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A special report from
Policy and Strategy, Inland Revenue

GST on cross-border supplies of remote services

This special report provides early information on changes to the Goods and Services Tax Act 1985, recently enacted in the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016.

The changes apply goods and services tax (GST) to cross-border “remote” services and intangibles supplied by non-resident suppliers (including e-books, music, videos and software purchased from offshore websites) to New Zealand-resident consumers. The new rules will require non-resident suppliers to register and return GST on these supplies if they exceed, or are expected to exceed, NZ\$60,000 in a 12-month period.

The new rules apply from 1 October 2016 and non-resident suppliers will be able to apply to be registered from 1 August 2016, with the registration taking effect from 1 October 2016. The registration form and information about registering for GST will be located on the Inland Revenue website www.ird.govt.nz (search keywords: non-resident GST). For general enquiries, or to apply for the Commissioner of Inland Revenue to exercise various discretions included in the rules, email info.lvg@ird.govt.nz

Information in this special report, and in a soon-to-be available special report on the new residential land withholding tax rules, precedes full coverage of the new legislation, which will be published in the July edition of the *Tax Information Bulletin*.

Key features

Scope of the new GST rules

From 1 October 2016, GST will apply to cross-border “remote” services and intangibles supplied by non-resident suppliers to New Zealand-resident consumers. The new rules will require non-resident suppliers to register and return GST on these supplies if the supplies in aggregate exceed, or are expected to exceed, NZ\$60,000 in a 12-month period.

Consistent with New Zealand’s broad-based GST system, the new rules apply GST to a wide range of cross-border remote services.¹ A “remote” service is defined as a service where, at the time of the performance of the service, there is no necessary connection between the physical location of the recipient and the place of physical performance. The definition

¹ Services that are already exempt (such as supplies of financial services), zero-rated under a specific rule or the rules that apply to telecommunication services retain their current treatment under the new rules.

includes digital services, such as e-books, music, videos and software downloads, as well as non-digital services, such as general insurance, consulting, accounting and legal services.

The new rules only apply when a remote service is supplied by a non-resident to a New Zealand resident and the service is not physically performed in New Zealand (which is covered by existing rules). Non-resident suppliers will be required to determine whether a customer is a New Zealand resident on the basis of two non-contradictory pieces of commercially available evidence.

The rules contain a list of commercially available evidence that suppliers can rely on, being:

- the person's billing address;
- the internet protocol (IP) address of the device used by the person or another geolocation method;
- the person's bank details, including the account the person uses for payment or the billing address held by the bank;
- the mobile country code (MCC) of the international mobile subscriber identity (IMSI) stored on the subscriber identity module (SIM) card used by the person;
- the location of the person's fixed landline through which the service is supplied to them; and
- other commercially relevant information.

The Commissioner of Inland Revenue will be able to prescribe or agree to an alternative method of determining whether a customer is resident, in circumstances when there is insufficient information available to apply the test. The Commissioner of Inland Revenue will take into account:

- whether the supply is made in a low-value, high-volume digital context;
- whether the supply is a one-off transaction, rather than one made between a supplier and customer who have an on-going relationship; and
- the information that is commercially available to the supplier.

Remote services supplied to GST-registered businesses

Non-resident suppliers will not be required to return GST on supplies to New Zealand GST-registered businesses, nor will they be required to provide tax invoices. However, the supplier will be able to treat the supply as zero-rated (taxed at a rate of zero percent). This may allow the supplier to claim back New Zealand GST costs incurred in making zero-rated supplies to GST-registered businesses.

A rule requires non-resident suppliers to presume that a New Zealand-resident customer is not a GST-registered business unless the customer has provided their GST registration number, New Zealand Business Number or notified the supplier of their status as a registered business. The Commissioner of Inland Revenue is also able to prescribe or agree to an alternative method of determining whether the supply is made to a GST-registered person. The Commissioner will take into account the following matters as an indication that the services are generally only supplied to registered businesses:

- the nature of the supply (for example, advertising services);
- the value of the supply (for example, the provision of a high-value software package that would only be associated with business use);
- the terms and conditions of the provision of services (for example, software that is licensed for enterprise use across a large number of networked computers).

When a GST-registered recipient is inadvertently charged GST, they will have to seek a refund from the non-resident supplier, and the non-resident supplier may make a GST adjustment in their GST return when it is apparent that a mistake has been made. Alternatively, if the payment for the supply (including GST) is NZ\$1,000 or less, a non-resident supplier will have the option to provide a tax invoice to the purchaser to allow them to claim a deduction, rather than to refund the GST charged and make the necessary adjustment in their GST return.

Special rules for certain non-resident suppliers

Non-resident marketplaces

When certain conditions are satisfied, an operator of a marketplace (such as an app store) may be required to register and return GST on supplies made through the marketplace, instead of the underlying supplier.

The rules require the non-resident operator of an “electronic marketplace”, rather than the underlying supplier, to register and return GST. An “electronic marketplace” is a marketplace operated by electronic means through which a person (the underlying supplier) makes a supply of remote services by electronic means through another person (the operator of the marketplace) to a third person (the recipient).

Operators of “non-electronic marketplaces” can also register and return GST on behalf of its underlying suppliers (for example, in the insurance industry) but this requires an agreement with the Commissioner of Inland Revenue.

New Zealand agents

A new agency rule provides agents acting for non-resident suppliers of remote services to New Zealand resident consumers the ability to agree with the supplier to treat the agent (and not the principal) as making the supply.

Insurance and gambling services

General insurance and gambling services are subject to special GST rules that apply GST on a cashflow and net basis:

- Non-resident insurance suppliers will need to return GST on premiums charged to New Zealand-resident consumers and will be able to claim deductions when making insurance payments to New Zealand-resident consumers, or on New Zealand GST costs incurred in paying for replacement goods or repair services.

- Non-resident gambling suppliers will need to return GST on the amounts received from New Zealand residents less amounts paid out to New Zealand residents. A special rule allows losses derived from one taxable period to be used to offset positive amounts from subsequent taxable periods.

Non-double taxation rule

A special rule will prevent double taxation from arising on supplies of remote services performed in New Zealand to a non-resident consumer in situations when the same supply is also subject to consumption tax in another jurisdiction. The rule allows a deduction against the supplier's liability for New Zealand GST to the extent that the same supply has been taxed in another jurisdiction.

Reverse charge (GST-registered recipient of remote services)

The reverse charge has been extended to GST-registered businesses that receive non-taxable supplies of remote services and do not use or intend to use those services to make taxable supplies. The reverse charge applies if the percentage intended or actual taxable use of the services is less than 95 percent of the total use. The reverse charge requires the GST-registered businesses to return the GST. An equivalent reverse charge also applies in relation to zero-rated supplies of remote services received by GST-registered businesses.

Administration of the non-resident registration system

Registration

The new rules will require non-resident suppliers to register and return GST on remote services supplied to New Zealand-resident consumers if these supplies exceed, or are expected to exceed, NZ\$60,000 in a 12-month period. Non-resident suppliers are able to use a fair and reasonable method of converting foreign currency amounts to New Zealand currency to determine whether the registration threshold has been exceeded.

Non-resident suppliers are able to apply to be registered from 1 August 2016 (an application form will be available on that date) with the registration coming into force on 1 October 2016. The registration form will be located on the Inland Revenue website www.ird.govt.nz (search keywords: non-resident GST). The application form will be relatively simple and ask for the applicant's name, contact details, country of residence (including any existing tax identification numbers), a description of the business activity and website address.

If a non-resident supplier is already registered for GST because they make taxable supplies under the standard rules, they do not need to register separately for any remote services they supply. Instead, these suppliers should continue to file their usual GST returns and include their supplies of remote services.

Filing GST returns

The registration form will ask applicants whether they intend only to return GST, or return GST and claim GST back on New Zealand-based costs. A simplified “pay-only” GST return will be available from 1 April 2017, for suppliers that only return GST. The simplified return would only include fields relevant to returning GST, such as the amount of supplies to New Zealand-resident customers and the amount of GST required to be returned.

Applicants who indicate that they intend to return GST and claim GST may be asked to provide further information about their business during the registration process to better confirm their identity. These applicants will be required to file a full GST return.

