

GST on low-value imported goods

A special report

August 2019

First published in August 2019 by Policy and Strategy, Inland Revenue, PO Box 2198, Wellington 6140.

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The Persistent URL for this document is <https://purl.org/nzir-tp/2019-002>

The document is available at <http://taxpolicy.ird.govt.nz/publications/2019-sr-gst-low-value-imported-goods/overview>

CONTENTS

Introduction	7
Key features	7
Scope of the new GST rules.....	7
Distantly taxable goods supplied to GST-registered businesses.....	8
Special rules for certain businesses	9
Electronic marketplaces	9
Redeliverers.....	9
New Zealand agents	9
Preventing double taxation	9
Vouchers	10
Converting foreign currency amounts to New Zealand dollars	10
Currency conversion to determine whether GST applies to a supply of goods.....	11
Currency conversion when determining the amount of GST payable	11
Reverse charge (GST-registered recipient of distantly taxable goods returns the GST)....	11
Administration of the non-resident registration system.....	11
Registration.....	11
Filing GST returns	12
Methods for electronic marketplaces and redeliverers to determine GST treatment of supplies.....	13
Consumers and underlying suppliers providing false or misleading information.....	13
Optional rules aimed at reducing costs for suppliers.....	13
Claiming GST deductions for New Zealand expenses.....	13
Option to charge GST on high-value goods	14
Option to charge GST on low-value supplies to GST-registered businesses	14
Transitional rule for fixed-term contracts entered into before 1 December	14
Background	14
Application date	15
Detailed analysis	15
Key terms	15
Scope of the new GST rules.....	16
Place of supply rules	16
Exempt and zero-rated supplies	17
Definition of “distantly taxable goods”	19
Example 1 – high value item shipped in two different boxes for assembly by the recipient.....	21

Example 2 – learn to play electric guitar starter pack	21
Example 3 – separate supplies of distantly taxable and non-distantly taxable goods bought in the same transaction.....	23
Calculating GST on distantly taxable goods	23
Example 4 – calculating amount of output tax based on GST-inclusive price	24
Example 5 – calculating amount of output tax based on GST-exclusive price	25
Example 6 – application of section 10(7E) to separate zero-rated supply of international transport.....	25
Example 7 – apportionment of delivery fee relating to distantly taxable and non- distantly taxable goods based on value	26
Example 8 – apportionment of delivery fee relating to distantly taxable and non- distantly taxable goods based on weight	26
Example 9 – goods returned to merchant	27
GST registration threshold	28
Example 10 – non-resident supplier below the registration threshold	29
Example 11 – non-resident supplier above registration threshold	29
Effect of the new legislation on suppliers’ residency and income tax obligations	29
Distantly taxable goods supplied to GST-registered businesses.....	30
Example 12 – business-to-business exclusion	30
Example 13 – alternative method of determining supplies are to a GST-registered business	31
GST inadvertently charged to a GST-registered recipient	31
Supplies of NZ\$1,000 or less.....	32
Special rules for certain businesses	33
Marketplaces.....	34
Example 14 – marketplace that authorises the charge to the recipient.....	36
Example 15 – marketplace that does not authorise the charge	36
Example 16 – marketplace that authorises delivery.....	36
Example 17 – marketplace that does not authorise delivery	36
Example 18 – marketplace that directly or indirectly sets any of the terms and conditions	38
Example 19 – marketplace that does not directly or indirectly set any of the terms and conditions	38
Example 20 – zero-rated supply of remote services from underlying supplier to marketplace operator	40
Example 21 – zero-rated supply of distantly taxable goods from underlying supplier to marketplace operator	41
Example 22 – supply of distantly taxable goods through New Zealand-resident marketplace.....	41
Example 23 – marketplace provides discount for distantly taxable goods sold by underlying supplier	42
Example 24 – marketplace writes off amount owed by underlying supplier as a bad debt.....	43
Redeliverers.....	44
Example 25 – redeliverer providing a mailbox service.....	46
Example 26 – redeliverer providing a personal shopping service	47
New Zealand-resident agents.....	47

Example 27 – New Zealand-resident agent treated as making supply of distantly taxable goods	47
Preventing double taxation	48
Changes to the customs de minimis	48
Exception to the collection of GST on importation	48
Example 28 – consignment of distantly taxable goods with total value above NZ\$1,000.....	49
Example 29 – distantly taxable goods subject to tariff duty imported in consignment over NZ\$1,000.....	50
Example 30 – difference in exchange rate used by supplier and that used by Customs	50
Receipt requirement	50
GST information to be included on import documents	52
Refunds when double taxation occurs.....	56
Non-double taxation rule.....	56
Example 31 – non-double taxation rule in section 20(3)(dd)	57
Vouchers	57
Example 32 – seller of voucher opts to use redemption basis	58
Converting foreign currency amounts to New Zealand dollars	58
Currency conversion to determine whether GST applies	58
Example 33 – supplier using exchange rate published by New Zealand Customs	60
Example 34 – supplier using midpoint exchange rate published by retail bank.....	60
Example 35 – currency conversion to determine whether goods are distantly taxable.....	60
Currency conversion when determining the amount of GST payable	61
Example 36 – currency conversion to determine amount of GST to be returned in New Zealand dollars.....	61
Methods for electronic marketplaces and redeliverers to determine GST treatment of supplies	61
Electronic marketplaces – methods for determining residency of underlying suppliers.....	62
Example 37 – methods for determining residency of underlying supplier.....	63
Example 38 – non-resident underlying supplier with New Zealand branch treated by marketplace as resident	64
Electronic marketplaces – proxies for determining if delivery address is in New Zealand.....	64
Example 39 – method for determining location of recipient	65
Redeliverers – default method for determining estimated customs value of goods.....	65
Commissioner discretion to agree or prescribe alternative methods.....	66
Liability for GST if person has relied on a section 60G method	67
Example 40 – agreed method for determining residency of underlying suppliers.....	68
Example 41 – agreement allowing redeliverer to rely on value declared by recipient.....	68
Example 42 – misclassification of item by underlying supplier resulting in treatment as exempt supply.....	69
Example 43 – reliance on information by marketplace operator not on reasonable grounds.....	69
Reverse charge (GST-registered recipient of remote services).....	69
Example 44 – application of reverse charge to distantly taxable goods.....	70
Example 45 – input tax on goods subject to the reverse charge	70
Reverse charge for supplies of NZ\$1,000 or less	70

Example 46 – supplier inadvertently charges GST on supply to registered person and recipient applies the reverse charge	71
Administration of the supplier registration system	71
Taxable periods	71
Example 47 – alternative taxable period end date	72
Holding records outside New Zealand and in a language other than English	72
Exception from the bank account requirement	72
Consumers and underlying suppliers providing false or misleading information.....	72
Example 48 – consumer makes misrepresentation that they are registered for GST	73
Example 49 – non-resident underlying supplier makes misrepresentation that they are resident in New Zealand.....	74
Optional rules aimed at reducing costs for suppliers.....	75
Claiming GST deductions for New Zealand expenses	75
Example 50 – application of the attribution rule in section 20(3LB) and (3LC) where the non-resident supplier pays the import GST	76
Example 51 – non-taxation where non-resident supplies high-value imported goods to consumer and pays the import GST	76
Option to charge GST on high-value goods	77
Example 52 – merchant making election under self-assessed 75 percent test.....	78
Example 53 – marketplace operator making election under self-assessed 75 percent test.....	78
Example 54 – redeliverer making election under self-assessed 75 percent test	79
Example 55 – exercise of Commissioner’s discretion	80
Option to charge GST on low-value supplies to GST-registered businesses	81
Example 56 – non-resident supplier elects to charge GST on low-value supplies to GST-registered businesses under section 8(4F)	82
Example 57 – prohibition on issuing a tax invoice for a high-value supply of distantly taxable goods	83
Transitional rule for fixed-term contracts entered into before 1 December	84
Example 58 – contract for magazine subscription entered into before 1 December 2019	84

GST on low-value imported goods

Introduction

1. This special report provides information on recently enacted changes to apply Goods and Services Tax (GST) to low value imported goods. The Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 was enacted on 26 June 2019 and features a number of amendments to the Goods and Services Tax Act 1985.
2. The changes apply GST to imported goods valued at or below NZ\$1,000 (such as books, clothing, cosmetics, shoes, sporting equipment and small electronic items) that are imported from offshore merchants by consumers in New Zealand. The new rules will require non-resident merchants, operators of electronic marketplaces and redeliverers (referred to collectively as “suppliers”) to register and return GST on these supplies if they exceed, or are expected to exceed, NZ\$60,000 in total over a 12-month period.
3. The new rules apply from 1 December 2019 and non-resident suppliers will be able to apply to be registered from 1 September 2019, with the registration taking effect from 1 December 2019. 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 (the Commissioner) to exercise various discretions included in the rules, email info.lvg@ird.govt.nz.
4. Information in this special report precedes full coverage of the new legislation which will be published in the September edition of the *Tax Information Bulletin*.
5. The new legislation is broadly consistent with the GST rules that have applied to supplies of remote services since 1 October 2016. A special report from May 2016 contains detailed guidance on the GST on remote services rules and is available online at <https://taxpolicy.ird.govt.nz/publications/2016-sr-gst-cross-border-supplies/overview>.
6. Legislation references are to the Goods and Services Tax Act 1985 (the GST Act) unless stated otherwise.

Key features

Scope of the new GST rules

7. From 1 December 2019, GST will apply to “distantly taxable goods” – generally low-value imported goods supplied by non-resident merchants to New Zealand consumers. The new rules will require non-resident merchants, operators of electronic marketplaces and redeliverers 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.

