/03 "Goods and Services Tax - legal services provided to non-residents relating to transactions involving land in New Zealand" *Tax Information Bulletin* Vol. 27, No. 3 (April 2015).

5.7 This interpretation is arguably inconsistent with the policy intent of the provision. The "directly in connection with land" test uses the location of land as a proxy for the place that a service is consumed, when the service has a very close relationship to land. The test was not intended to create a distinction between services that have a physical effect on land and other services that affect the legal nature of land, such as legal services that facilitate a change to the ownership of land.

5.8 The adoption of a "one step removed" test may also arguably result in certain other professional or intellectual services falling outside the scope of the provision, even though the service is supplied with the underlying purpose of affecting the physical or legal nature of land.

5.9 For example, one interpretation would be that services provided by real estate agents in facilitating a change in ownership of land are "one step removed" from a direct transaction. Similarly, architectural services could be argued to be "one step removed" from a transaction with a direct effect on land, being the construction of a building. Other professional or intellectual services will, on the other hand, have a direct effect on land, including those which define the nature or value of property, such as surveying and valuation services.

5.10 The OECD International VAT/GST Guidelines are intended to drive international consistency in the treatment of the place of supply for cross-border services and intangibles. This will best ensure that, in applying the destination model, double taxation and double non-taxation is mitigated.

5.11 For these reasons, this chapter reviews the "directly in connection with land" test.

International approaches

OECD International VAT/GST Guidelines

5.12 The OECD International VAT/GST Guidelines state that for supplies of services that are directly connected with immovable property, taxing rights may be allocated to the jurisdiction in which the immovable property is located.[10] The use of "directly connected" does not have an independent meaning in this context and is intended to narrow the scope of the rule to services that have a "very close, clear and obvious link or association" with immovable property.

5.13 The relationship with immovable property must be at the heart of the supply for the required level of connection to be present; it cannot be merely one aspect of a supply of services. The guidelines state that this connection would be satisfied for certain intellectual services, such as architectural services that relate to a clearly identifiable property.

[10] OECD International VAT/GST Guidelines, April 2014.

Australia

5.14 In Australia, a supply that is made to an offshore non-resident will not be GST-free if the supply is directly connected with real property situated in Australia.[11] The Australian Taxation Office (ATO) considers that a supply will be "directly connected with real property" when the direct object of the supply is the real property, including in the sense that the supply changes or affects the nature, value or ownership of the real property.[12]

5.15 Following the interpretation in *Malololailai*, the ATO considers that the supply of real estate agent services will not be directly connected with real property when it is merely a supply of marketing services in finding a willing purchaser for the property. However, a supply when a real estate agent is selling or auctioning real property for a non-resident will be directly connected with the property if the agent has the authority to sign the sale agreement on behalf of the non-resident.

5.16 A supply of architectural services to design a building for a particular site is considered to be directly connected with real property, as it has the purpose of affecting the nature of the real property. The ruling also considers that legal services that are directly connected with the disposal, acquisition or transfer of an interest in real property, such as conveyancing services or the preparation of a lease agreement, will be directly connected with real property.

Canada

5.17 Canada excludes supplies of a service in relation to real property situated in Canada from zero-rating. This includes supplies of an advisory, professional or consulting service in relation to real property situated in Canada.[13] In applying this test, the Canada Revenue Agency considers whether the service is designed to serve a particular need or requirement arising from the property, and whether the relationship between the purpose or objective of the service and the property is reasonably direct.[14] A supply of services will generally be "in respect" of a Canadian property if the service is aimed at dealing with the transfer of ownership of, claims on or rights to the property, or determining the title to the property.

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[11] A New Tax System (Goods and Services Tax Act) 1999 (Cth), section 38-190(1).

[12] GST Ruling 2003/7, Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?

[13] Excise Tax Act 1985, Schedule VI, Part V, sections 7 and 23.

[14] GST/HST Policy Statement P-169R, Meaning of in Respect of Real Property Situated in Canada and in Respect of Tangible Personal Property that Situated in Canada at Time the Service is Performed, for Purposes of Schedule VI, Part V, Sections 7 and 23 to the Excise Tax Act.

European Union

5.18 In the European Union, the place of supply of services that have a "sufficiently direct connection" with immovable property is where the property is situated.[15] Services are considered to have a sufficiently direct connection with immovable property where they are:

- derived from immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied;
- provided to, or directed towards, immovable property, having as their object the legal or physical alteration of that property.[16]

5.19 Services which have a sufficiently direct connection under this test include the services of real estate agents in intermediating the sale or leasing of property, and architectural services that relate to a particular property. Legal services relating to the transfer of a title to property, or to establish or transfer interests or rights in property will also have a sufficiently direct connection to the property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.

Policy considerations

Which services should be considered to have a direct connection with land?

5.20 The key consideration is which services have such a strong connection with land that its location should be treated as their place of consumption.

5.21 The "directly in connection with land" test was intended to encompass services that have a very close relationship with land, such that they are effectively consumed where the land is located. However, it is arguable that the test currently has limited application to intellectual or professional services, even when the service is supplied with an underlying purpose or objective of affecting the physical or legal nature of land.