Both types of GST return will be able to be filed online using Inland Revenue’s myIR. For GST payments, myIR displays payment options available to registrants, such as Western Union and OrbitRemit, and provides links and instructions on how to make payments. Information on how to file returns online and make payments will be available to non-resident suppliers when they apply to register for New Zealand GST.

Taxable periods

For the period from 1 October 2016 to 31 March 2017, non-resident suppliers of remote services will have a taxable period of six months (or an optional taxable period of two months). After this transitional period, these suppliers will have mandatory quarterly taxable periods beginning on 1 April 2017.

A GST return must be provided setting out the tax payable for the taxable period by the 28th of the month following the end of the taxable period. The end of each taxable period is the last day of the month at the end of the taxable period. The quarterly taxable periods end on 30 June, 30 September, 31 December and 31 March.

Converting amounts to New Zealand dollars

When converting to New Zealand dollars for determining the amount of GST required to be returned, the supplier can use the conversion rate at:

- the time of supply;
- the end of each taxable period;
- the time of filing the return (or at the due date for filing, if the return is filed past the due date);
- another time as agreed with the Commissioner of Inland Revenue.

Once the supplier elects in their return to use an option they may not change their method for a period of 24 months, unless they agree otherwise with the Commissioner.

Consumers providing false or misleading information

The Commissioner of Inland Revenue will have the discretion to require a person to register and pay the GST if that person provides false or misleading information about themselves in order to avoid GST, if the GST amount involved is substantial or the behaviour is repeated.

Existing “knowledge offences” rules may also apply when a person deliberately supplies incorrect information to a non-resident supplier for the purpose of avoiding GST by misrepresenting themselves as a registered business or as a resident of another country. This is a criminal penalty and a person convicted of a knowledge offence is liable for a fine of up to NZ\$25,000 for a first-time offence, or NZ\$50,000 for repeated offences.

Transitional rule

A transitional provision is provided in the new rules for fixed-term contracts entered into before 1 October 2016 and when the consideration for the supply is set or reviewed for periods of 396 days or less during the term of the agreement.

The transitional provision allows suppliers to treat periodic payments under the contract as not being successive supplies, and therefore, payments made after 1 October 2016 are not subject to GST. This transitional rule only applies for the term of the agreement or up to 396 days from the date the contract was entered into, whichever is earlier.

Background

In principle, GST should apply to all consumption that occurs in New Zealand, as this ensures that the system is fair, efficient and simple.

When GST was introduced in 1986, few New Zealand consumers purchased offshore services, and online digital products were not available. At that time, the compliance and administrative costs that would have been involved in taxing imported services outweighed the benefits of taxation.

The growth of e-commerce means the volume of services and intangibles on which GST has not been collected is increasingly significant. Previous tax settings had the potential to distort consumer and business decisions, placing New Zealand suppliers of services and intangibles at a competitive disadvantage relative to non-resident suppliers. Non-collection of GST on cross-border services and intangibles has also resulted in a growing “hole” in New Zealand’s GST revenue base.

The new rules are intended to maintain the broad base of New Zealand’s GST system and from a GST perspective create a level playing field between domestic and offshore suppliers of services and intangibles. The effect will be to reduce the extent to which differences in GST treatment distort consumers’ purchasing decisions.

The amendments broadly follow Organisation for Economic Co-operation and Development (OECD) guidelines, as well as similar rules that apply in other jurisdictions, such as Member States of the European Union, Norway, South Korea, Japan, Switzerland and South Africa. Australia also enacted similar rules that will apply from 1 July 2017.

Application date

The new GST rules come into force on 1 October 2016.

Detailed analysis

References are to the Goods and Services Tax Act 1985 unless stated otherwise.

Scope of the new GST rules

(Sections 2, 8(3)(c), 8(4D), 8B, 11A(1)(j), 11A(1)(x) and 51(1B))

Place of supply rules

The GST Act imposes GST on goods and services supplied in New Zealand. The Act adopts a broad set of rules to determine whether a good or service is considered to be supplied in New Zealand in the first instance. The place of supply rules are followed by a range of exclusions that determine whether the supply is zero-rated or exempt rather than taxed at the normal 15% rate.

If a non-resident person supplies services, the starting point is that the supply will be treated as having been made outside New Zealand, and therefore not subject to GST. However, under section 8(3)(b), services are treated as having been supplied in New Zealand if the services are physically performed in New Zealand by a person who is in New Zealand at the time of performance. Section 8(4) provides that if a supply is made to a GST-registered business for the purposes of carrying on their taxable activity, the services are considered to be supplied outside New Zealand, and therefore are not subject to GST, unless the parties agree that GST will apply.

New section 8(3)(c) has been inserted into the place of supply rules, which treat supplies of “remote services” (as defined) supplied by a non-resident to a person resident in New Zealand as a supply made in New Zealand. The supply is therefore subject to GST, unless the services are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed (in which case the supply would be subject to GST under existing section 8(3)(b)).

In the same way as section 8(4), new section 8(4D) provides that if remote services are made to a GST-registered business for the purposes of carrying on their taxable activity, the services are treated as having been supplied outside New Zealand. The services are therefore not subject to GST, unless the non-resident supplier chooses to treat the services as being made in New Zealand (no agreement is required between the supplier and recipient for this purpose).

If the supplier chooses to treat the services as being made in New Zealand, these services will be zero-rated under section 11A(1)(x). (See the following section of this *Special report* for more information on business-to-business supplies.)

Section 11A(1)(j) zero-rates services that are physically performed outside New Zealand or supplies that arrange services that are physically performed outside New Zealand. An amendment to this section excludes supplies of remote services to a person resident in New Zealand that is not a registered person from this zero-rating rule. This creates a level playing field between resident and non-resident suppliers, as in both cases, GST will apply at the 15% rate when remote services are physically performed outside New Zealand and supplied to a New Zealand-resident consumer.