8. The new rules apply GST to a wide range of “distantly taxable” goods,¹ consistent with New Zealand’s broad-based GST system. “Distantly taxable” goods are generally defined as goods that:
 - individually have a value of NZ\$1,000 or less;
 - are outside New Zealand at the time of supply;
 - are supplied by a non-resident; and
 - are delivered to New Zealand.
9. Suppliers may have the option to also charge GST on their supplies of goods valued over NZ\$1,000 to consumers in New Zealand.
10. The New Zealand Customs Service (Customs) will continue to collect GST, as well as other duties and cost recovery charges, on consignments with a total value in excess of NZ\$1,000.

Distantly taxable goods supplied to GST-registered businesses

11. 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.
12. A rule requires non-resident suppliers to presume that a New Zealand customer is not a GST-registered business unless the customer has provided their GST registration number or New Zealand Business Number, or otherwise notified the supplier of their status as a GST-registered business.
13. The Commissioner can also prescribe or agree to an alternative method of determining whether the supply is made to a GST-registered person. The Commissioner will consider the following matters as an indication that the goods are generally only supplied to registered businesses:
 - The nature of the supply (for example, a product that would only ever be purchased by a business for the purpose of carrying on its taxable activity).
 - The value of the supply (for example, the supply is of a value that would be expected to be received only by a GST-registered person in the course or furtherance of its taxable activity, such as a supply of a very large quantity of low-value goods).
 - The terms and conditions related to the provision of the goods (for example, whether the supply is of goods that may be licensed for use by a GST-registered person).
14. When a GST-registered recipient is inadvertently charged GST, they will have to seek a refund from the non-resident supplier. The non-resident supplier may make an adjustment in their GST return when it is apparent that a mistake has been made. Alternatively, if the value of the supply (excluding GST) is NZ\$1,000 or less, a non-

¹ Goods that are already exempt (such as supplies of fine metal) retain their current treatment under the new rules.

resident supplier will have the option to provide a tax invoice to the purchaser to allow them to claim a deduction, rather than refunding the GST charged and making an adjustment in their GST return.

Special rules for certain businesses

Electronic marketplaces

15. When certain conditions are satisfied, an operator of an online marketplace may be required to register and return GST on supplies of distantly taxable goods made through the marketplace, instead of the underlying supplier.
16. The rules require the operator of an “electronic marketplace”, rather than the non-resident 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, or a supply of distantly taxable goods, through another person (the operator of the marketplace) to a third person (the recipient).
17. Operators of “non-electronic marketplaces” may also register and return GST on behalf of their underlying suppliers, but this requires an agreement with the Commissioner.

Redeliverers

18. In some situations, a “redeliverer” may be used to deliver or assist in the delivery of goods to New Zealand, as opposed to the merchant who sold the goods or an operator of a marketplace. When this occurs, the redeliverer may be required to register and return GST on the goods.
19. A redeliverer is required to return GST when, under an arrangement with the recipient, the redeliverer does one or more of the following:
 - provides the use of an address outside New Zealand to which the goods are delivered;
 - arranges or assists the use of an address outside New Zealand to which the goods are delivered;
 - purchases the goods outside New Zealand as an agent of the recipient;
 - arranges or assists the purchase of the goods outside New Zealand.

New Zealand agents

20. An amendment to an existing agency rule provides agents acting for non-resident suppliers of distantly taxable goods the ability to agree with the supplier to treat the agent (and not the principal) as making the supply.

Preventing double taxation

21. Special rules apply to prevent double taxation from arising on distantly taxable goods imported into New Zealand with a combined value in excess of NZ\$1,000. Since Customs will collect GST and other duties on consignments valued above NZ\$1,000,

suppliers are required to take reasonable steps to ensure tax information is included on relevant import documents in order for Customs to identify these goods at the border. The following information should be included on import documents:

- The name and registration number of the supplier.
 - Which particular goods in the consignment GST has already been collected on.
 - Which particular goods in the consignment GST has not been collected on.
22. Suppliers would also need to provide a receipt to consumers if they have charged the consumer GST on some or all of the goods in the transaction.² This receipt can then be used as evidence to Customs that GST has already been charged on the goods. The information required to be included on the receipt consists of:
- the name and registration number of the supplier;
 - the date of the supply;
 - the date of issue of the receipt (if different from the date of the supply);
 - a description of the goods supplied;
 - the consideration for the supply and the amount of GST included;
 - which goods GST has been charged on; and
 - information indicating the goods for which the amount of GST charged is zero.
23. A special non-double taxation rule also allows a deduction against the supplier's liability for New Zealand GST to the extent that the same supply is subject to consumption tax in another jurisdiction.

Vouchers

24. The GST rules for vouchers have been amended to clarify that the seller of a face value voucher³ may treat GST as applying on the redemption of the voucher, if the voucher is (or could be) redeemed for remote services or distantly taxable goods.
25. A further amendment clarifies that if GST is payable on the redemption of a voucher, the person redeeming the voucher for goods and services is liable for GST.

Converting foreign currency amounts to New Zealand dollars

26. Non-resident suppliers of distantly taxable goods will be able to choose from a range of exchange rates when converting foreign currency amounts to New Zealand dollars.

² The requirement to provide a receipt applies even if the combined value of the goods supplied in the transaction is below NZ\$1,000. One reason for this is that goods sold in a foreign currency could have a value of NZ\$1,000 or less at the time of supply (so the supplier charges GST) and a value above NZ\$1,000 at the time the goods are imported, due to exchange rate movements.

³ A face value voucher entitles the holder to use the voucher to purchase goods and services up to a set monetary value.

Currency conversion to determine whether GST applies to a supply of goods

27. For the purpose of determining whether goods are individually valued at or below NZ\$1,000 (and, therefore, whether GST should be returned), a supplier may use any one of the following exchange rates:
- the rate published by Customs;
 - the Reserve Bank of New Zealand (RBNZ) rate, or a reference rate published by another central bank;
 - an exchange rate provided by a foreign exchange organisation or foreign exchange data vendor.
28. Other than the requirement that a supplier's chosen exchange rate be used consistently (discussed later at [231]), there are no restrictions on the specific type of exchange rate (sell NZD, buy NZD, or midpoint rate) that suppliers may use for converting foreign currency amounts. This means that suppliers can choose a sell NZD rate, a buy NZD rate or a midpoint rate when converting foreign currency amounts to establish whether GST applies (as well as for the purpose of calculating the amount of GST required to be returned in New Zealand dollars).

Currency conversion when determining the amount of GST payable

29. 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); or
 - another time as agreed with the Commissioner.
30. Once the supplier chooses a method other than expressing amounts in New Zealand currency at the time of supply, they may not change their method for a period of 24 months, unless they agree otherwise with the Commissioner.

Reverse charge (GST-registered recipient of distantly taxable goods returns the GST)

31. To ensure that supplies of distantly taxable goods acquired by GST-registered businesses for a purpose other than making taxable supplies are taxed, the reverse charge has been extended. The reverse charge requires the GST-registered business to return the GST if the percentage intended or actual taxable use of the services is less than 95 percent of the total use.

Administration of the non-resident registration system

Registration

32. The new rules will require non-resident suppliers to register and return GST on distantly taxable goods supplied to consumers if these supplies exceed, or are expected to exceed, NZ\$60,000 in a 12-month period. Some New Zealand-resident businesses

will also be required to return GST on distantly taxable goods that they are deemed to supply.

33. 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.
34. Non-resident suppliers may apply to be registered from 1 September 2019 (an application form will be available on that date) with the registration coming into force on 1 December 2019. The registration form will be located on the Inland Revenue website www.ird.govt.nz. (search keywords: non-resident GST). The application form will 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.
35. If a supplier (whether resident or non-resident) is already registered for GST because they make taxable supplies under existing GST rules, they do not need to register separately for any distantly taxable goods they supply. Instead, these suppliers should continue to file their usual GST returns and include their supplies of distantly taxable goods.

Filing GST returns

Simplified "pay only" registration

36. Applicants who indicate on the registration form that they will only return GST and not claim expenses will file a simplified "pay only" GST return. The simplified return would only include fields relevant to returning GST, such as the amount of supplies to New Zealand customers and the amount of GST required to be returned.
37. For the period from 1 December 2019 to 31 March 2020, non-resident suppliers of distantly taxable goods that become liable to be registered between 1 December and 31 December 2019 will have a taxable period of four months. After this transitional period, these suppliers will have mandatory quarterly taxable periods beginning on 1 April 2020.
38. 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.⁴ 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 31 March, 30 June, 30 September and 31 December.

Full registration

39. 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.
40. 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, and

⁴ The exceptions to this being when the month following the end of the taxable period is December (in which case the filing and payment due date is 15 January) or April (filing and payment due date of 7 May).

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.

Methods for electronic marketplaces and redeliverers to determine GST treatment of supplies

41. As discussed above at [15] to [19], in certain circumstances the special rules applying to electronic marketplaces and redeliverers would, for GST purposes, treat these businesses as suppliers of distantly taxable goods. This means electronic marketplace operators and redeliverers will need to rely on information provided by merchants or by customers to determine the GST treatment of these supplies.
42. The new legislation includes some default rules (based on objective proxies) that electronic marketplace operators and redeliverers can use to determine how much GST they are required to return on distantly taxable goods. The new rules also provide the Commissioner with discretion to prescribe or agree to alternative methods for electronic marketplace operators and redeliverers to determine if they are treated as making a supply of distantly taxable goods and the amount of GST payable.
43. This is intended to minimise compliance costs in situations where it may not be possible to precisely determine the GST treatment of a supply due to insufficient commercially available information.