5.22 A number of these services may be "one step removed" from a direct transaction that affects land but have a strong connection with land as their consumption would affect the nature or value of land. In considering whether the connection to land has been satisfied, a better approach may be to instead look at the service in the broader context of the purpose or objective that it serves, rather than looking to whether the service itself has a direct legal or physical effect on land. This approach would be in line with the OECD VAT/GST Guidelines, and with the approaches of other jurisdictions such as Australia, Canada and the European Union.

5.23 The "directly in connection with land" requirement could be altered to include services where there is a direct relationship between the purpose or objective of the service and the land. This would include services that have

[15] EU Directive 2006/112/EC, Article 45.
[16] Council Implementing Regulation (EU) No 282/2011, Article 31a.

the purpose of affecting the nature or value of land or affecting the ownership of any interest in land.

5.24 In particular, the following services would be regarded as having such a sufficiently close connection with land that they could be considered to be consumed where the land is located:

- the assessment of the risk or integrity of land;
- intermediation in the sale or lease of land, including by real estate agents and property managers;
- architectural or design engineering services that relate to a particular site, including the drawing up of plans for a building or part of a building;
- legal services relating to transactions involving the transfer of title to land or the establishment or enforcement of an interest in land (such as the drafting of agreements for the sale and purchase of land, lease agreements or construction agreements).

Which services should not be considered to have a direct connection with land?

5.25 A service should not be considered to be supplied directly in connection with land when it does not clearly relate to designated land in New Zealand. This would include services such as:

- advice or information about property prices or investment in the property market in general;
- market research relating to the economic viability of a particular project;
- architectural services which do not relate to a particular site;
- advice on the tax implications of investing in property generally.

5.26 Further, a service would not be regarded as supplied directly in connection with land if the part of the service that relates to land is only an incidental aspect of the supply. For example, this may be the case when legal services are provided to establish a trust that will subsequently hold land.

Suggested solution

5.27 We are suggesting that an amendment be made to clarify or alter the scope of the services that are supplied "directly in connection with land", to include services where there is a direct relationship between the purpose or objective of the service and land. This would include services which have the purpose or objective of affecting or defining the nature or value of land, protecting land, or affecting the ownership or any interest in or right over land.

5.28 This would mean that the services of real estate agents, architects and legal services in respect of land in New Zealand would not be zero-rated when supplied to offshore non-residents. Similarly, where these services are supplied in relation to land that is situated outside New Zealand, they would be zero-rated. This change would not affect the use of the phrase "directly in connection with" elsewhere in the GST Act.

5.29 A service would not be supplied directly in connection with land if it does not relate to a designated property, or when the part of the service that relates to land is only an incidental aspect of the supply.

5.30 The application date for the amendment is expected to be 1 April 2017. However, there are possible concerns in relation to the treatment before that date – for example, uncertainty as to the correct position for some services (excluding legal services) may gave rise to refund claims from the purchaser to the vendor or from the vendor to Inland Revenue. Submissions are therefore sought on the appropriateness of a "savings" provision for past tax positions.

Example

Eleanor, who is an Australian resident, comes to New Zealand with a view to buying a holiday home. After looking at potential areas, she returns to Australia and continues her search.

At first, she seeks general advice from a New Zealand firm on the local property market and on the tax implications of such an investment. She hires a New Zealand-based real estate agent to search for a suitable property and negotiate the sale on her behalf. Savannah, a New Zealand solicitor, drafts a sale and purchase agreement which is signed by both parties. As the land is vacant, Eleanor hires a New Zealand architectural firm to draw up plans for a building to be constructed on the property.

Under the suggested solution, these services would be standard-rated, except for the provision of general advice which would continue to be zero-rated.

CHAPTER 6

Zero-rating of land – commercial leases

6.1 Supplies of land between registered persons, where the land will be used in a taxable activity by the purchaser, are generally zero-rated, meaning no GST is charged by the vendor or deducted by the purchaser. The decision to zero-rate land was based around concerns with "phoenix" fraud, often involving land sold between associated entities. The purchaser would receive a refund of GST charged on the supply, but the vendor would deliberately wind up before making payment of the GST.

6.2 To avoid introducing significant compliance costs, and given the multitude of existing standard-rated commercial leases, commercial leases were excluded from the requirement to zero-rate supplies of land. An exception to this exclusion was certain long-term leases, with large up-front payments. These leases may be substitutable for a sale of land – posing a risk of phoenix fraud – and are therefore zero-rated.

6.3 Section 11(8D) contains the rules governing when commercial leases, and certain associated payments, will or will not be zero-rated. However, a number of technical issues have been identified in relation to these rules.

6.4 Unless otherwise specified, the suggested changes set out in this chapter would apply from 1 April 2011 (the date section 11(8D) first came into force), and provide for past positions to be preserved.

Lease-related surrender payments

6.5 The first issue concerns the rule in section 11(8D)(a) which zero-rates supplies of an assignment or surrender of an interest in land. It is not clear that both of the two conceivable types of surrender payment – specifically payments from landlord to tenant and payments from tenant to landlord, would be zero-rated.

6.6 The wording of the provision fits well in the former scenario (landlord pays tenant), as the tenant is surrendering its leasehold estate (and so, in a sense, supplying an interest in land) in consideration for the payment.