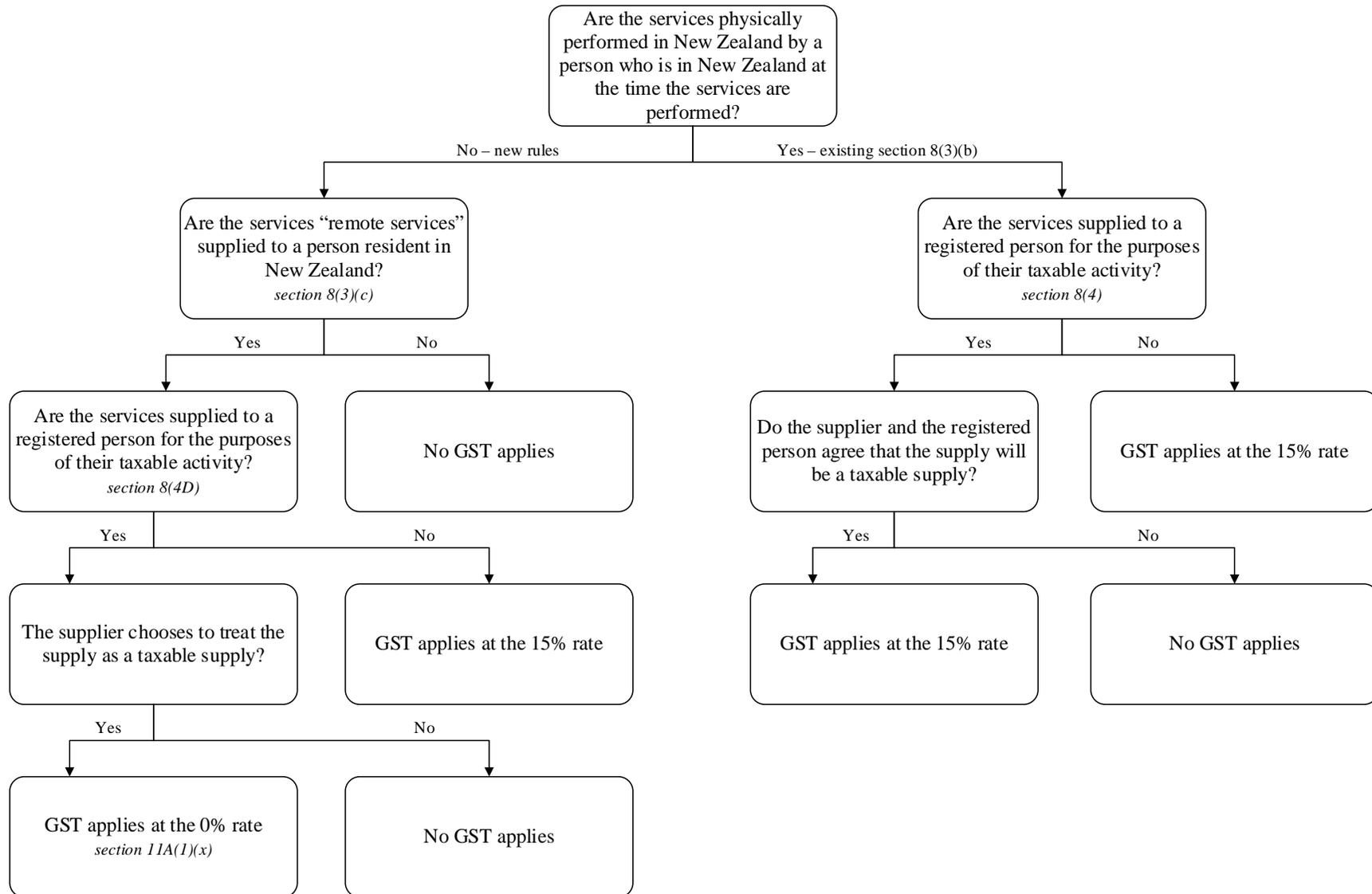
Example

Movie Co. is a non-resident company that provides remote services to consumers in a number of countries, including New Zealand. As some of these services are remote services supplied to a New Zealand-resident consumer, these supplies will be subject to GST under section 8(3)(c). If Movie Co. exceeds the NZ\$60,000 registration threshold, it will be required to register and return GST on these supplies.

If Movie Co. was a resident of New Zealand that physically performed remote services outside New Zealand, its supplies would also be subject to GST at the 15% rate when supplied to New Zealand-resident consumers, due to the exception to section 11A(1)(j).

Services that are already exempt (such as supplies of financial services), or zero-rated under a specific rule, would retain that treatment under the new rules.

Summary of the new place of supply rules for services



Definition of “remote services”

Under section 2, “services” are defined to include anything other than goods or money. A definition of “remote services” has been added to section 2, being a service where, at the time of the performance of the service, there is no necessary connection between the physical location of the customer and the place where the services are performed.

Whether a service is a “remote service” will depend on if the nature of the service requires that the recipient is present when the service is physically performed. If a service is actually, or capable of being supplied when the recipient is not present, the test will be satisfied as there is no necessary connection between the physical location of the recipient and the place of physical performance.

Requiring a connection between the physical location of the customer and the place of physical performance of services means that the definition of “remote services” includes services that are capable of being supplied remotely, but that happen to be provided when the recipient and provider are in the same location.

Examples of services that could be supplied as remote services include:

- supplies of digital content, such as e-books, movies, TV shows, music and online newspaper subscriptions;
- online supplies of games, apps, software and software maintenance;
- webinars or distance learning courses;
- insurance services;
- gambling services;
- website design or publishing services; and
- legal, accounting or consultancy services.

Examples of services that would not be remote services include:

- provision of accommodation;
- hairdressing, beauty therapy and physiotherapy;
- car rental services;
- entry to cinema, theatre performances, sports events and museums;
- gym memberships;
- passenger transport services; and
- restaurant and catering services.

Example

Legal Co. is a non-resident company based in Australia. Sam, a New Zealand tax resident, seeks advice from Legal Co. about investing in an Australian company. The nature of the service is such that Sam is not required to be present when the advice is provided, and in fact the advice is provided via telephone and email, rather than in person.

The services are remote services, as there is no necessary connection between Sam's physical location and the place where the service is physically performed. If Legal Co. exceeds the registration threshold, it will be required to register and return GST on this supply.

An amendment has also been made to the definition of "goods" under section 2. The amendment removes the reference to a non-resident supplier and resident recipient, in order to ensure that intangible digital products will be treated as services irrespective of the tax residence of the supplier and recipient.

Telecommunications services

The GST Act includes special rules for cross-border supplies of telecommunications services,² including specific place of supply and zero-rating rules. These rules determine the GST treatment of the supply based on the place that the customer is located when initiating or receiving services.

These rules zero-rate domestic telecommunications providers' supplies of international roaming services to New Zealand residents who are temporarily offshore. Offshore telecommunications providers are, however, required to charge GST on services provided to non-resident consumers that are temporarily in New Zealand (for example, inbound roaming services), if the total value of their supplies exceeds the NZ\$60,000 registration threshold. However, if the threshold is exceeded only because of supplies to non-residents that are physically present in New Zealand, they are not required to register.

The new rules are not intended to disturb the current tax settings for telecommunications services. Section 8(5) excludes these services from the application of the relevant provisions.

GST registration threshold

As a result of the changes to the place of supply rules, non-resident suppliers of remote services to New Zealand customers will be required to register for GST if the total value of supplies made in New Zealand exceeds NZ\$60,000 in a 12-month period, which is equivalent to the existing registration threshold for resident suppliers.

As these suppliers will be subject to the rules contained in section 51, non-resident suppliers will be required to register if:

² "Telecommunications services" are defined to include the transmission, emission or reception of information by certain technical systems, including access to global information networks, but excludes the content of the telecommunication.

- the total value of their supplies made in New Zealand in the past 12 months exceeded NZ\$60,000 (unless the Commissioner of Inland Revenue is satisfied that their supplies in the next 12 months will not exceed this threshold); or
- the total value of their supplies made in New Zealand in the next 12 months is expected to exceed NZ\$60,000.

As remote services supplied by a non-resident to a New Zealand GST-registered business are generally treated as not being supplied in New Zealand (and therefore not subject to GST), these supplies will not count towards the registration threshold. However, if the supplier chooses to zero-rate the services they will count towards the threshold.

If a non-resident supplier of remote services is carrying on a taxable activity in New Zealand, and their supplies fall below the NZ\$60,000 threshold, they will be able to voluntarily register for GST.

Example

Music Co., a non-resident, supplies access to music on a subscription basis over the internet. Music Co. also supplies licences for businesses such as restaurants and bars to play music in a commercial setting.

Each year, Music Co. makes supplies valued at NZ\$50,000 to New Zealand customers who are not GST-registered. It makes supplies valued at NZ\$20,000 to New Zealand GST-registered customers.

Unless Music Co. chooses to treat its supplies to GST-registered customers as being zero-rated, Music Co. will not be required to register and return GST on any of its supplies in New Zealand, as it has not exceeded the NZ\$60,000 registration threshold.

New section 51(1B) allows non-resident suppliers to use a “fair and reasonable” method of converting foreign currency amounts to New Zealand currency to determine whether the registration threshold has been exceeded. This includes converting amounts to New Zealand currency as at the time of supply, using the current exchange rate at the time of testing the threshold, or using an average exchange rate over the period. Any of these methods would be regarded as fair and reasonable as long as they were used on a consistent basis.

Example

Software Co., a non-resident, supplies software to New Zealand businesses and individual consumers. Over the past two years, Software Co. has supplied NZ\$10,000 of software, each month, to New Zealand individual consumers and this is expected to continue into the foreseeable future.

Software Co. will be expected to register for New Zealand GST from 1 October 2016 as it is reasonably expected that their supplies to New Zealand individual consumers will exceed NZ\$60,000 in the 12 months following 1 October 2016 (the date the new rules apply from).

Determining whether a customer is resident in New Zealand

When applying the new place of supply rules, a supplier will be able to use objective proxies to determine whether a customer is a New Zealand resident. Under new section 8B(1) and (2), a non-resident supplier of remote services is required to determine whether a customer is a New Zealand resident on the basis of two non-conflicting pieces of evidence.

This rule is intended to provide non-resident suppliers with certainty when determining whether a recipient of a supply should be treated as a New Zealand resident. New section 8B(2) provides a list of indicators that can be used for these purposes:

- the person's billing address;
- the internet protocol (IP) address of the device used by the person or another geolocation method;
- the person's bank details, including the account the person uses for payment or the billing address held by the bank;
- the mobile country code (MCC) of the international mobile subscriber identity (IMSI) stored on the subscriber identity module (SIM) card used by the person;
- the location of the person's fixed landline through which the service is supplied to them; or
- other commercially relevant information.