Consumers and underlying suppliers providing false or misleading information

44. The Commissioner will have the discretion to require a person to register and pay the GST if that person provides false or misleading information about themselves resulting in an underpayment of GST, if the GST amount involved is substantial or the behaviour is repeated.
45. Existing “knowledge offences” rules may also apply when a person (being a consumer, or an underlying supplier selling goods through a marketplace) deliberately supplies incorrect information to a supplier by misrepresenting themselves as a GST-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.

Optional rules aimed at reducing costs for suppliers

Claiming GST deductions for New Zealand expenses

46. An amendment to a pre-existing deduction rule will allow non-resident suppliers of distantly taxable goods and/or remote services to claim GST deductions for New Zealand expenses. Deductions are available regardless of whether the relevant business inputs are used for (or available for use in) making supplies to consumers in New Zealand. This is only available to those suppliers that have registered under the standard registration system as a “pay and claim” registrant.

Option to charge GST on high-value goods

47. Suppliers of distantly taxable goods may elect to charge GST on goods valued above NZ\$1,000 (“high-value goods”) if those goods are supplied to consumers in New Zealand. This option is available if at least 75 percent of the total value of goods that they supply to customers in New Zealand in the 12-month period starting on the date the election is intended to be effective for are individually valued at NZ\$1,000 or less.
48. Alternatively, a supplier will be able to charge GST on its supplies of high-value goods to consumers if the Commissioner considers that allowing the supplier to do so will not result in a risk to the integrity of the tax system.

Option to charge GST on low-value supplies to GST-registered businesses

49. If certain conditions are met, a non-resident supplier is able to choose to charge GST on a supply of distantly taxable goods to a GST-registered business and proactively issue the recipient with a tax invoice. This applies when:
 - the value of the supply (excluding GST) is NZ\$1,000 or less; and
 - the supplier reasonably expects that in the 12 months after the supply is made, more than 50 percent of their supplies to customers in New Zealand will be to persons that are not registered for GST.
50. If a non-resident supplier opts to charge GST on a supply to a GST-registered business they are able to issue a single document that qualifies both as a full tax invoice and as a receipt that the recipient may provide to Customs to prevent any double taxation.

Transitional rule for fixed-term contracts entered into before 1 December

51. A transitional provision is provided in the new rules for fixed-term contracts entered into before 1 December 2019 and when the consideration for the supply is set or reviewed for periods of 396 days or less during the term of the agreement.
52. The transitional provision allows suppliers to treat periodic payments under the contract as not being successive supplies, and therefore, payments made after 1 December 2019 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

53. In principle, GST should apply to all consumption that occurs in New Zealand, as this ensures that the system is fair, efficient and simple. Under the current rules, however, GST is not typically collected on imported goods below the customs de minimis of NZ\$60 of duty owing (this typically equates to a parcel with a value of NZ\$400 if GST is the only applicable duty).
54. When GST was introduced in 1986, few New Zealand consumers purchased goods from offshore suppliers, and online shopping did not exist. At that time, the compliance and administrative costs that would have been involved in taxing imported goods under the de minimis outweighed the benefits of taxation.

55. The growth of e-commerce means the volume of imported goods on which GST is not collected is becoming increasingly significant. Many are concerned that the current tax settings place New Zealand suppliers of low-value goods at a competitive disadvantage relative to offshore suppliers. The non-collection of GST on low-value imported goods has also resulted in a growing gap in New Zealand's GST revenue base (estimated to be around NZ\$130 million in 2017–18).
56. 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 low-value goods. The effect will be to reduce the extent to which differences in GST treatment distort consumers' purchasing decisions.
57. On 1 July 2018 Australia introduced rules requiring offshore suppliers to register and return GST on their supplies of low-value imported goods to Australian consumers. The amendments broadly follow Australia's recently introduced rules.

Application date

58. The new GST rules come into force on 1 December 2019.

Detailed analysis

Key terms

59. There are a number of terms that have a specific meaning in respect of these new rules.
60. **Supplier** – The term “supplier” is used throughout this special report to refer to the person who is the supplier of the goods for GST purposes (that is, required to return and pay GST on the supply to Inland Revenue). The supplier will be the merchant unless another person (such as an electronic marketplace operator, redeliverer or agent) is treated as the supplier of the goods under a specific provision.
61. **Merchant** – The term “merchant” is used in this special report to refer to the person who actually supplies the goods. A merchant may sell independently – for example, via their own website or by mail order – or they may sell their goods on a marketplace.
62. **Marketplace** – Refers to a third-party medium that allows consumers and merchants to interact to facilitate the sale and purchase of goods or services. The definitions of “marketplace” and “electronic marketplace” are discussed at [135].
63. **Redeliverer** – Refers to a person who delivers goods (or arranges or assists delivery) to New Zealand under an arrangement with the recipient of the goods, and does one or more of the following:
 - provides the use of an address outside New Zealand to which the goods are delivered;
 - arranges or assists the use of an address outside New Zealand to which the goods are delivered;

- purchases the goods outside New Zealand as an agent of the recipient; or
 - arranges or assists the purchase of the goods outside New Zealand.
64. **Consignment** – The term “consignment” generally means a single package or parcel of imported goods. However, in some instances, Customs will treat two or more packages arriving on the same day, from the same consignor (supplier) and addressed to the same consignee (importer or recipient) as one consignment.
65. **De minimis** – Refers to the threshold below which Customs will not collect GST and other duty on a consignment of imported goods. From 1 December 2019, imported consignments valued at NZ\$1,000 or less will not have GST and other duty collected at the border (unless a specific exception to the de minimis applies, such as for alcohol and tobacco).
66. **Customs value** – Refers to the value of imported goods as determined under Schedule 4 of the Customs and Excise Act 2018. This is the valuation that Customs uses when determining whether a consignment of imported goods is above the de minimis, and therefore whether Customs collects duty on the goods.
67. **Estimated customs value** – Refers to the value of an item of goods as determined in accordance with new section 10B of the Goods and Services Tax Act 1985, discussed later at [84]. This valuation (which approximates the customs value of an individual item of goods) is used for the purposes of determining whether a given item of goods is valued at NZ\$1,000 or less, and therefore whether GST is required to be charged on the supply of the item.
68. **Value of supply** – Refers to the (GST-exclusive) value of a supply of goods and services. This is the valuation used for the purpose of calculating the amount of GST, and is determined by reference to the amount of consideration for the supply of goods and services (generally the total price or amount paid by the recipient of the supply of goods and services).

Scope of the new GST rules

(Sections 2, 4B, 8(3)(ab), 10(7E), 10B, 51(1B) and 77(5))

Place of supply rules

69. 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 accompanied by a range of exclusions that determine whether the supply is zero-rated or exempt rather than taxed at the normal 15% rate.
70. If a non-resident person supplies goods, 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)(a), goods are treated as having been supplied in New Zealand if the goods are in New Zealand at the time of supply. Section 8(4) provides that if a supply is made to a GST-registered business for the purposes of carrying on its taxable activity, the goods are considered to be supplied outside New Zealand, and therefore are not subject to GST, unless the parties agree that GST will apply.

Distantly taxable goods supplied by non-residents

71. New section 8(3)(ab) has been inserted into the place of supply rules, which treats supplies of “distantly taxable goods” (as defined) supplied by a non-resident to a person providing a delivery address in New Zealand as a supply made in New Zealand, and therefore subject to GST.
72. Like section 8(4), new section 8(4E) provides that if distantly taxable goods are supplied to a GST-registered business for the purposes of carrying on its taxable activity, the goods are treated as having been supplied outside New Zealand. The goods are therefore not subject to GST, unless the non-resident supplier chooses to treat the goods as being supplied in New Zealand. More information on this option is provided later in this special report at [311] to [318].