6.7 However, the landlord will arguably not supply an interest in land; they are instead agreeing not to enforce their right to payment under the lease. Consequently, it is arguable that the rule will not apply in this scenario. However, both forms of surrender payment were intended to be zero-rated.

Suggested solution

6.8 An amendment to section 11(8D)(a) is proposed, to clarify that a payment from tenant to landlord can also be zero-rated, when the supply of land to which it relates is a zero-rated supply of land.

Lump sum lease payments

6.9 When a large payment (in excess of 25 percent of the total consideration under the lease) is made, the payments under the lease are zero-rated. In some situations, this approach may arguably apply to retrospectively change the GST treatment of payments made prior to the large payment. This is because, as currently drafted, the zero-rating could apply to the entire supply of land not just the individual payments.

> **Example**
>
> Betty makes regular payments under a lease agreement. These payments are standard-rated and not subject to the zero-rating rules. At some point a large irregular payment is made. Consequently, the entire lease could now be treated as zero-rated, meaning that past and future payments under the lease are also zero-rated.
>
> If Betty was unable to anticipate this payment, and zero-rate previous payments, she will need to unwind the GST treatment of the previous payments, so that they are correctly zero-rated.

6.10 It was not intended that the payment would affect lease payments that were made before this large one-off payment. When GST has already been correctly returned, these payments do not pose the risk which the zero-rating rule was intended to address.

Suggested solution

6.11 One approach would be to preserve tax positions taken in relation to lease payments made prior to the large one-off payment being made. Instead only the large one-off payment and all future payments would be zero-rated.

6.12 Alternatively, the paragraph could be amended to ensure that only the large one-off payment would be zero-rated and all other regular payments under the lease would remain standard-rated.

6.13 We prefer the first approach as it would align better with the treatment of up-front large one-off payments and the policy intent, which is to fully zero-rate leases which are substitutable for transfers of ownership.

Periodic supplies

6.14 One of the requirements for a supply of land to be standard rated is that the supply be made "periodically" (section 11(8D)(b)(i)). This wording is intended to indicate a lease agreement.

6.15 A lease arrangement generally provides for a single continuous supply of the right to use land, with periodic payments. The timing rules treat this supply as a series of successive supplies. In particular, section 9(3) deems a supply with periodic payments to instead be a series of successive supplies, with the timing of each supply determined by the earlier of the time of payment becoming due or being received.

6.16 Consequently, it is intended that the lease will be treated as a continuous series of successive supplies. There is a technical question, however, about whether this series of successive supplies would satisfy the requirement that the supply of land be made periodically.

Suggested solution

6.17 This question could be resolved by an amendment to align the two provisions. The test for standard rating a commercial lease could be clarified to apply to supplies of land that are treated as a series of successive supplies under the timing rule in section 9(3) (agreements to hire, periodic payments, progressive supplies).

The test for large, irregular, payments

6.18 Another issue with the test for standard rating relates to the requirements that a payment in advance of, or contemporaneous with, the supply must meet. These requirements are set out in section 11(8D)(b)(ii).

6.19 The test considers whether the amount totals 25 percent or less than the total consideration specified in the agreement, and relates to the longer of one-year or the shortest possible fixed-term of the agreement (that is, not including a renewal period), and is not itself a regular payment.

6.20 When an amount satisfies these criteria, the lease will be standard-rated. However, this could arguably allow a lease to be standard-rated, despite another amount also being paid or payable that does not satisfy the test. This potentially allows the test to be circumvented. The focus of the test might be clearer if it was on whether a payment is made that does not satisfy the criteria, rather than whether a payment is made that does.

Suggested solution

6.21 The test could be amended to ensure that zero-rating is triggered where an amount is paid or payable under the lease that is not a regular payment, which exceeds 25 percent of the consideration specified in the agreement and which relates to the longer of one year or the shortest possible fixed term of the lease.

Procurement of a lease

6.22 The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 inserted a new paragraph (c) in section 11(8D), to ensure that payments for the procurement of a lease are subject to the zero-rating of land rules. When a lease cannot be assigned, the current tenant may contract with a prospective tenant, to seek the landlord's agreement to enter into a new lease agreement with the prospective tenant. It was intended that the current tenant's (the vendor's) services in procuring this agreement would be zero-rated. However, a further amendment may be required to ensure the provision works as intended.

6.23 Currently, this paragraph provides: "a supply of an interest in land by way of a procurement by a third party of an existing lease is a supply under subsection (1)(mb) if it meets the requirements set out in that subsection". This implies the third party acquires the existing lease. However, the reason for the procurement is because the existing lease is incapable of being assigned, so it is necessary that the vendor (the current tenant) arranges a new lease between the purchaser (the prospective tenant) and landlord.

Suggested solution

6.24 An amendment could be made to clarify that a payment to the existing tenant is zero-rated when the third party does not acquire the existing lease, but instead a new lease is created and the payment is for the vendor's services in arranging a new lease.

6.25 The amendment could apply from 30 June 2014 (the effective date of paragraph (c)). The amendment would preserve existing positions previously taken.