The supplier can use one or more pieces of other commercially relevant information to determine whether a person is resident in New Zealand, rather than using the specific indicators listed. This information might include the customer's trading history (such as the previous billing address of the customer) or the product purchased if it is linked to a geographic location (for example, some vouchers may only be used in a particular country). Information provided by a third party, such as by a payment service provider, can also be used if it is commercially relevant.

Under section 8B(3)(a), if a supplier has more than one piece of evidence that meets the test, where one piece supports the conclusion that the customer is resident in New Zealand and another supports the conclusion that the customer is resident in another country, the supplier is required to choose the more reliable set of evidence. Which items are more reliable will depend on the circumstances.

Example

Jacob, a New Zealand tax resident, purchases a navigational app on his phone while on holiday in the United States. The app store collects two pieces of evidence that support the conclusion that Jacob is resident in New Zealand – his credit card information and the records of his billing addresses from his transaction history with the app store.

The app store also has two pieces of evidence that suggest Jacob is resident in the United States – the SIM card in the phone he is using and his IP address. Section 8B(3)(a) requires the app store to use the set of evidence that is more reliable to determine whether GST applies in New Zealand.

The app store has implemented system rules that give priority to its customers' credit card information and transaction history, as these indicators are more reliable in the context of their business. On this basis, the app store treats Jacob as a New Zealand resident, and charges New Zealand GST on the supply.

For additional flexibility, section 8B(3)(b) allows the Commissioner of Inland Revenue to prescribe or agree with a supplier an alternative method of determining whether a customer is resident in New Zealand when sufficient information is not commercially available to apply the test.

Section 8B(3B) outlines a number of factors the Commissioner would take into account when exercising the discretion, being:

- whether the supply is made in a low-value, high-volume digital context;
- whether the supply is a one-off transaction, as opposed to one made where the supplier and customer have an on-going relationship; and
- the information that is commercially available to the supplier.

Remote services supplied to GST-registered businesses

(Sections 8(4D), 8B, 11A(1)(x), 11A(7), 8B, 20(4C), 24 and 25(1)(aab) to (abb))

New section 8(4D) will apply to supplies made under section 8(3)(c), so that remote services supplied to GST-registered businesses will be treated as being supplied outside New Zealand, unless the supplier chooses to treat the supply as being made in New Zealand. If the supplier chooses to treat the supply as being made in New Zealand, the supply will be zero-rated under new section 11A(1)(x).

Example

Accommodation Co. is a non-resident company that provides facilitation services, by matching customers who are looking for accommodation in a particular location with local accommodation providers.

The facilitation services provided by Accommodation Co. to the local accommodation providers are remote services, as there is no necessary connection between the location of the recipients and the place where the facilitation services are performed.

If the local providers are not registered for GST, these supplies will be subject to GST under section 8(3)(c), as the facilitation services are remote services that are supplied to a New Zealand resident who is not a GST-registered business.

If the local providers are registered for GST, then under section 8(4D) the facilitation services will be treated as being supplied outside New Zealand. If Accommodation Co. incurs New Zealand GST costs, it may wish to zero-rate the services, as this would allow them to deduct the costs incurred in New Zealand in making the supplies.

New section 8B(5) requires non-resident suppliers to treat their services as being supplied to a consumer who is not GST registered, unless the recipient notifies the supplier that they are GST registered or provides their GST registration number or a New Zealand business number. GST-registered recipients of remote services may not identify themselves as a GST-registered business, or provide their GST registration number or a New Zealand business number, if they intend to use the service wholly for non-taxable purposes.

It is recognised that it may not be practical for all suppliers to ask for evidence that a customer is GST-registered. Therefore, to provide additional flexibility, section 8B(6) allows the Commissioner of Inland Revenue to prescribe or agree an alternative method to determine whether the supply is made to a GST-registered person. Section 8B(7) outlines the factors that the Commissioner will consider when exercising the discretion, being:

- the nature of the supply (for example, advertising services);
- the value of the supply (for example, provision of a high-value software package that would only be associated with business use); or
- the terms and conditions of the provision of services (for example, software that is licensed for enterprise use across a large number of networked computers).

Example

Software Co. is a non-resident that provides software to New Zealand businesses and individual consumers. Factors such as price, and licensing terms and conditions mean there is a clear division between the software purchased by businesses and individual consumers. Businesses that purchase the software are likely to be GST-registered businesses.

Software Co. has a large number of customers and it is impractical to ask for evidence to identify their customers as GST-registered. Software Co. is able to apply to the Commissioner of Inland Revenue to use an alternative method for identifying whether their customers are GST-registered persons.

Evidence such as the nature of the products, pricing, licensing terms and other conditions could be used, as well as a sample of their customer base that supports the likelihood that future customers will be GST-registered.

GST inadvertently charged to a GST-registered recipient

There may be instances when a non-resident supplier inadvertently treats a GST-registered business as an individual consumer and therefore charges the business GST. In this situation, the GST-registered recipient should seek a refund from the non-resident supplier and not claim an input tax deduction for the inadvertently charged GST (see the deduction prohibition in section 20(4C)). There is, however, an exception to the deduction prohibition for supplies under NZ\$1,000.

Amendments to section 25(1) will allow a supplier to make adjustments to the payment of output tax in the return in which it is apparent that the mistake has been made. This will apply if the supply is standard-rated when it should not have been treated as a taxable supply (see new subsection 25(1)(aab)), or the supply is standard-rated if it should have been zero-rated (see new subsection 25(1)(abb)).

Note that an adjustment will be required only if the non-resident supplier has already furnished a return and has accounted for an incorrect amount of output tax as a result of the mistake (see existing section 25(1)(e)). If the mistake becomes apparent before the relevant return has been furnished, the mistake can be rectified before the return is filed.

Since non-resident suppliers are not required to provide a tax invoice under the amendment to section 24(5), they will not be required to issue a credit note under section 25(4).

Supplies of NZ\$1,000 or less

An exception to the above rules applies when the payment for the supply (including GST) is NZ\$1,000 or less based on the value of the supply in New Zealand dollars at the time of supply. In this situation, when the supplier inadvertently charges a GST-registered business GST, the supplier can choose to provide a tax invoice to the GST-registered business. This option is intended to be a compliance cost-saving measure for non-resident suppliers in relation to low-value supplies, when the cost of issuing a refund may exceed the cost of issuing a tax invoice. Note that if the supplier chooses to provide a tax invoice, the supplier must provide a full tax invoice, even if the payment for the supply (including GST) is less than \$50 (see the amendments to section 24(4)).

The tax invoice must be a full invoice as set out in section 24(3), and therefore must contain the following particulars:

- the words “tax invoice” in a prominent place;
- the name and registration number of the supplier;
- the name and address of the recipient;
- the date upon which the tax invoice is issued;
- a description of the services supplied;
- the quantity of the services supplied;

and either—

- the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for the supply; or
- where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in relation to the tax.

The exception to the deduction prohibition (discussed above, under section 20(4C)) allows the GST-registered business to claim an input tax deduction under the normal deduction provisions to the extent to which the services are used for, or available for use, in making taxable supplies.