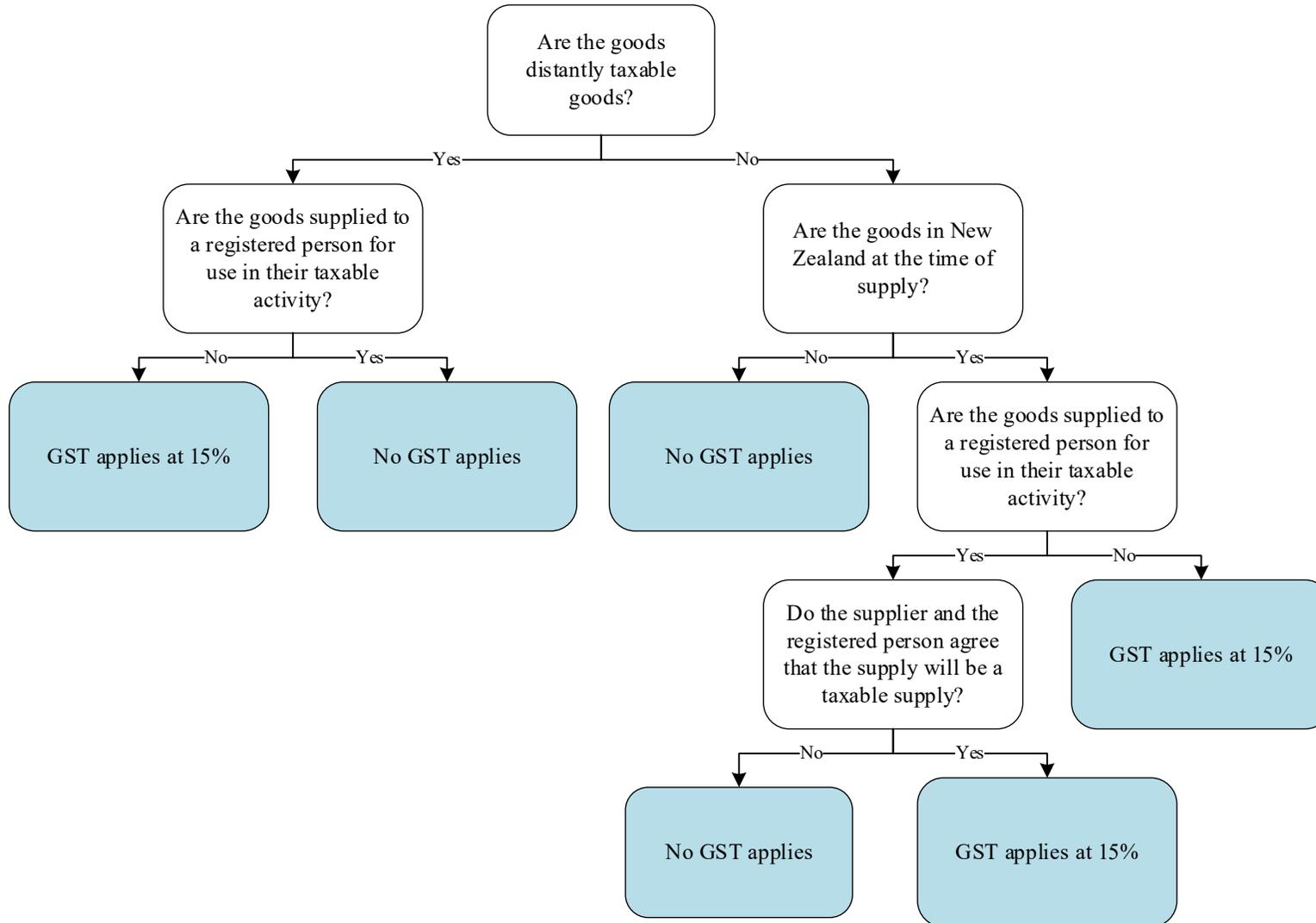
Distantly taxable goods supplied by New Zealand residents

73. Goods treated as having been supplied by a New Zealand-resident person, such as an electronic marketplace operator, redeliverer or agent domiciled in New Zealand, would be treated as supplied in New Zealand by existing section 8(2). This treatment would apply even if the goods are supplied to a GST-registered business for the purposes of carrying on its taxable activity.
74. A comprehensive explanation of the special rules applying to electronic marketplaces, redeliverers and New Zealand-resident agents is provided later, with each section beginning at [134], [168] and [183], respectively.

Exempt and zero-rated supplies

75. Supplies of goods that are already exempt from GST (such as supplies of fine metal), or zero-rated under a specific rule, would retain that treatment under the new rules.

Figure 1: Summary of the new place of supply rules for non-resident suppliers of goods



Definition of “distantly taxable goods”

76. Under the GST Act, “goods” are defined as all kinds of real or personal property; but do not include choses in action, money or a product that is transmitted by means of a wire, cable, radio, optical or other electromagnetic system or by means of a similar technical system.
77. New section 4B sets out that “distantly taxable goods” would generally be defined as goods that:
- are supplied by a non-resident;
 - are outside New Zealand at the time of supply;
 - are delivered to a place in New Zealand by the supplier, or the supplier arranges or assists the delivery of the goods to a place in New Zealand; and
 - are low-value goods (that is, individually have an estimated customs value of NZ\$1,000 or less).
78. As discussed in later sections of this special report, the definition of distantly taxable goods also includes goods treated by section 60C, 60D or 60E as being supplied by a marketplace operator or redeliverer, regardless of the residency of the marketplace operator or redeliverer.
79. Alcoholic beverages, tobacco and tobacco products that are exempted from regulations made under section 406(1) of the Customs and Excise Act 2018 are not distantly taxable goods. At present, Customs collects GST and other duty including excise-equivalent taxes on these goods. This will not change.

Goods outside New Zealand at the time of supply

80. A non-resident merchant supplying low-value goods that are delivered to an address in New Zealand will be considered to have made a supply of distantly taxable goods if the goods are outside New Zealand at the time of supply.
81. The time of supply for distantly taxable goods will be determined by the general rule in section 9(1), which sets out that the time of supply is the earlier of any payment being received by the supplier or an invoice being issued by the supplier. In the case of goods purchased online by consumers, this will generally be the same as the time the consumer purchases the goods.
82. If either a redeliverer or an operator of a marketplace is treated by section 60C, 60D or 60E as the supplier of the goods, the location of the goods at the time of supply will not be relevant for determining if the goods are distantly taxable goods. Any goods that are treated by one of those sections as having been supplied by a marketplace operator or a redeliverer will be distantly taxable goods, regardless of where the goods are located at the time of supply.⁵

⁵ While not necessarily likely, it is possible that the time of supply for imported goods could be after the goods are already in New Zealand. As discussed later, goods that are not imported but are actually sourced from within New Zealand are distantly taxable goods if they are supplied through a marketplace by a non-resident merchant and the marketplace operator is treated by section 60C or 60D as the supplier.

Goods individually having an estimated customs value of NZ\$1,000 or less

83. In order for an “item of goods” to be distantly taxable, it must have an estimated customs value of NZ\$1,000 or less. Suppliers will be required to determine a reasonable estimate of the item’s customs value using information available to them at the time of supply (new section 10B(3)).
84. For the sole purpose of determining whether an item is an item of distantly taxable goods (and, therefore, whether GST is charged on the supply of the item), section 10B(2) provides that the value of an item will be the amount of consideration,⁶ less any amounts included in the consideration for:
- GST charged on the supply of the item under section 8;
 - any duty payable by the supplier under the Customs and Excise Act 2018;⁷ and
 - the cost of transport and insurance of the item between leaving its country of export and being delivered in New Zealand. Any amounts charged for transport and insurance of the item which relate to domestic transport and insurance within the country of export should not be subtracted from the amount of consideration. Suppliers may make a reasonable estimate of the amount relating to transport and insurance within the country of export for this purpose.
85. This is broadly consistent with the valuation that Customs will use (the “customs value”) when determining if a consignment of imported goods is above or below the NZ\$1,000 de minimis. However, as explained below at [94] to [96], the approximation of the customs value outlined above is different to the valuation that is used for calculating the amount of GST required to be returned on distantly taxable goods.
86. Note that “an item of goods” may be a single good or multiple goods, depending on how the “item” is presented for sale. For example, an item of goods could be one pair of socks or a pack of ten pairs of socks.

⁶ “Consideration” is a term commonly used in contract law to refer to what a party to a contract agrees to provide under the contract. In the case of a supply of goods and services by a business to a consumer, the consideration for the supply will typically be a sum of money that the consumer pays to the supplier in order to receive the goods and services.

⁷ A merchant may include an amount in the price of an item to cover any duty payable under the Customs and Excise Act 2018 if it is selling goods on a delivered-duty-paid basis (that is, will pay the customs duties to Customs on behalf of the recipient).

Example 1 – high value item shipped in two different boxes for assembly by the recipient

Kathryn, a consumer in New Zealand, buys a bicycle from a merchant in China for NZ\$1,200 (excluding GST and delivery). For ease of packaging and handling and to minimise the risk of damage in transit, the bicycle parts are shipped to Kathryn in two separate boxes to be assembled when Kathryn receives the packages.

It is clear from the advertisement on the Chinese merchant’s website that the nature of what is being supplied is a single item of goods (being an unassembled bicycle) and not multiple items. On this basis, the Chinese merchant does not charge Kathryn GST on the supply of the bicycle, as the bicycle is not considered distantly taxable (the estimated customs value of the bicycle is NZ\$1,200, exceeding the de minimis of NZ\$1,000.)

The two boxes arrive in New Zealand on the same flight and are treated by Customs as a single consignment. Assuming that the customs value of the consignment is above NZ\$1,000 at the time of importation, Customs will charge Kathryn GST, along with the Import Entry Transaction Fee and Biosecurity System Entry Levy and any other duties.

Example 2 – learn to play electric guitar starter pack

Jared decides that he wants to learn to play guitar and orders a ‘learn to play electric guitar starter pack’ from an online music retailer based in Japan for NZ\$1,500 (excluding GST and delivery). The starter pack has everything that Jared needs to get started, including a lead, strap, tuner, guitar bag, amplifier, picks, whammy bar and an instructional DVD.

It is clear from the advertisement on the Japanese merchant’s website that what is being offered for sale is a package for a single price of NZ\$1,500. Although Jared provides a delivery address in New Zealand at the online checkout, he is not charged GST because the goods are outside New Zealand at the time of supply and the goods are not distantly taxable goods (as the estimated customs value of the item, being the starter pack, is NZ\$1,500).

87. Under the rules for electronic marketplaces and “approved” marketplaces, some distantly taxable goods may not actually be imported into New Zealand by the recipient, but may instead be sourced from within New Zealand.⁸ This would occur when a non-resident uses an electronic marketplace to sell low-value goods that are already in New Zealand to a customer providing a New Zealand delivery address. In this situation, the value of an item of goods would be the amount of consideration the item is sold for, less any amounts included in the consideration for:

- GST charged on the supply of the item under section 8; and
- the cost of transport and insurance of the item.⁹

Currency conversion to determine the estimated customs value

88. To determine whether an item has an estimated customs value of NZ\$1,000 or less, currency conversion to New Zealand dollars may be required if the item is sold in a

⁸ This is because whether the marketplace operator is treated as the supplier is based solely on the residency status of the merchant. This is to avoid further compliance costs for marketplace operators in determining whether the goods are already in New Zealand or will be shipped from outside New Zealand.