Land acquired by non-profit entities

6.26 The zero-rating of land rules apply to a supply of land between registered persons, when the purchaser acquires the land for the purpose of making taxable supplies.

6.27 Under section 20(3K), a non-profit entity that is registered for GST is treated as if all its supplies of goods and services are used for making taxable supplies, except when they are used to make exempt supplies. This allows a registered person to recover GST incurred for all the non-profit body's non-exempt activities.

The zero-rating of land rules and GST-registered non-profit entities

6.28 The zero-rating of land rules do not apply to the purchase of land by a GST-registered non-profit entity, which purchases the land for use in its non-profit activities. The supply is instead standard-rated, in which case the supplier must return GST and the non-profit body may deduct this amount. This is because section 20(3K) does not apply for the purposes of the zero-rating of land rules, and only applies for parts of the apportionment and adjustment rules that allow input tax deductions.

Policy considerations

6.29 The zero-rating of land rules were introduced as a method of accounting for GST on land that avoided the fiscal risk in charging and refunding GST. Non-profit bodies should be treated in the same manner as other registered persons in relation to the sale and purchase of land. Zero-rating supplies of land from a GST-registered person to a GST-registered non-profit entity would be consistent with this policy intention.

Suggested amendment

6.30 Section 20(3K) could be widened so that a supply of land by a registered person to a registered non-profit entity would be zero-rated when the non-profit entity acquires the land for use other than for making exempt supplies.

CHAPTER 7

Miscellaneous issues

Time of supply when consideration is unknown

7.1 In general, the time at which a good or service is supplied is the earlier of when an invoice is issued or a payment is received. A person accounting on an invoice basis will return GST on the supply in the period where the time of supply has been triggered.

7.2 An exception to this rule is when goods are received under an agreement (other than a hire agreement), but the total consideration of the supply is not known at the time the goods are appropriated under that agreement. A timing rule (section 9(6)) splits the supply into different parts based on “the extent to which any payment under the agreement is due or received or an invoice has been issued”. Hence, the time of supply for each part is determined separately, and the supplier may return GST for each separate part.

7.3 Section 9(6) is limited in application to goods that are supplied under an agreement. The Act does not provide a similar rule for supplies of services. However, the same issue can arise in relation to supplies of services – for example, when the time of supply is triggered by the payment of a deposit, but the total consideration depends on the services performed.

7.4 In addition, the timing rule only applies when the goods are received under an agreement. However, the difficulty in accounting for GST is not confined to when the supply is received under an agreement, but could occur in any case when the time of supply has been triggered, prior to the final consideration payable being known.

7.5 An associated problem arises if the recipient of the supply requests a tax invoice. A tax invoice must be furnished within 28 days of the request, and is required to include the consideration for the supply, which may be unknown. This creates problems with the current invoicing rules, which permit the issue of only a single tax invoice in relation to a supply.

7.6 If the consideration for a supply is altered in certain ways, a debit or credit note may be issued to account for the variation. However, it is not clear that these rules apply when the consideration is not varied, but becomes known later.

Suggested solution

7.7 The section 9(6) timing rule could be extended so that it applies to any supply of goods or services where the consideration has not been determined at the time a payment is first received or an invoice issued. The supply of goods or services would be deemed to be made to the extent that payment is due or received or an invoice issued.

7.8 Splitting the supply into multiple supplies, based on payment being made or due, or an invoice being issued would more clearly enable a supplier to return GST as the consideration becomes known, and allow for invoices to be issued in respect of each of these supplies.

Agents acting for purchasers

7.9 Generally, when an agent acts on behalf of a person in making supplies of goods and services, the GST consequences will be the same as if the person performed those actions themselves.

7.10 In certain situations, a person may elect out of these rules. When an agent acts for a supplier, the parties may elect to "opt out" of the agency rules, and treat the supply as two separate supplies – between the principal and the agent, and between the agent and the recipient.

7.11 The amendment providing for this "opt out" was made in 2013 following concerns that some taxpayers' billing systems would automatically issue a tax invoice. Where both the principal and agents' systems did so, it could breach the rule providing for only a single tax invoice to be issued for each supply, as only one supply would in fact take place. The amendment ensured that this practice would not be in breach of that rule by effectively creating an "extra" supply.

7.12 This amendment also provided that the principal could not take a bad debt deduction for non-payment when the agent had been paid. This was to avoid a possible GST mismatch.

7.13 Officials are aware of some concerns arising when an agent is making purchases on behalf of their principal, and their billing system automatically issues a tax invoice to their principal. Currently, this would be seen as a single transaction between the principal and the supplier (who may have issued a tax invoice themselves) and the tax invoice issued by the agent may not be permitted. A purchaser and their agent cannot opt out of the agency rules and treat this as an additional supply.

7.14 However, the costs of altering systems to comply with these requirements may be high, as the systems may also need to address situations where the person is acting not as an agent, but in their own capacity, and a tax invoice may need to be issued.

7.15 Allowing for agents acting on behalf of purchasers and their principals to agree to opt out of the agency rules would reduce compliance costs in a similar way as for suppliers acting through an agent. It would also better align the GST system with what occurs in practice.