If the supplier chooses to provide a tax invoice:

- the supplier is not required to make an adjustment under section 25 to correct the amount of GST shown on the invoice (see section 25(1)(aab)(ii) and exception to section 25(1)(abb));
- the supplier and recipient are treated as having agreed that the supply is made in New Zealand (and therefore subject to GST) under section 8(4);³ and

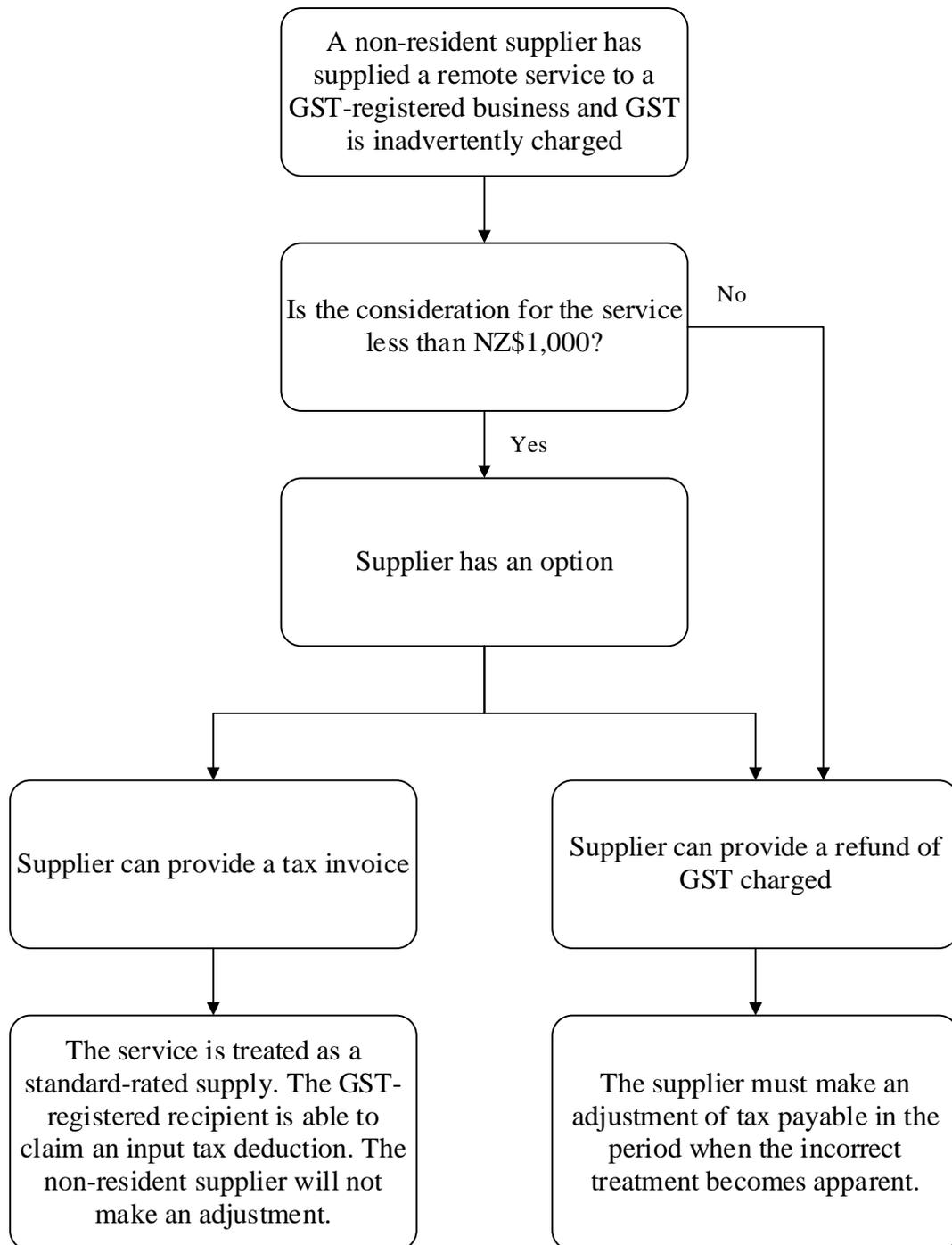
³ Note that new section 24(5B) and (5D) incorrectly refer to section 8(4), instead these sections should refer to new section 8(4D). Officials will seek to correct this cross-referencing error in a future omnibus tax bill.

- the zero-rating provision under section 11A(1)(x) does not apply (see exception to the zero-rating provision under section 11A(7)).

These provisions turn a supply that should not have been taxed or was taxed at zero percent, into a supply that is taxed at the standard rate of 15%. In this situation, the correct amount of GST is returned by the supplier and therefore an adjustment to the supplier's GST return, under section 25, is not required.

The following diagram summarises how these rules will apply.

When GST is incorrectly charged



The option to provide a tax invoice is not available for the supply of a contract of insurance (see section 24(5C) and the discussion on the special rules that apply to contracts of insurance).

Special rules for certain non-resident suppliers

(Sections 2, 5(10B), 5(11), 5(13), 10(14B) to (4F), 20(3)(d)(vii), 60(1A), 60(1AB), 60(1C), 60C and 60D)

Non-resident marketplaces

A marketplace is a medium that allows consumers and suppliers of goods and services to interact to facilitate the sale and purchase of the goods and services. When certain conditions are satisfied, an operator of a marketplace (such as an app store) instead of the underlying supplier may be required to register and return GST on supplies made through the marketplace. Under the new rules, electronic marketplaces are required to register and return GST, and non-electronic marketplaces can register subject to the Commissioner of Inland Revenue's approval.

The definition of "marketplace" in section 2 means an electronic marketplace or a marketplace approved under section 60D as a supplier of remote services. An electronic marketplace is further defined under section 2 as requiring the following:

- the marketplace allows underlying suppliers to make supplies of remote services through the marketplace to customers;
- the marketplace must be operated by electronic means, including by a website, internet portal, gateway, store, distribution platform or other similar marketplace; and
- the supplies made by the marketplace must be made by electronic means.

Payment providers are excluded from the definition of "electronic marketplace" as these providers merely facilitate the exchange of money between the supplier and consumer, rather than the exchange of the remote service itself.

Electronic marketplace rule

New section 60C states that when a supply of remote services is made through a non-resident operator of an electronic marketplace to a person resident in New Zealand, the operator of the marketplace will be treated as making the supply in the course or furtherance of their taxable activity. As the rules will only apply to non-resident operators of electronic marketplaces through which supplies of remote services are made to New Zealand residents, this rule is not expected to affect existing arrangements that apply in the domestic context.

However, the operator of the electronic marketplace will not be considered to have made the supply if they do not control any of the key elements of the supply, and the liability of the underlying supplier is made clear in the documentation relating to the transaction. Accordingly, under section 60C, the non-resident operator of an electronic marketplace will be the supplier, unless all of the following conditions are satisfied:

- the electronic marketplace does not authorise the charge to the recipient, or authorise the delivery of the supply, or set the terms and conditions under which the supply is made;
- the documentation provided to the recipient identifies the supply as made by the underlying supplier and not the marketplace; and

- the underlying supplier and the operator of the marketplace have agreed that the supplier is liable for GST.

If they are treated as making the supply, the operator of the electronic marketplace will be responsible for returning GST. The operator of the electronic marketplace will include these supplies in their turnover for the purpose of determining whether the registration threshold is exceeded and, if it is exceeded, will be liable for the GST.

Non-electronic marketplace rule

Similarly to the rule that applies to electronic marketplaces, new section 60D allows non-electronic marketplaces (such as a syndicate providing insurance services to New Zealand residents) to register as a marketplace subject to the Commissioner of Inland Revenue's approval. The operator, and not the underlying supplier, would then be treated as making the supply in the course or furtherance of a taxable activity.

When exercising this discretion the Commissioner of Inland Revenue may take into account (under section 60D(3)):

- whether the marketplace is best placed to determine whether the recipient of the supply of remote services;
 - is resident in New Zealand;
 - is a registered person; and
- whether the number of underlying suppliers to the marketplace means that return requirements are better satisfied by the marketplace rather than the individual underlying suppliers.

Resident underlying suppliers

A specific rule in new section 60(1C) will apply to New Zealand-resident suppliers of remote services through a marketplace. These underlying suppliers may already be registered for GST under the standard rules. If these suppliers were subject to the general rule under section 60C or 60D, the services they supply through the electronic marketplace would no longer be taxable, as the operator of the marketplace will have been treated as the supplier. This would mean that GST incurred by the underlying supplier in making these supplies would be irrecoverable.

To address this issue, section 60(1C) treats the supply of remote services as two separate supplies – a supply of services from the underlying supplier to the operator, and a supply of those services from the operator of the marketplace to the recipient. This will allow the resident underlying supplier to recover the GST costs incurred in making the supply.

Example

Gaming Co., a New Zealand GST-registered app developer, contracts with Applications Co., a non-resident operator of an app store, to distribute its smartphone games. Applications Co. collects payments from customers and authorises delivery of the app.

Applications Co. is treated as the supplier under section 60C, and therefore is responsible for GST on the supply. If Applications Co. makes supplies that exceed the registration threshold, it will be required to register and return GST on supplies of the remote services that are made through it to New Zealand-resident consumers.