⁹ There will be no customs duty payable as the goods are sourced from within New Zealand, rather than being imported.

currency other than New Zealand dollars.¹⁰ Currency conversion for this purpose will only be necessary if:

- it is unclear whether an item of goods that is sold in another currency has an estimated customs value exceeding NZ\$1,000; and
- the supplier has not elected to treat its high-value goods as distantly taxable goods (discussed later at [293]).

89. Under new section 77(5), a supplier may convert foreign currency amounts into New Zealand dollars using either:

- the spot exchange rate for the foreign currency applying at the time of supply; or
- a currency conversion method approved by the Commissioner of Inland Revenue.

90. The currency conversion method approved by the Commissioner is set out later in this special report at [227] to [232].

Which goods would be included in a supply of distantly taxable goods?

91. In some cases, a single transaction will involve one or more items that each have an estimated customs value of NZ\$1,000 or less and, at the same time, one or more other items that each have an estimated customs value exceeding NZ\$1,000. In this situation, section 4B(2) splits the transaction into two separate supplies:

- a supply of distantly taxable goods, consisting of all the goods that are low-value goods (that is, individually have an estimated customs value of NZ\$1,000 or less); and
- a second supply consisting of the remaining goods supplied in the transaction.

92. The supplier can however elect to treat its supplies of high-value goods as distantly taxable, in which case there will generally be a single supply of distantly taxable goods. In this situation, section 4B(2) will only split the supply into two separate supplies if some of the goods are not distantly taxable goods because they are alcoholic beverages, tobacco or tobacco products (or, if a non-resident merchant is the supplier for GST purposes, because some of the goods are in New Zealand at the time of supply).

93. Further explanation of the special rules allowing suppliers to treat their supplies of high-value goods to consumers as distantly taxable goods is provided in a later section of this special report at [293] to [310].

¹⁰ As the estimated customs value is worked out by using a reasonable estimate at the time of supply, the date or time of supply will be the date or time of the currency conversion (if required).

Example 3 – separate supplies of distantly taxable and non-distantly taxable goods bought in the same transaction

Brenda decides to treat herself by buying a new television and home entertainment system. She orders a 50” flat screen television for NZ\$800 (excluding GST and delivery), as well as a stereo/home entertainment system for NZ\$1,100 from the catalogue of an Australian-based mail order company.

The Australian merchant charges Brenda GST on the television but not on the stereo/home entertainment system. This is because the estimated customs value of the television is less than NZ\$1,000 (NZ\$800) – meaning that the supply of the television is a taxable supply of distantly taxable goods.

However, the estimated customs value of the stereo/home entertainment system is above NZ\$1,000 (NZ\$1,100) and, therefore, the stereo/home entertainment system is not supplied as a taxable supply because the item is outside New Zealand at the time of supply and is not an item of distantly taxable goods.

Calculating GST on distantly taxable goods

94. To calculate the amount of GST on distantly taxable goods, suppliers need to determine the value of the supply. It should be noted that the value of a **supply** of distantly taxable goods is not the same as the estimated customs value of distantly taxable goods (as the estimated customs value is only used for the purpose of determining whether a given item is distantly taxable).
95. Instead, the value of a supply of distantly taxable goods is determined by the amount of consideration for the supply (section 10(2)),¹¹ which – unlike the estimated customs value – will typically include amounts paid by the recipient for related services such as freight and insurance.
96. The amount of GST required to be returned on a supply of distantly taxable goods is 15% of the value of the **supply**. For goods that are priced inclusive of GST, the amount of GST that should be returned will be equal to the amount of consideration for the supply multiplied by $3 \div 23$. An example of how this applies is provided in example 4.

Treatment of amounts paid by the recipient for delivery and other related services

97. Under ordinary GST principles, the amount of consideration for a supply of distantly taxable goods will typically include amounts paid by the recipient for services relating to the goods, such as delivery and insurance. This is because these services are generally either:
 - ancillary or integral to the supply of the goods (such as in the case of freight and insurance); or
 - merely incidental to the goods, or are a means of better enjoying the goods.

¹¹ Section 10(2)(a) provides that, to the extent that the consideration for a supply of goods and services is in money, the value of the supply with the addition of GST is equal to the amount of consideration in money. To the extent that the consideration for a supply of distantly taxable goods is not in money, section 10(2)(b) provides that the value of the supply with the addition of GST is equal to the open market value of the non-monetary consideration.

98. Where this is the case, the services will typically form part of the supply of distantly taxable goods, even if a separate fee is charged for the services. This applies even if the services would be zero-rated if they were supplied separately – for example, international transportation of goods (including ancillary activities such as handling) and insurance associated with the international transportation are zero-rated.¹²
99. However, in limited situations, it is possible that there may be a separate zero-rated supply if the recipient contracts separately for the supply of these services.
100. To avoid doubt and ensure consistent treatment, new section 10(7E) provides that the consideration for a supply of distantly taxable goods includes the amount of consideration for a supply of related services to the recipient of the distantly taxable goods if:
- the consideration for the related services is determined by reference to the items included in the supply of distantly taxable goods;¹³
 - the supply of related services is made, arranged or facilitated by the supplier of the distantly taxable goods (or by the underlying supplier, if the supplier for GST purposes is a marketplace operator);
 - the supply of related services is directly in connection with the distantly taxable goods or is of insurance of the goods;¹⁴
 - the supply of related services would be zero-rated in the absence of this rule; and
 - the supply of related services and the supply of distantly taxable goods do not form a single supply.
101. This means that amounts paid by the recipient for a separate zero-rated supply (such as international transportation that is contractually supplied to the recipient by a third party) may still be included as part of the consideration for a supply of distantly taxable goods that is subject to GST at the rate of 15%.

Example 4 – calculating amount of output tax based on GST-inclusive price

Wendy purchases a fascinator from Wild Hats, an e-commerce business based in Australia that ships novelty party hats from its warehouse in Melbourne. Wild Hats is registered for GST in New Zealand.

The price of the fascinator is NZ\$23 including GST if any. To get the hat to her address in New Zealand, Wendy also pays a shipping fee of NZ\$11.50 (also inclusive of GST). Therefore, the total amount paid by Wendy including GST is NZ\$34.50.

The amount of GST returned on the supply by Wild Hats is NZ\$4.50 ($\text{NZ\$34.50} \times 3/23 = \text{NZ\$4.50}$). This includes the NZ\$1.50 of GST included in the shipping fee.

¹² For more information on when multiple goods and services supplied in a single transaction will form a single supply or multiple supplies, see the Interpretation Statement, *IS 18/04 Goods and Services Tax – Single supply or multiple supplies*, available at <https://www.ird.govt.nz/resources/2/2/229901d1-77a8-410e-a005-933a9904455e/is1804.pdf>.

¹³ For example, this means that a subscription where a consumer is paying for the transport of many supplies of goods over a period of time is excluded from the scope of the rule.

¹⁴ The “directly in connection with” wording is intended to apply broadly to services that have a direct physical intervention with the goods, including (but not limited to) transportation and handling of the goods. For example, services such as gift-wrapping would meet the “directly in connection with” test.

Example 5 – calculating amount of output tax based on GST-exclusive price

Chris buys a new suit from a non-resident merchant based in Hong Kong for NZ\$900 plus GST if any. The merchant charges Chris an additional NZ\$50 plus GST if any for delivery to New Zealand.

The merchant charges Chris NZ\$142.50 of GST ($\text{NZ\$}950 \times 15\% = \text{NZ\$}142.50$). The full amount paid by Chris is therefore NZ\$1,092.50 (NZ\$950 + NZ\$142.50 in GST).

Example 6 – application of section 10(7E) to separate zero-rated supply of international transport

Jan, a consumer in New Zealand, purchases a fishing rod from an American merchant on the A Co. marketplace for NZ\$20 (excluding GST).

The merchant does not provide shipping to addresses outside the United States. However, to make goods on its marketplace available to a global market, A Co. allows customers outside the United States to purchase shipping to the destination country from a freight forwarder. Using the A Co. marketplace, Jan purchases shipping of the fishing rod to her home in New Zealand for NZ\$10 excluding GST.

Under the rules applying to electronic marketplaces, A Co. is treated as making the supply of the fishing rod to Jan, meaning that A Co. is responsible for GST on the supply of the fishing rod. However, neither A Co. nor the American merchant supply the shipping to Jan, as the contract for the supply is between the freight forwarder and Jan. This means that the supply of shipping is separate to the supply of the fishing rod. Consequently, the supply of shipping is zero-rated under the rules applying to international transportation.

However, section 10(7E) treats the shipping fee as part of the consideration for a taxable supply of distantly taxable goods because:

- the shipping fee is determined by reference to the supply of the fishing rod to Jan;
- the shipping was purchased by Jan through the A Co. marketplace, which is sufficient to meet the test that either A Co. or the American merchant facilitated the supply of the shipping;
- the shipping is supplied directly in connection with distantly taxable goods, as it involves the physical handling and transport of the fishing rod;
- in the absence of section 10(7E), the shipping would be zero-rated as a supply of international transportation services; and
- the supply of shipping and the supply of distantly taxable goods do not form a single supply (as mentioned above, the supply of shipping is a separate supply to the supply of the fishing rod).