Suggested solution

7.16 An amendment could be made to include an opt-out provision for purchasers and their agents, similar to the one for suppliers and their agents. A purchaser and their agent could agree to treat a supply or type of supply as two separate supplies, being between the supplier and the agent, and the agent and principal. Using this provision would be optional – principals and their agents would not be required to treat a supply as two supplies.

7.17 Similar to the rules for suppliers' agents, this amendment would address technical non-compliance. It would also be appropriate to limit the scope of the amendment to this purpose. As a base protection measure, the agent would be prohibited from taking a bad debt deduction for non-payment by their principal, the purchaser. Under existing rules, the agent would not be treated as making a supply, so would not receive a deduction for non-payment.

Example

The agent pays consideration to the supplier, and invoices their principal for reimbursement. The principal defaults, and the debt goes bad. If the agent and principal have opted out of the agency rules, under the suggested amendment, this will be in respect of a taxable supply, as below:

However, previously there would not have been a taxable supply, and the agent would not be entitled to a bad debt deduction. Allowing a deduction therefore goes beyond the issue of compliance with the tax invoice rules.

7.18 The opt-out to the agency rules should only apply when the agent is New Zealand-resident. It is possible that a non-resident agent may receive supplies of services without GST applying, which are then provided to a New Zealand resident without attracting GST.

Services performed on boats and aircraft exported under their own power

7.19 GST is not intended to be a tax on consumption that occurs outside New Zealand. Consequently, a variety of supplies of goods that are exported can be zero-rated, including the supply of a boat or aircraft that is to be exported under its own power by the recipient (although export must generally occur within 60 days of the purchaser receiving possession).

7.20 In addition, certain goods and services supplied in relation to goods that are to be exported can be zero-rated. This includes services supplied in relation to goods that have been entered for export by the supplier, and also certain goods and services provided in relation to temporary imports. For example, goods that are affixed to a temporarily imported boat in the course of repairs may be zero-rated.

7.21 Goods and services supplied in relation to a boat or aircraft purchased in New Zealand, which is to be exported under its own power, cannot however currently be zero-rated.

> **Example**
>
> Thomas purchases a yacht from a GST-registered shipwright in New Zealand, which he will sail out of New Zealand within 60 days.
>
> Before sailing the yacht away from New Zealand, he arranges to have the yacht repainted, and for new railings to be installed around the sides.
>
> The shipwright can zero-rate the supply of the yacht, as it is exported under its own power within the prescribed timeframe.
>
> The supply of the railing and the repainting cannot be zero-rated.

7.22 The inability to zero-rate goods attached to, or services provided directly in connection to, newly purchased boats or aircraft which will be exported, seems anomalous. The consumption of these goods and services is unlikely to occur in New Zealand, and their supply should be zero-rated.

7.23 A newly purchased boat or aircraft that is to be exported under its own power must generally be exported within 60 days to qualify for zero-rating. This time period may be extended when certain circumstances beyond the control of the supplier and recipient prevent export within the time period.

Suggested solution

7.24 An amendment could be made to ensure that these services and goods supplied in connection to boats or aircraft exported under their own power within 60 days of sale (as a zero-rated supply) are zero-rated. The circumstances when an extension to the 60-day time limit is available should be expanded to include when export cannot occur within this time period, due to this work being performed on the boat or aircraft.

Non-resident registration rules – services received by a registered person

7.25 On 1 April 2014, rules in section 54B took effect that allow non-resident businesses to register for New Zealand GST in order to claim input deductions for certain business expenditure. The rules allow non-residents to register, where they satisfy certain criteria.

7.26 A legislative mismatch has inadvertently been created between section 54B(1)(c) and section 11A(2)(b).

7.27 Section 11A(2)(b) provides that a New Zealand supplier cannot zero-rate a supply to a non-resident if "it is reasonably foreseeable, at the time the agreement is entered into, that [the ultimate recipient] will not *receive the performance of the services in the course of making taxable or exempt supplies*" [emphasis added].

7.28 The purpose of section 11A(2) is to ensure that, for example, the New Zealand provider of education services cannot zero-rate supplies made to a non-resident company when it is clear that the non-resident will in turn on-sell those services to an individual in their own jurisdiction. This ensures that private consumption of services in New Zealand continues to be appropriately taxed.

7.29 The effect of section 11A(2) could be undermined if the non-resident company in the example was able to register for GST in New Zealand and claim input deductions on the supply, but did not return output tax on the on-supply to the unregistered person. (In theory, the non-resident <u>is</u> required to be registered and return output tax on the on-supply of the services to the ultimate consumer, but it is recognised that there are practical difficulties in enforcing tax liabilities on non-residents in these situations. As a result, the tax payable on the supply subject to section 11A(2) acts as a proxy for final consumption).

7.30 Section 54B(1)(c) prevents this registration. It provides that a non-resident cannot register if their taxable activity involves "a performance of services in relation to which it is reasonably foreseeable that the performance of the services will be received in New Zealand by a person who is not a registered person". Because section 54B(1)(c) refers only to a person who is not a registered person it does not deal with supplies received by a sole trader in New Zealand, and enjoyed by that person in their individual capacity. The services, although received by "a registered person", will not be received in the course of making taxable or exempt supplies – they will be privately consumed.