Even though Applications Co. is treated as a supplier of the app under section 60C, under section 60(1C), Gaming Co. and Applications Co. can agree to treat the supply from Gaming Co. to Applications Co. as a separate supply. This will allow Gaming Co. to deduct its GST costs incurred in making supplies to Applications Co.

New Zealand-resident agents

A new agency rule under section 60(1A) and 60(1AB) allows agents acting for non-resident suppliers that supply remote services to New Zealand-resident consumers to agree with the supplier to treat the agent (and not the principal) as making the supply in the course and furtherance of a taxable activity carried on by them.

If this option is exercised, the agent would be required to register and return GST on the supplies of remote services. Since the agent is a New Zealand resident they would be treated as any other resident supplier of services and, therefore, would be required to return GST on both supplies to New Zealand consumers and GST-registered businesses.

Example

Agent Co., a New Zealand resident, provides contracts of general insurance to New Zealand residents on behalf of Insurance Co., a non-resident supplier of insurance services. Agent Co. and Insurance Co. agree that Agent Co. will be treated as making the supply of the insurance services.

Assuming the supplies made by Agent Co. exceed the NZ\$60,000 registration threshold, Agent Co. is now required to register and return GST on behalf of Insurance Co. in relation to supplies to both New Zealand consumers and GST-registered businesses.

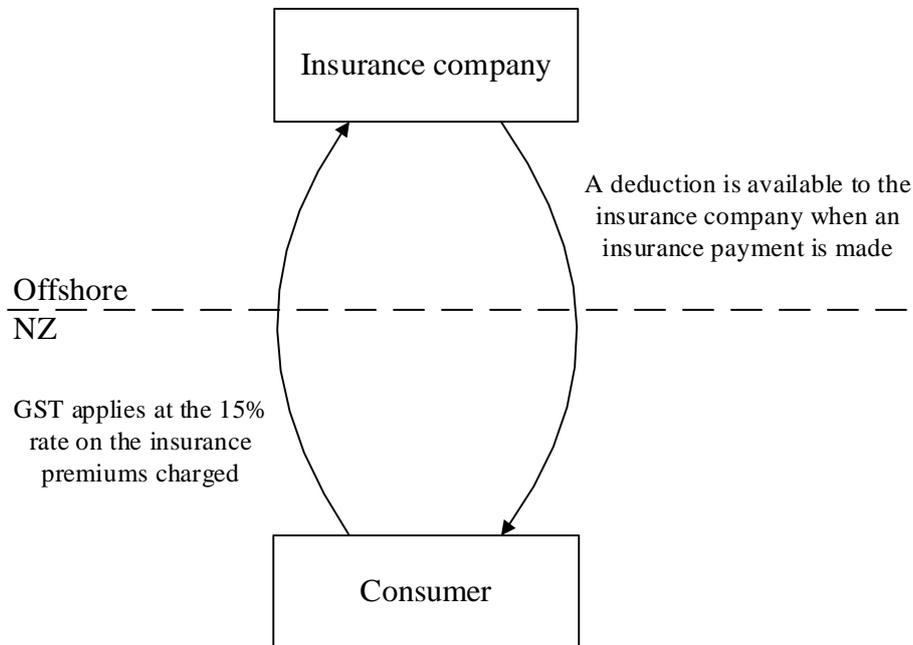
Remote supplies of insurance services

Under the new rules, a non-resident provider of insurance will be required to return GST on premiums charged to New Zealand-resident consumers if its supplies to New Zealand residents exceed the registration threshold, as the supply of the contract of insurance will be taxable under section 8(3)(c).

If registered, a non-resident insurer would also be able to claim a deduction when making an insurance payment under an insurance contract with a New Zealand-resident consumer (through existing section 20(3)(d)), or on New Zealand GST costs incurred in paying for replacement goods or repair services.

The following diagram shows how the rules will apply to cross-border supplies of insurance to New Zealand residents who are not GST-registered businesses.

Cross-border supplies of general insurance services to New Zealand-resident non GST-registered consumers

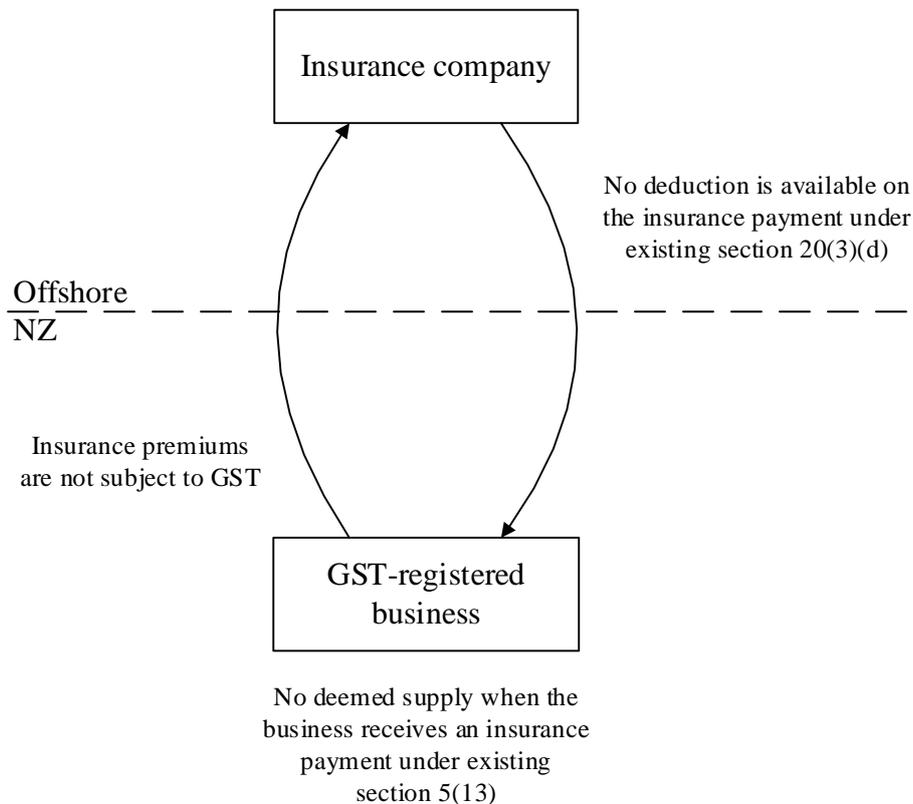


Supplies of general insurance services to New Zealand GST-registered businesses

Unless the insurer decides to zero-rate the supply under sections 8(4D) and 11A(1)(x), cross-border supplies of insurance services to a GST-registered businesses will not be subject to GST.

Consequently, a non-resident insurer will not be required to return GST on premiums charged to GST-registered business customers, and will not be entitled to a deduction under section 20(3)(d). A GST-registered recipient of an insurance payment will not be required to return output tax on the payment under existing section 5(13). This means the current arrangements for GST on supplies of insurance services by a non-resident insurer to a GST-registered business will not change. The following diagram shows how the new rules will apply.

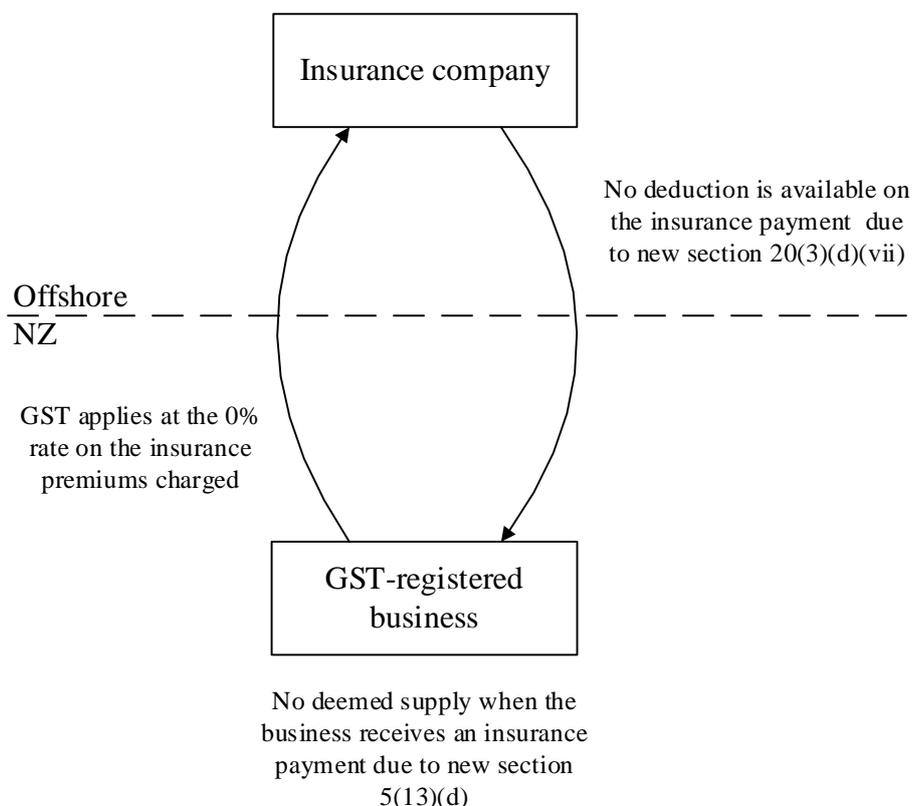
**Cross-border supplies of insurance services to New Zealand GST-registered businesses
(when the supply is not zero-rated)**