This means that A Co. is required to return GST of NZ\$4.50, made up of NZ\$3 in GST on the fishing rod ($\text{NZ\$}20 \times 15\% = \text{NZ\$}3$) and NZ\$1.50 in GST on the shipping ($\text{NZ\$}10 \times 15\% = \text{NZ\$}1.50$).

Apportionment of GST on freight and insurance charges

102. In some situations, a consumer may purchase goods that are distantly taxable goods as well as goods that are not distantly taxable goods in a single transaction. In this situation, the consumer may be charged a single delivery fee for the transportation of all the goods. Where this is the case, apportionment of GST on the amount paid for transportation will usually be required.

103. The supplier may use any fair and reasonable method of apportioning GST on delivery charges. For example, apportionment based on the weight of the distantly taxable goods relative to the weight of other goods would be a fair and reasonable apportionment method, as would apportionment based on the value of the goods. If feasible, it would be in the supplier's interest to use the same method for apportioning GST on delivery charges at the point of sale as that used to apportion delivery charges for customs purposes.
104. However, apportionment of GST on a single delivery charge relating to both distantly taxable goods and other goods will not be required if:
- the delivery services are a separate zero-rated supply; and
 - section 10(7E) does not apply to treat the amount of consideration relating to delivery services as part of the consideration for the supply of distantly taxable goods (so GST will not apply at all to the amount paid for delivery).

Example 7 – apportionment of delivery fee relating to distantly taxable and non-distantly taxable goods based on value

Scott purchases a gold watch for NZ\$1,100 along with two shirts at NZ\$40 each (all priced excluding GST) from a merchant in Germany for delivery to his address in New Zealand.

The shirts are both distantly taxable goods – each of these items has an estimated customs value of NZ\$1,000 or less – so the German merchant (who is registered for GST in New Zealand) is required to return GST on each of these items. However, the watch is not distantly taxable, as it has an estimated customs value above NZ\$1,000 (NZ\$1,100), so the German merchant is not required to return GST on the watch.

The merchant charges Scott an NZ\$30 fee for the transportation of all the goods purchased and ships the goods to Scott in a single package. The merchant apportions the GST on the transportation fee based on the value of the respective items in the package. The apportionment ratio used by the merchant is 6.78% $((40 + 40) \div (40 + 40 + 1,100) = 0.06779)$.

The merchant charges Scott NZ\$12.31 in GST, comprising NZ\$12 in GST on the distantly taxable goods $((NZ\$40 + NZ\$40) \times 15\% = NZ\$12)$ and NZ\$0.31 in GST on the transportation fee $(NZ\$30 \times 6.78\% \times 15\% = NZ\$0.31)$.

Example 8 – apportionment of delivery fee relating to distantly taxable and non-distantly taxable goods based on weight

Aroha purchases a number of items (all priced excluding GST) from a merchant in the United States (US) for delivery to her address in New Zealand:

- two shirts at NZ\$50 each;
- a ball dress at NZ\$300; and
- a wedding dress at NZ\$1,200.

The shirts and ball dress are all distantly taxable goods, so the US merchant (who is registered for GST in New Zealand) is required to return GST on each of these items. However, the wedding dress is not, so the US merchant is not required to return GST on the wedding dress.

The US merchant charges Aroha an NZ\$80 fee for the transportation of all the goods purchased and ships the goods to Aroha in a single package. The US merchant apportions the GST on the transportation fee based on the weight of the respective items in the package. The combined weight of the distantly taxable goods is 2kg, and the wedding dress also weighs 2kg (half the weight of the package).

The US merchant charges Aroha NZ\$66 of GST, comprising NZ\$60 in GST on the distantly taxable goods $((\text{NZ\$}50 + \text{NZ\$}50 + \text{NZ\$}300) \times 15\% = \text{NZ\$}60)$ and NZ\$6 in GST on the transportation fee $(\text{NZ\$}80 \div 2 \times 15\% = \text{NZ\$}6)$.

Special valuation rule for supplies treated as made by redeliverers

105. New section 10(7C) contains a special rule for determining the amount of output tax (GST payable) on a supply of distantly taxable goods treated by section 60E as being made by a redeliverer. The special rule is explained later in this special report at [178].

Discounts, returns and refunds

106. Section 25(1) provides a list of situations where a GST-registered supplier may return too much or too little GST as a result of either a mistake, subsequent alteration to, or cancellation of the supply. This list includes the following events:

- The supply of goods and services has been cancelled.
- The nature of the supply of goods and services had been fundamentally varied or altered.
- The previously agreed consideration for the supply of goods and services has been altered, for instance through the offer of a discount.
- The goods and services or part of the goods and services have been returned to the supplier.

107. In the situation where a merchant has returned too much or too little GST as the result of an event referred to in section 25(1) (such as the events listed above), section 25(2) provides that the merchant may make an adjustment in its GST return when it is apparent that too much or too little output tax has been returned.

Example 9 – goods returned to merchant

Aroha from the previous example decides that the ball dress she bought is too small. The US merchant agrees to provide Aroha with a full refund of the price of the dress if Aroha returns it.

The US merchant receives the returned dress and refunds the GST-inclusive amount paid for the dress of NZ\$345 (NZ\$300 + NZ\$45 in GST). By the time that the US merchant received the returned dress, they had already filed their GST return for the taxable period in which the supply to Aroha was made. The US merchant is entitled to make a reduction of NZ\$45 in their output tax in the GST return for the current taxable period.

108. A special valuation rule applies in the specific situation where an operator of a marketplace (who is treated as making a supply of distantly taxable goods or remote services by section 60C or 60D) provides a discount to the recipient of the supply. This rule is explained later at [162].

GST registration threshold

109. As a result of the changes to the place of supply rules, non-resident suppliers of distantly taxable goods will be required to register for GST if the total value of supplies in New Zealand exceeds NZ\$60,000 in a 12-month period. This is equivalent to the existing registration threshold for resident suppliers, as well as non-resident suppliers of remote services.
110. As these suppliers will be subject to the rules contained in section 51, non-resident suppliers will be required to register if:
- the total value of their supplies 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 in New Zealand in the next 12 months is expected to exceed NZ\$60,000.
111. The total value of supplies in New Zealand by a non-resident includes the following:
- the total value of supplies of distantly taxable goods¹⁵ to consumers, including amounts charged for services such as delivery and insurance;
 - the total value of supplies to consumers of goods that are located in New Zealand at the time of supply (not including any distantly taxable goods);
 - the total value of supplies to consumers of services physically performed in New Zealand; and
 - the total value of remote services supplied to consumers (not including any services physically performed in New Zealand).
112. As goods and 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.
113. If a non-resident makes supplies of distantly taxable goods to consumers and their total supplies in New Zealand fall below the NZ\$60,000 threshold, they will be able to voluntarily register for GST.

¹⁵ “Distantly taxable goods” in this specific context being just those items that individually have an estimated customs value of NZ\$1,000 or less.

Example 10 – non-resident supplier below the registration threshold

Jersey Co., a non-resident company based in the United States, sells clothing to customers across the world. Jersey Co. also makes and supplies businesses with staff uniforms.

Each year, Jersey 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.

Jersey Co. is not 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.

114. 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 11 – non-resident supplier above registration threshold

Tool Warehouse, a non-resident company, supplies power tools to New Zealand businesses and individual consumers. Over the past two years, Tool Warehouse has supplied NZ\$10,000 of power tools that each individually have an estimated customs value of NZ\$1,000 or less, each month, to New Zealand individual consumers and this is expected to continue into the foreseeable future.

Tool Warehouse will be expected to register for New Zealand GST from 1 December 2019 as it is reasonably expected that their supplies in New Zealand to individual consumers will exceed NZ\$60,000 in the 12 months following 1 December 2019 (the date the new rules apply from).

Effect of the new legislation on suppliers’ residency and income tax obligations

115. Although these amendments treat certain goods supplied by non-residents as “supplied in New Zealand”, there is no intention that this will affect whether a supplier is a resident of New Zealand for GST or income tax purposes, or whether a supplier has a “permanent establishment” in New Zealand.
116. The GST Act largely adopts the Income Tax Act 2007’s definition of “resident”. Solely for GST purposes, a person is also considered to be a resident of New Zealand to the extent that the person carries on a taxable activity or other activity in New Zealand, and has a fixed or permanent place in New Zealand relating to that activity. The amendments do not affect the extent to which a person carries on an activity in New Zealand, despite making certain supplies taxable for GST purposes.
117. Double tax agreements (DTAs) primarily deal with whether a resident of one country is subject to income tax on income derived in another country. The concept of “permanent establishment” is used in DTAs between New Zealand and other countries. Under DTAs, a company that does not have a “permanent establishment” in New Zealand will have no New Zealand income tax. The fact that a supplier is registered for New Zealand GST under the new rules should not affect whether or not they have

a “permanent establishment” in New Zealand for DTA purposes, or the application of the definition of resident used for GST purposes.

Distantly taxable goods supplied to GST-registered businesses

(Sections 8(4E), 8BB, 20(4C), (4D), 24 and 25(1)(aab) to (abb))

118. New section 8(4E) applies to supplies of distantly taxable goods by non-residents to GST-registered businesses and treats these as being made outside New Zealand (not subject to GST). However, as discussed later at [311] to [318], a limited exception will in certain circumstances allow a non-resident supplier to treat these supplies as being made in New Zealand (subject to GST).

Example 12 – business-to-business exclusion

Consider Tool Warehouse in the previous example.