7.31 A non-resident making supplies to such a person would be arguably entitled to register under section 54B. However, this result is contrary to the policy intent behind section 54B, because the services in question are, in essence, received outside the scope of the recipient's taxable activity.

Suggested solution

7.32 In section 54B(1)(c) "not a registered person" ought to be replaced by "a person that does not receive the performance of the services in the course of making taxable or exempt supplies".

Non-resident registration rules – imported goods

7.33 The base maintenance provisions in sections 20(3LB) and (3LC) broadly cover the following scenario:

- A non-resident registers for GST under section 54B.
- The non-resident then sells a high-value good to a New Zealand recipient who is not GST-registered.
- The time of supply is triggered while the good is still offshore, so no GST is payable.
- The supplier, as part of the agreement, acts as importer of the goods and pays the import GST levied under section 12.
- The supplier, as a registered person, then claims this import GST as a deduction and gets it refunded.
- The goods are delivered to the ultimate New Zealand customer without a further imposition of GST.

7.34 Without the base maintenance provisions, the net result of this transaction is that there is no GST paid for a good that is consumed in New Zealand by an unregistered person. The base maintenance provisions negate this result by deeming the recipient of the goods to have paid the import GST rather than the registered non-resident. If the recipient is GST-registered, they can claim a deduction for the import GST. If the recipient is not registered, no refund is available and the GST would be payable.

7.35 The base maintenance provisions only apply when the non-resident supplier is registered under section 54B. To qualify to be registered under that section, the non-resident must anticipate claiming input deductions of greater than $500 in its first return.[17] If the non-resident's only connection with New Zealand is as an importer, they may not satisfy the $500 test.

7.36 The legislation therefore currently creates a potential circularity. In the scenario described above, because the importer cannot register, the base maintenance provisions do not apply. Therefore, if the New Zealand customer is GST registered:

- the customer could not claim the input deduction on the non-registered supplier's/importer's behalf; and
- the unregistered non-resident supplier is liable for the import GST, which it cannot recover or on-charge.

7.37 The net result is a GST impost on a business-to-business transaction. It is recognised that this may be an undesirable policy outcome.

7.38 There are some practical solutions to this issue. The right policy outcome would be achieved if the original transaction were subject to GST. This could be contractually arranged by the parties by ensuring that the goods

[17] Section 54B(1)(b) imposes this requirement.

were in New Zealand at the time of supply. Alternatively, the recipient customer could be treated as the importer of the goods. In either case, assuming the customer was registered, it could claim the GST.

7.39 In this respect, we note that the imposition of this GST cost would have been there before the introduction of the non-resident registration rules. So, in effect, the new rules do not appear to be making anyone worse off.

7.40 Therefore, there is a question whether legislative change is necessary given that parties presumably have the option of returning to a previous practice that achieved a neutral outcome. However, the counter-argument, is that the legislation should provide a remedy for supply chains that are using a system whereby a GST cost is borne by businesses.

Suggested solution

7.41 On balance, we consider a legislative amendment should be made. This could best be achieved by eliminating the section 54B(1)(b) requirement for a $500 input tax deduction if the person's liability to pay GST is limited to GST paid under section 12. This would allow non-residents that operate only as importers the ability to register under section 54B. This in turn would allow the base maintenance provisions to work as intended and push the GST liability onto the New Zealand customer.

Goods moved offshore by GST-registered non-residents

7.42 A registered person who incurs GST on goods paid to the NZ Customs Service on importation and purchased to make taxable supplies may deduct this GST to the extent that the goods or services are used to make taxable supplies.

7.43 One requirement of a taxable supply is that it is made in New Zealand. Supplies will be made in New Zealand when the supplier is a resident of New Zealand, but not when the supplier is a non-resident unless the goods supplied are in New Zealand at the time of supply, or the services supplied are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed.

7.44 An issue arises when a GST-registered person, who is only a resident to the extent they carry on activities in New Zealand, takes a deduction for GST charged on goods in New Zealand, and subsequently exports those goods while retaining ownership.

7.45 When these goods are subsequently exported, they will no longer be used to make taxable supplies, as supplies made by non-residents are generally deemed to be made outside New Zealand, with certain exceptions.

7.46 A consequence of this is that the apportionment and adjustment rules will require the person to repay some or all of the GST they deducted when they purchased those goods. This effectively taxes goods ultimately consumed outside New Zealand by the claw-back of deductions.

Example

Virginia is an Australian singer, who comes to New Zealand on tour. She plans to sell merchandise at her concerts and is GST-registered.

When she imports the merchandise, she pays GST to NZ Customs and claims a deduction for the GST in her GST return.

At the end of the tour, any unsold merchandise is exported to the next destination of the tour, and sold there. As she is a non-resident and supplying goods outside New Zealand, she is no longer using the merchandise to make taxable supplies. She must therefore adjust the input tax deduction claimed.

7.47 This issue is restricted to non-residents. The Act deems goods supplied by a New Zealand resident as being supplied in New Zealand and the zero-rating rules ensure that this does not result in GST being charged on supplies of goods and services which are consumed outside New Zealand. This means a New Zealand resident may retain any GST deducted on those exported goods.