If the non-resident insurer decides to treat the supply as zero-rated, GST will apply at 0% on the insurance premiums. This will allow the insurance supplier to claim back GST costs incurred in New Zealand in making these supplies, which could include costs incurred in repairing or replacing goods. This should mean that non-resident insurers, in the same way as resident insurers, are indifferent from a GST perspective about whether they make a payment to the insured GST-registered business or replace or repair damaged goods.

However, the new rules ensure that an insurer is not entitled to claim a deduction for insurance payments under these contracts (new section 20(3)(d)(vii)), and that a GST-registered recipient of an insurance payment is not required to pay output tax under new section 5(13)(d). This treatment is equivalent to situations when the supply is treated as being made outside of New Zealand, with the exception of the non-resident insurer's ability to claim back related New Zealand GST costs. The following diagram shows how these rules will apply.

Cross-border supplies of zero-rated insurance services to New Zealand GST-registered businesses



No option to provide a tax invoice

The option to provide a tax invoice when GST is inadvertently charged on a supply for consideration of NZ\$1,000 or less will not apply to supplies under a contract of insurance. Allowing this option would require changes to ensure that GST applies correctly on a cashflow basis, which would lead to significant complexity in the rules. Because of the nature of insurance services, an insurance company is likely to have access to sufficient information to determine whether their client is a GST-registered business.

Remote supplies of gambling services

New section 5(10B) treats payments for remote gambling services or prize competitions by a New Zealand resident performed outside New Zealand as payment for the supply of services by the person who conducts the gambling or prize competition. An addition to section 5(11) will apply the definition of “gambling” under the Gambling Act 2003 to section 5(10B).

“Gambling” is defined under the Gambling Act 2003 as follows:

- paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance;
- includes a sales promotion scheme;
- includes bookmaking; and

- includes betting, paying, or staking consideration on the outcome of a sporting event.

A “prize competition” is defined in the GST Act as a scheme or competition:

- for which direct or indirect consideration is paid to a person for conducting the scheme or competition;
- that distributes prizes of money or in which participants seek to win money; and
- for which the result is determined:
 - by the performance of the participant of an activity of a kind that may be performed more readily by a participant possessing or exercising some knowledge or skill; or
 - partly by chance and partly by the performance of an activity as described above, whether or not it may also be performed successfully by chance.

Section 10(14B) applies to determine the consideration for the supply of remote gambling services or prize competitions for the purposes of section 5(10B). The amount of consideration is:

$$\textit{Consideration} = \textit{amounts received from residents} - \textit{prizes paid to residents}$$

Amounts received by residents and prizes paid to residents are defined under section 10(14C) as follows:

- *amounts received from residents* – this is the total amount in money received in relation to the supply by the non-resident person who conducts the gambling or the prize competition, as applicable, from all persons resident in New Zealand; and
- *prizes paid to residents* – this is the total amount of all prizes paid and payable in money to persons resident in New Zealand in relation to the supply.

Sections 10(14D), 10(14E) and 10(14F) apply in situations when a loss is calculated under the formula. Losses derived from the formula can be carried forward to the next taxable period and can be offset against positive consideration in that period. Any balance of losses can continue to be carried forward in subsequent periods until they are extinguished.

Example

Gambling Co. operates an offshore gambling website. In a taxable period Gambling Co. receives \$100 from New Zealand residents and pays out \$250 in prizes to New Zealand residents. Therefore, Gambling Co. has a loss of \$150 in that period and will have no GST to return.

In the next taxable period, Gambling Co. receives \$500 from New Zealand residents and pays out \$120 of prizes to New Zealand residents. Gambling Co. can use the \$150 loss from the previous taxable period and offset that loss against the positive consideration calculated in the current period. Therefore, the total consideration derived in the current period is \$230 and Gambling Co. will be required to return \$30 of GST $((\$500 - \$120 - \$150) \times (3/23) = \$30)$.

Non-double taxation rule

(Section 20(3)(dc))

Section 20(3)(dc) prevents double taxation from arising on supplies of remote services to a non-resident consumer in New Zealand that are physically performed in New Zealand, by allowing a deduction that offsets their liability for GST in New Zealand to the extent that the supply is subject to consumption tax in another jurisdiction.

Section 20(3)(dc) provides a deduction for the New Zealand GST charged when:

- there is a supply of remote services that are physically performed in New Zealand and supplied to a non-resident person in New Zealand who is not registered for New Zealand GST; and
- the supplier has, in relation to the supply, incurred liability for, returned and paid a consumption tax in another jurisdiction.

The deduction is limited to the GST paid on the supply in New Zealand (15%) and to the extent tax is paid and returned in the other country.

Example

A resident of Country A visiting New Zealand receives a remote service from a New Zealand supplier. The service is physically performed in New Zealand and therefore is subject to New Zealand GST. Country A also requires the New Zealand supplier to register for GST and tax the service at a rate of 20% as it is a remote service supplied to a resident of their country.

The non-double taxation rule allows the New Zealand supplier the ability to claim an input tax credit up to the amount of New Zealand GST returned on the supply (15%) if the supplier has returned and paid GST to Country A. If Country A's tax rate was 10%, the supplier would only be entitled to an input tax credit of 10%.

Reverse charge (GST-registered recipient of remote services)

(Sections 8(4B), 20(4D), 20(3JC) and 25AA)

An amendment to the reverse charge rule in section 8(4B) will require recipients of a remote service under new section 8(3)(c), that are not treated as being supplied in New Zealand, to return output tax on the supply if the percentage intended or actual use of the services is less than 95 percent of the total use.

An exception (new section 20(4D)) to the prohibition on input tax deductions (new section 20(4C)) allows a recipient of remote services, that is required to return output tax under the reverse charge, to claim an input tax deduction to the extent to which the services are used for, or available for use, in making taxable supplies.

Example 1

Melissa is a self-employed project manager who is registered for GST. She purchases a software package from a non-resident supplier for \$400, identifies herself as a GST-registered person and therefore is not charged GST. She uses the software 50 percent for her taxable project management services and 50 percent for home/recreational use.

Under the reverse charge rule, Melissa is treated as making a supply to herself of \$400 at the 15% rate. She must return output tax of \$60 ($\$400 \times 15\%$). However, Melissa can claim an input deduction for the portion of the value of the software package (50 percent) that is attributed to her taxable use. This input tax deduction is \$30 ($\60×50 percent). Her net position in the relevant return (assuming no other supplies) is therefore an output tax liability of \$30 ($\60 output tax minus \$30 input tax).

If Melissa's taxable use of the software package had been 95 percent or more, she would not have been required to apply the reverse charge.

The existing reverse charge rule only applies when the supply of services is not treated as a supply made in New Zealand. Therefore, the reverse charge under section 8(4B) will not apply when the non-resident supplier chooses to treat the service as being made in New Zealand under section 8(4D), as the service will be zero-rated under section 11A(1)(x).

In this situation, section 20(3JC) requires the recipient of a remote service under section 8(3)(c), that is zero-rated under new section 11A(1)(x) or existing section 11A(1)(j), to return output tax on the nominal GST component for any non-taxable use of the services. The nominal GST component is the tax that would be chargeable on the value of the supply, as if the value were equal to the consideration charged on the supply.