If the New Zealand businesses that Tool Warehouse sells power tools to are not registered for GST, the power tools that each individually have an estimated customs value of NZ\$1,000 or less will be subject to GST under section 8(3)(ab), as these power tools are distantly taxable goods that are supplied to a person providing a delivery address in New Zealand who is not a GST-registered business.

If the New Zealand business customers are registered for GST, then under section 8(4E) the power tools will be treated as being supplied outside New Zealand.

119. Section 8BB(1) requires non-resident suppliers to treat distantly taxable goods 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 distantly taxable goods should 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 goods wholly for non-taxable purposes.
120. It may not be practical for all suppliers to ask for evidence that a customer is GST-registered. Therefore, to provide flexibility, section 8BB(3) allows the Commissioner to prescribe or agree an alternative method to determine whether the supply is made to a GST-registered person. Section 8BB(4) outlines the factors that the Commissioner will consider when exercising the discretion:
- The nature of the supply (for example, a product that would only ever be purchased by a business for the purpose of carrying on its taxable activity).
 - The value of the supply (for example, the supply is of a value that would be expected to be received only by a GST-registered person in the course or furtherance of its taxable activity, such as a supply of a very large quantity of low-value goods).
 - The terms and conditions related to the provision of the goods (for example, whether the supply is of goods and services that may be leased or licensed for use by a GST-registered person).
121. Suppliers who have already agreed an alternative method with the Commissioner for supplies of remote services may want to use the same method to determine whether

supplies of distantly taxable goods are to GST-registered businesses. In this situation, the supplier should apply to the Commissioner to agree an alternative method for their supplies of distantly taxable goods. This could be as simple as requesting the Commissioner's approval for them to use their existing method for distantly taxable goods.

Example 13 – alternative method of determining supplies are to a GST-registered business

Discount Crazy is a non-resident that supplies a wide range of products to New Zealand businesses and individual consumers. Factors such as the quantity or volume of goods purchased in a single transaction and the overall value of the transaction mean that in some cases it is quite clear that low-value items are being purchased in bulk by a business and not an individual consumer. Businesses that purchase goods in bulk are likely to be GST-registered businesses.

Discount Crazy has a large number of customers and it is impractical to ask for evidence to identify their customers as GST-registered. Discount Crazy 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 supplies, 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

122. 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 valued at NZ\$1,000 or less¹⁶ if the supplier has provided the recipient with a full tax invoice (discussed below).
123. Amendments to section 25(1) will allow a supplier to make adjustments to its output tax in the return in which it is apparent that the mistake has been made. This applies if the supply is treated as made in New Zealand (subject to GST) when in fact it should not have been treated as a taxable supply (see section 25(1)(aab)).
124. Note that an adjustment will be required only if the non-resident supplier has already filed 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 filed, the mistake can be rectified before the return is filed.
125. Since non-resident suppliers are not required to provide a tax invoice under the amendment to section 24(5), they do not have to issue a credit note under section 25(4). However, if a non-resident supplier opts to charge GST on business-to-business supplies and provide a tax invoice under the special rule in new section 8(4F) (discussed later at [311] to [318]), the supplier will be required to issue a credit note if the amount of consideration for the supply is subsequently reduced or if the supply is cancelled.

¹⁶ Meaning that the value of the overall supply is NZ\$1,000 or less (as opposed to all of the items in the supply each having an estimated customs value of NZ\$1,000 or less).

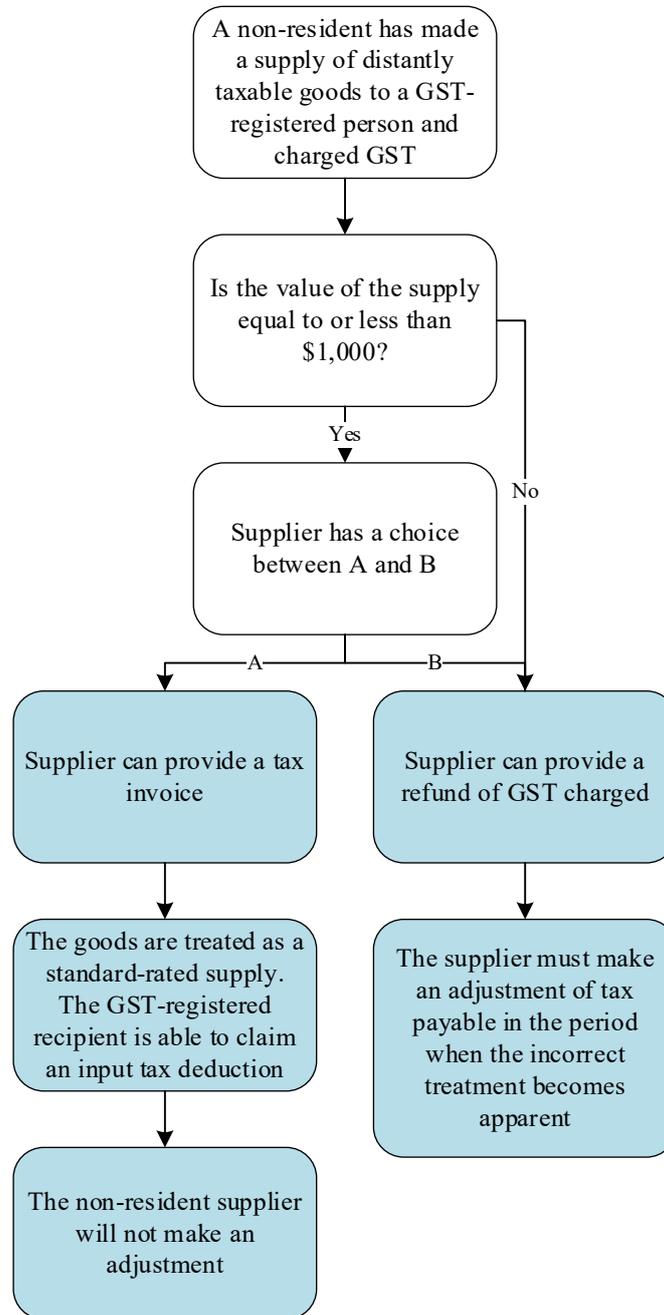
Supplies of NZ\$1,000 or less

126. An exception to the above rules applies when the value of the supply (excluding GST) is NZ\$1,000 or less 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 compliance 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, it must be a full tax invoice, even if the payment for the supply (including GST) is less than NZ\$50 (see the amendments to section 24(4)).
127. 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 goods and services supplied;
 - the quantity of the goods and 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.
128. The exception to the deduction prohibition in section 20(4C) (discussed above) allows the GST-registered business purchasing the goods to claim an input tax deduction under the normal deduction provisions to the extent to which the goods are used for, or available for use, in making taxable supplies.
129. If the supplier chooses to provide a tax invoice:
- the supplier is not required to make an adjustment to correct the amount of GST shown on the invoice (see section 25(1)(aab)(ii)); and
 - 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).¹⁷
130. These provisions turn a supply that should not have been taxed 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.

¹⁷ Note that the reference in section 24(5D) to the supplier and recipient being treated as agreeing that section 8(4) will not apply to the supply is incorrect (as section 8(4) would not apply in the first place if the supply is of distantly taxable goods). Officials will seek to correct this error in a future omnibus tax bill.

131. Figure 2 summarises how these rules will apply.

Figure 2: When GST is incorrectly charged



Special rules for certain businesses

(Sections 2, 10(7C), 10(7D), 11(1)(jb), 11A(1D), 26AA, 60(1A), 60(1C), 60C, 60D and 60E)

132. GST is normally payable by the merchant who sells the goods or services. However, the GST on a supply of distantly taxable goods may be payable by either an operator of a marketplace, the merchant who sold the goods, a “redeliverer” who brings the goods to New Zealand, or a New Zealand resident acting on behalf of a non-resident principal.

133. To determine who is liable to return the GST, the new legislation establishes the following hierarchy:
- if an operator of a marketplace is liable to return the GST on a supply, the merchant will not be responsible for the GST;¹⁸
 - if an operator of a marketplace or the merchant is liable to return the GST on a supply, a redeliverer will not be responsible for the GST; and
 - if a New Zealand-resident agent makes supplies of distantly taxable goods on behalf of a non-resident principal, the agent will be responsible for the GST instead of the principal if the agent and principal have an agreement to this effect.

Marketplaces

134. A marketplace is a medium that allows consumers and merchants to interact to facilitate the sale and purchase of goods or services. When certain conditions are satisfied, an operator of an electronic marketplace instead of the merchant (referred to as 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.
135. The definition of “marketplace” in section 2 means an electronic marketplace or a marketplace approved under section 60D as a supplier of remote services or distantly taxable goods. An electronic marketplace is further defined under section 2 as requiring the following:
- The marketplace enables underlying suppliers to supply goods or remote services through the marketplace to customers.
 - The marketplace is operated by electronic means, including by a website, internet portal, gateway, store, distribution platform or other similar marketplace.
 - Supplies of remote services made through the marketplace must be made by electronic means, but this requirement does not apply to supplies of tangible goods made through the marketplace.
136. Providers that solely process payments 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 sale and purchase of the goods or services.
137. Section 2 defines an “underlying supplier” as the person that would be the supplier of the goods and services in the absence of the marketplace rules. Given that a marketplace is at the top of the hierarchy of collection entities (with a redeliverer only being responsible for GST if neither a marketplace operator nor the merchant who sold the goods is liable to return the GST), the “underlying supplier” would be the merchant who sold the goods.