7.48 This issue is also further restricted to non-residents who are not registered under the special non-resident registration rule (section 54B). Non-residents registered under this rule may deduct GST charged on goods or services, when they are used to make supplies outside New Zealand, which would be taxable supplies if made and received in New Zealand.

7.49 This result seems inconsistent with the purpose of GST, as it results in GST effectively being imposed on consumption outside New Zealand, through the denial of deductions.

7.50 It also results in a different GST outcome for the affected group compared with residents and non-residents registered under the non-resident registration rule, who may generally deduct GST incurred on goods used for business purposes, regardless of where they are used.

7.51 This is a relatively new issue. Prior to the application of the current apportionment rules, from April 2011, the non-taxable use of these goods would be taxed through a deemed supply, which was zero-rated in this situation. Consequently, the problem would not have arisen.

Suggested solution

7.52 Officials consider that where a non-resident, registered under the ordinary registration rules, acquires goods and applies them to make supplies through their overseas business activities, they should be able to treat those supplies as being made and received in New Zealand.

Grouping limited partnerships

7.53 Currently, limited partnerships are specifically included within the "company" definition in section 2 of the Act. This change was made by the Limited Partnerships Act 2008. As a result, limited partnerships are treated differently to general partnerships, which are GST entities by virtue of the "person" definition including an "unincorporated body of persons".

7.54 Given there are relatively few provisions in the Act that apply specifically to "companies", it is rare that this distinction actually means that limited partnerships are treated differently to general partnerships. However, one area where this distinction results in a difference in treatment is the grouping provisions (section 55).

7.55 Under section 55(1), a company is generally only eligible to group with other companies if they are part of a "group of companies" for the purposes of section IC 3 of the Income Tax Act. A limited partnership is not usually a "company" for income tax purposes, so there is a question as to whether an limited partnership could take advantage of section 55. There is an interpretative argument that these provisions can only be read sensibly if "company" in this context takes on its GST Act definition, but this is not clear.

7.56 There is a general grouping provision that applies to allow other entities to form a GST group if two or more registered persons exercise sufficient control over a collection of entities (section 55(8)). This is achieved by application to the Commissioner and allows collections of, for example, trusts to register as a group. However, section 55(8) specifically excludes "companies" from its ambit – on the assumption that companies will be eligible to group under section 55(1).

7.57 This combination of provisions leaves the possibility that limited partnerships may be the only entity that cannot group for GST purposes. We do not consider there is a policy justification for singling out limited partnerships in this way. The question is whether section 55(1) or section 55(8) should be amended to address this.

7.58 There is a potential difficulty in assuming that limited partner rights will always equal appropriate "voting interests", as required to group under the section 55(1) test. In contrast, grouping under section 55(8) is governed by a control test, where entities that are controlled by each other, or the same person or partnership, may form a GST group, and this may be more easily applied in the limited partnership situation.

Suggested solution

7.59 We suggest that limited partnerships be able to group under section 55(8).

CHAPTER 8

Administration

Six-monthly taxable periods

8.1 The default tax filing period for GST returns is two monthly. However, if a registered person makes or is likely to make taxable supplies that exceed $24,000,000 in a 12-month period, they must file monthly. Taxpayers can choose to file GST returns on a six monthly basis if they do not make, or are not likely to make, over $500,000 in taxable supplies in a 12-month period.

8.2 Section 15C(2) provides a discretion for the Commissioner to allow a registered person to file on a six-monthly basis, even though their taxable supplies exceed this threshold. This is intended to reduce compliance costs for businesses that have only just reached the threshold, and for businesses that operate on a seasonal basis (for which accounts are generally prepared at the end of the season). For these taxpayers, the compliance costs associated with two-monthly filing may be disproportionately high when balanced against the benefit to the Government in revenue terms.

Example

Dwight operates a ski-hire shop, which is only open during winter. During the other months, Dwight leaves New Zealand. If Dwight filed two-monthly GST returns, he would need to file a number of nil returns while outside New Zealand.

8.3 Section 15C(2) provides factors for the Commissioner to consider in exercising her discretion to allow a registered person who exceeds the $500,000 threshold to file on a six-monthly basis. These factors are:

- the person's history in filing returns and paying tax liabilities;
- the person's financial reporting practices;
- the nature and volume of the person's taxable supplies;
- the previous use of a six-month cycle.

8.4 Inland Revenue has published guidelines on how it will exercise this discretion, which state that Inland Revenue will consider whether the taxpayer:

- has a good compliance history;
- has satisfactory record-keeping practices and the cost of more regular filing would be excessive; and

- the value of annual taxable supplies is subject to seasonal or low volume / high value cashflow peaks.[18]

8.5 When the exception to the $500,000 threshold for six-monthly filing was introduced in 2000, it was created as a discretion to be exercised by Inland Revenue. This reflected the approach at the time where Inland Revenue directed taxpayers to file using particular taxable periods.

8.6 Since then, amendments have been made to reduce compliance and administrative costs by allowing registered persons to self-assess their filing basis, depending on their volume of taxable supplies. Consistent with this approach, the discretion in section 15C(2) could be replaced with a test that allows a registered person to determine whether they are eligible for six-monthly filing, even though they have exceeded the $500,000 threshold.