This section will only apply when at the time of acquisition, or at the end of an adjustment period, the taxable use of the service is less than 95 percent. This is consistent with the application of the reverse charge rule under section 8(4B).

Example 2

The supplier in Example 1 chooses to treat the service as a supply made in New Zealand, in which case the service is zero-rated under section 11A(1)(x). Because the supply is zero-rated, Melissa will be required to return output tax on the nominal GST component for any non-taxable use of the services under section 20(3JC).

Since the value of the software is \$400, the nominal GST component is \$60 ($\$400 \times 15\%$). The amount of output tax Melissa is required to return is \$30, calculated by multiplying the nominal GST component (\$60) by the non-taxable use of the service (50 percent).

Note that an equivalent amount of tax is paid on the services as with the application of section 8(4B).

Amendments have also been made to existing sections 10(15C) (reduction of value of related party internal charges), 24B (records to be kept by recipient of imported services), and 56B (branches and divisions in relation to certain imported services) to ensure these provisions apply when the recipient is required to apply the reverse charge under section 20(3JC).

Reverse charge for supplies of NZ\$1,000 or less

There may be instances when a GST-registered recipient applies the reverse charge and the non-resident supplier also inadvertently charges the GST-registered recipient GST. In this situation, GST may be returned twice on a single supply (by the non-resident supplier and the GST-registered recipient). This issue will likely be resolved if the non-resident supplier subsequently returns the GST to the GST-registered recipient and makes an adjustment under section 25 as described previously. An adjustment may still be necessary under section 25AA(1)(a)(iii), however, to ensure the correct amount of tax is accounted for under the section 8(4B) reverse charge rule.

To ensure the correct amount of tax is paid when the supplier provides a tax invoice under section 24(5B), an addition to section 25AA will allow the GST-registered recipient to correct the amount of output tax paid and deductions claimed as a result of the application of the reverse charge rule under section 8(4B). The recipient will then be able to claim, in the normal manner, the portion of the GST charged by the non-resident supplier to the extent to which the services are used for, or available for use in, making taxable supplies.

Example 3

Consider Example 1 again, where Melissa has applied the reverse charge under section 8(4B). However, she subsequently finds out that the price for the software included GST at the standard 15% rate ($3/23 \times \$400 = \52.17).

Melissa contacts the non-resident supplier and seeks a refund for the incorrectly charged GST. Instead of providing a refund, since the consideration for the supply is NZ\$1,000 or less, the supplier issues Melissa with a full tax invoice.

The tax invoice enables Melissa to claim an input tax deduction to the extent the services are used for, or available for use, in making taxable supplies, which means she can deduct \$30. The non-resident supplier is not required to make any adjustments under section 25.

Under section 25AA(1)(a)(v), Melissa makes an adjustment in the return during which it is apparent that a mistake has been made to the amount of output tax and deductions claimed as a result of the application of section 8(4B). Melissa can claim a deduction under section 20(3) for the output tax actually accounted for (\$60 under section 25AA(2)) and return output tax for the deduction actually claimed (\$30 under section 25AA(3)).

Administration of the non-resident supplier registration system

(Sections 5(27), 15(6), 51B(7), 75(3F) and 77 of the Goods and Services Tax Act 1985. Sections 24BA(1B) and 143A(1)(g) of the Tax Administration Act 1994)

Taxable periods

For the period beginning 1 October 2016 to 31 March 2017, non-resident suppliers of remote services will have a taxable period of six months, or the option of two-month periods. From 1 April 2017, non-resident suppliers of remote services that are subject to GST under the new rules will have quarterly taxable periods (section 15(6)). This is intended to align with these suppliers' filing obligations in other jurisdictions.

Expressing amounts in a foreign currency

Generally, the GST Act requires all amounts to be expressed in New Zealand currency at the time of supply. This means that if a supply is paid for in a foreign currency, the value of the supply must be expressed as the amount of foreign currency converted to New Zealand currency at the exchange rate applying at the time of supply.

Amendments have been made to section 77 that will provide non-resident suppliers of remote services with a range of options for expressing amounts in a foreign currency.

When converting to New Zealand dollars for determining the amount of GST required to be returned, the supplier can use the conversion rate at:

- the time of supply;
- the end of each taxable period;
- the time of filing the return (or at the due date for filing, if the return is filed past the due date);
- another time as agreed with the Commissioner of Inland Revenue.

Once the supplier elects in their return to use an option other than expressing amounts in New Zealand currency at time of supply, they may not change their method for a period of 24 months, unless they agree otherwise with the Commissioner.

Holding records outside New Zealand and in a language other than English

Currently, a GST-registered person must apply to the Commissioner of Inland Revenue for authorisation to keep records at a place outside New Zealand or in a language other than English. Section 75(3F) provides an automatic exception to this requirement for non-resident suppliers of remote services that are subject to GST under section 8(3)(c).

Exception from the bank account requirement

Recent amendments to the Tax Administration Act 1994 require an offshore person to have a New Zealand bank account in order to obtain an IRD number. This is to ensure that an offshore person has first been subject to New Zealand's anti-money laundering and Countering Financing of Terrorism rules.

Section 24BA(1B) provides an exception to this requirement for non-resident suppliers who require an IRD number solely because they are a non-resident supplier under the GST Act.

Misrepresentations by recipients of remote services

Sections 5(27) and 51B(7) provide a discretion for the Commissioner of Inland Revenue to require a person to register and pay GST that should have been charged, when:

- the person has knowingly provided information that is altered, false or misleading, which leads to a supply being treated as zero-rated or as not being supplied in New Zealand; and

- the person has repeatedly and knowingly provided altered, false or misleading information, or the amount of GST that was not charged is substantial.

The existing “knowledge offences” also apply when a person deliberately supplies incorrect information for the purpose of avoiding GST by misrepresenting themselves as a registered business or as a resident of another country (section 143A(g) of the Tax Administration Act 1994). This is a criminal penalty and a person convicted of a knowledge offence is liable for a fine of up to NZ\$25,000 for a first-time offence or NZ\$50,000 for repeated offences.

If a customer has provided incorrect or false information to access content that is geographically restricted, and this consequentially results in GST not being charged, the reverse charge rule in section 5(27) and the existing knowledge offences would not be expected to apply. However, there may be other consequences unrelated to New Zealand’s tax obligations.

Example

Luke purchases a number of remote services online, including online dating services, music and movie content. Luke is not registered for GST. To avoid paying GST, Luke continually informs suppliers he is GST registered and provides suppliers with a false GST registration number.

The Commissioner of Inland Revenue exercises her discretion to register Luke from the time the services were physically performed, and requires him to repay the GST that was not charged, plus penalties and interest.

Transitional rule

(Section 85B)

Section 85B contains a new transitional provision similar to the transitional rule under section 78AA(10) and (11), which was provided for the GST rate change in 2010. The new transitional provision applies:

- to contracts that are for a fixed term and entered into before 1 October 2016; and
- to periodic payments made under the contract, and consequently section 9(3)(a) would apply to treat these payments as successive supplies; and
- if the consideration for the supply is set or reviewed for periods of 396 days or less during the term of the agreement (this covers contracts that are entered into during a month and end a year later at the end of the month); and
- if the non-resident supplier elects that the transitional provision applies.

The transitional provision allows a non-resident supplier to treat periodic payments under the contract as not being successively supplied under section 9(3), and therefore, those payments made after 1 October 2016 would not be subject to GST. This transitional rule would only apply for the term of the agreement or up to 396 days from the date the contract was entered into, whichever is earlier. After that time, section 9(3) would usually apply and treat periodic payments as being successive supplies when the payments become due or are received, whichever is earlier.

Example

Jacob insures his car for a 12-month period with a non-resident insurance provider on 15 January 2016 and he elects to pay for the insurance in monthly instalments. The non-resident insurance provider is able to treat those monthly instalments as not being successively supplied under section 9(3) and, therefore, payments made after 1 October 2016 would not be subject to GST up until the 12-month contract ended.

Jacob has an accident and damages his car on 1 November 2016. He immediately makes a claim under his insurance contract. The insurance provider is unable to claim a deduction for any insurance payment made as it relates to a non-taxable supply of insurance.