8.7 The test would be designed to achieve the same policy intent as the current discretion, which is targeted to apply to seasonal businesses and those that have only just exceeded the threshold. The test could allow six-monthly filing where a registered person makes most or all of their taxable supplies in one season, or for "one-off" occasions when they have exceeded the threshold but expect to remain under the threshold in future.

8.8 The "one-off" exception recognises that there may be factors that distort a registered person's pattern of taxable supplies, which could cause them to exceed the threshold but may not be repeated. In these cases, it is appropriate to relieve the registered person from incurring the compliance costs of adjusting to file returns on a more regular basis, such as changing their accounting system and practices.

8.9 A registered person would qualify for the "one-off" exception when they have exceeded the threshold for six-monthly filing in one taxable period, but are not likely to make taxable supplies over $500,000 in a 12-month period following that taxable period. This means that, for example, if a registered person has exceeded the threshold due to a steady increase in taxable supplies over time, they would not qualify for the exception.

8.10 The exception would only be available on a "one-off" basis, as if the registered person makes or is likely to make taxable supplies of over $500,000 in a 12-month period following the taxable period in which the exception is used, they would be required to change to two-monthly filing.

8.11 Consistent with the current discretion, the exception would only be available if the taxpayer has met their GST obligations to file and pay on time in the past. Taxpayers that have previously failed to comply with their obligations pose a greater future compliance risk and should not be allowed to file less regularly than other taxpayers that exceed the threshold. For the purposes of the test, the taxpayer's compliance history could be measured over the previous two years (or since registration if they have been registered for less than two years).

[18] GNL-420 Six-monthly GST return threshold (December 2001).

8.12 A registered person would be required to monitor their eligibility for six-monthly filing, and to notify Inland Revenue if they no longer met the requirements to file on this basis. Unless the exception applied, where a registered person had exceeded the $500,000 threshold they would be required to file on a one or two-monthly basis as necessary.

Suggested solution

8.13 The Commissioner's discretion would be replaced with a test that a registered person can apply to determine whether they are eligible for six-monthly filing despite exceeding the $500,000 threshold.

8.14 The exception would apply:

- when a registered person makes most or all of their taxable supplies in one season; or
- on a one-off basis, where a registered person has exceeded the six-monthly filing threshold but is not likely to make taxable supplies of over $500,000 in the 12-month period following the taxable period in which they have exceeded the threshold; and
- the registered person has met their GST obligations to file and pay on time in the past two years (or since registration if they have been registered for less than two years).

8.15 This amendment could also resolve a number of minor technical issues that have been identified with the current drafting of section 15C. The changes would apply from a registered person's next taxable period following enactment of the amending legislation.

Notification that a refund is being withheld

8.16 If a person's input tax deductions exceed their output tax liability, a refund is available. Section 46 provides for the Commissioner to withhold refunds that have been claimed in order to investigate the circumstances of a return. If the Commissioner wishes to withhold a payment while she investigates a return, she must notify the registered person of her intention within 15 working days.

8.17 The Court of Appeal in *Inland Revenue v Sea Hunter Fishing Ltd* (2002) 20 NZTC 17,468 found that this means that the taxpayer must have received the notice or have been deemed to have received the notice in the ordinary course of post in this timeframe.

8.18 The current approach of setting the time limit with reference to when the notice is received, rather than when it is issued, is not consistent with other notice provisions contained in the Tax Administration Act 1994.

8.19 Setting the time limit by reference to the time that the notice is issued would provide greater certainty for both parties in determining when the notice requirements under the provision have been met, as the time when the notice is issued is a more definite requirement that can be more easily determined by both parties. It would also ensure that the timeframe for Inland Revenue to perform checks is not affected by changes to postal delivery schedules.

8.20 The change would also better enable Inland Revenue to conduct appropriate checks within the legislative time limit without resorting to issuing a formal notice. The proposed change would be unlikely to result in delays for taxpayers.

Suggested solution

8.21 The requirement that the Commissioner notify the registered person of the withheld refund within 15 days following the day the return is received could be replaced with a requirement that the Commissioner issue the notice within the specified period.

Refunds when tax is overpaid, due to a clear mistake or oversight

8.22 The time period in which a registered person may be refunded overpaid tax is generally within four years of the overpayment. When the overpayment of tax is the result of a clear mistake or simple oversight, this period may be extended by a further four years.

8.23 Currently, the extended period under section 45(4) only applies when:

- tax has been overpaid as a result of an amended assessment that increased the amount payable (section 45(2)); or
- tax has been overpaid as a result of the registered person being paid less than the refund that they were entitled to in the period (section 45(3)).

8.24 The extended period is not available for an overpayment of tax that falls within section 45(1), which applies when a registered person has paid tax in excess of the amount properly payable in the period. This is an anomalous outcome that does not reflect the policy intent of the provision.

Suggested solution

8.25 An amendment should be made to section 45(4) to allow the extension of the time limit in which the Commissioner must refund overpaid tax to circumstances in which section 45(1) applies. Officials suggest that this amendment should apply for taxable periods beginning on or after 1 April 2005, which was the date on which the current provision applied.