¹⁸ As discussed later in this special report, a limited exception to this may apply in the situation where an operator of an electronic marketplace is provided with incorrect or misleading information by the merchant, which leads the marketplace operator to conclude that it is not responsible for GST on the supply (or otherwise results in the marketplace operator underpaying GST to Inland Revenue).

Electronic marketplace rule

138. Section 60C has been amended so that it treats the operator of an electronic marketplace as making a supply of distantly taxable goods in the course or furtherance of a taxable activity when:

- the goods are supplied by a non-resident underlying supplier;
- the operator of the electronic marketplace or the underlying supplier makes, arranges or assists the delivery of the goods to a place in New Zealand; and
- the goods individually have estimated customs values of NZ\$1,000 or less.

139. 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, an operator of an electronic marketplace would not be treated as the supplier if all the following conditions are satisfied:

- the electronic marketplace does not authorise the charge to the recipient, or make or authorise the delivery of the supply, or directly or indirectly set any of 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 underlying supplier is liable for GST.

140. 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. The operator would also make any adjustments arising from the supply, for example, when incorrectly charged GST is refunded to a GST-registered business.

Meaning of “authorise the charge for the supply to the recipient”

141. The meaning of “authorise the charge for the supply to the recipient” is broad, covering the situation where the marketplace authorises the charge on behalf of the merchant or as a processing agent for the merchant. However, as mentioned earlier, providers that only process payments are excluded from the definition of “electronic marketplace”.

142. An electronic marketplace would authorise the charge to the recipient if it communicates the liability to pay to the customer, or otherwise influences whether or when the customer pays for the supply. This may be done by initiating the process through which the recipient is charged and includes situations where the marketplace connects the recipient to a third-party payment processor who receives the marketplace operator’s instruction. To authorise the charge, it is not necessary for the marketplace operator to collect or receive the payment, or that it is involved in each of the steps in the payment authorisation process.

Example 14 – marketplace that authorises the charge to the recipient

When using the A Co. marketplace to purchase goods, Virginia chooses to pay using Pay Global, a third party payment processor. A Co. connects Virginia to Pay Global’s website, and provides data to Pay Global that allows them to process the payment.

A Co. authorises the charge to Virginia. This is because it has communicated Virginia’s liability to pay for the goods.

Example 15 – marketplace that does not authorise the charge

Thomas is an underlying supplier who sells goods using the E-Z Trades marketplace. His profile advertises the fact that he has an active account on Pay Global, a third party payment processor. Thomas uses the messaging function to provide customers with his account details.

E-Z Trades does not communicate the customer’s liability to pay, or influence whether or at what time the customer pays for the supply. It does not authorise the charge for the supply to the recipient.

Meaning of “make or authorise the delivery of the supply to the recipient”

143. An electronic marketplace makes or authorises the delivery of the supply to the recipient if the operator of the marketplace itself delivers the goods, or if the marketplace sends approval to commence delivery or instructs the underlying supplier or a third party to make the delivery.

Example 16 – marketplace that authorises delivery

Consider Virginia and A Co. in Example 14. Once A Co. receives confirmation from Pay Global that payment was made, A Co. notifies the underlying supplier, and provides delivery instructions. A Co. authorises the delivery of the supply to Virginia.

Example 17 – marketplace that does not authorise delivery

Sports Stuff is an underlying supplier selling sporting gear through Persimmon’s website. Steve contacts Sports Stuff through Persimmon’s messaging service and buys a set of shin guards. Sports Stuff, and not Persimmon, authorises delivery of the item, given the arrangements for the order and delivery of the goods are made directly with Sports Stuff.

Meaning of “directly or indirectly set a term or condition under which the supply is made”

144. The meaning of “directly or indirectly set a term or condition under which the supply is made” is very broad. This concept looks beyond the formal contractual relationship to the influence exercised by the marketplace operator. The marketplace operator does not need to have any direct involvement in determining the contractual arrangements between underlying suppliers and buyers using the marketplace in order to be responsible for GST on supplies.
145. A requirement for underlying suppliers to comply with the marketplace’s listing policies will in many cases mean that the marketplace does (at least indirectly) set a

term or condition under which the supply is made, meaning that the marketplace operator will be responsible for GST on the supply. However, this may not be true in all cases and will depend on what the marketplace's specific listing policies are.

146. For example, a requirement in a contract between the marketplace operator and the underlying supplier that goods sold on the marketplace must comply with New Zealand laws and regulations will not in itself mean that the marketplace "directly or indirectly sets a term or condition under which the supply is made". This is because the "directly or indirectly" test is a proxy for the level of control or influence the marketplace operator has over the sale and any post-sales processes, such as returns, refunds and customer complaints. A mere requirement that listings comply with New Zealand's regulatory requirements or, for example, that listings do not contain offensive language is not sufficient to meet this test.
147. However, there are several marketplace listing policies that will meet this test, including:
 - the offer, acceptance, payment for the goods or delivery information is to be communicated through the marketplace;
 - the underlying supplier must accept one or more specific payment methods, or shipping or delivery methods to be used in fulfilling the sale;
 - the marketplace operator provides the types of packaging to be used by the underlying supplier;
 - underlying suppliers will match the prices of goods which are sold cheaper elsewhere (price match guarantee);
 - the marketplace operator has the right to withhold the buyer's payment from the underlying supplier until the buyer confirms they are satisfied with the product;
 - use of the marketplace's grievance or dispute management procedures for underlying suppliers and buyers;
 - the marketplace operator has the right to set the price for which goods are sold, such as by offering a discount through a customer loyalty programme;
 - underlying suppliers are required to meet particular performance requirements, such as those relating to the quality of the goods or requiring them to maintain a particular customer rating to sell products on the marketplace; or
 - underlying suppliers are required to display a rating based on stipulated behaviours relating to that underlying supplier's conduct on the marketplace.
148. In practice this means there will be very limited circumstances where an electronic marketplace operator will not be responsible for GST on sales made by a non-resident underlying supplier through the marketplace.

Example 18 – marketplace that directly or indirectly sets any of the terms and conditions

Tangerine (an electronic marketplace) offers features and imposes requirements on underlying suppliers and buyers, each of which mean that it directly or indirectly sets some of the terms and conditions under which the supplies through it are made.

Tangerine:

- requires underlying suppliers to conclude the transaction through its marketplace, and prohibits them from directly transacting with buyers outside of its marketplace. This ensures that Tangerine can collect the correct fee amount, which is based on the value of the sale;
- requires underlying suppliers to accept at least one of the specific payment methods listed on its website; and
- provides a rating of the underlying supplier’s performance on the platform, using ratings from buyers. This rating system influences the underlying supplier’s conduct when selling items through Tangerine.

Example 19 – marketplace that does not directly or indirectly set any of the terms and conditions

XYZ Marketplace Co. (XYZ) operates an electronic marketplace. However, the only requirements that it places on merchants and buyers using its website are that restricted or prohibited items (such as firearms) cannot be listed for sale, and that listings and other communications between merchants and buyers cannot contain offensive language.

XYZ does not directly or indirectly set any of the terms or conditions under which the supply is made.

Priority rule where multiple electronic marketplaces are involved in a supply

149. Where multiple electronic marketplaces are liable for GST on a single supply of distantly taxable goods or remote services, a priority rule in section 60C(3) provides that the first operator that authorises a charge or receives payment for the supply is treated as the supplier. If none of the marketplaces involved meet this requirement, the first operator that authorises delivery would be treated as the supplier.

Approved marketplace rule

150. Amended section 60D allows non-electronic marketplaces for goods 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.
151. New section 60D(2)(c) sets out that an approved marketplace for goods will be treated as making a supply in the course or furtherance of a taxable activity in circumstances where:
- the Commissioner approves an application made by the operator of the marketplace under subsection (2);
 - the goods are supplied by a non-resident underlying supplier;
 - the operator of the marketplace or the underlying supplier makes, arranges or assists the delivery of the goods to a place in New Zealand; and

- the goods individually have estimated customs values of NZ\$1,000 or less (if the marketplace operator has not elected to charge GST on high-value goods – discussed later in this special report).
152. When exercising this discretion to approve a marketplace under section 60D, subsection (3) provides that the Commissioner may take the following into account:
- whether the marketplace is best placed to determine whether the recipient of the supply of goods is a registered person; and
 - whether the number of non-resident underlying suppliers selling low-value goods through the marketplace means that return requirements are better satisfied by the marketplace rather than the individual underlying suppliers.

Residency of underlying suppliers

153. As mentioned above, a marketplace operator will only be treated as making a supply of distantly taxable goods if the underlying supplier of the goods is a non-resident. This is in contrast with the existing marketplace rules for remote services, which (as illustrated in Table 1) apply to supplies made by both resident and non-resident underlying suppliers.
154. The marketplace rules for goods do not require the marketplace operator to distinguish between goods that are outside New Zealand at the time of supply versus those that are already in New Zealand. This is because all goods that are treated by section 60C or 60D as supplied by a marketplace operator are included in the definition of “distantly taxable goods”, regardless of where the goods are situated at the time of supply.
155. Table 1 is a summary of the differences between the GST rules applying to goods individually valued at NZ\$1,000 or less (“low-value goods”) and remote services before and after 1 December 2019, in the situation where those low-value goods or remote services are supplied over a marketplace by a non-resident underlying supplier.

Table 1: Pre-1 December 2019 treatment of different types of supplies and application of the marketplace rules to these supplies from 1 December 2019

	Remote services	Low-value goods in New Zealand at the time of supply	Low-value goods outside New Zealand at the time of supply
<i>Previous treatment</i>	Marketplace operator is the supplier for GST purposes.	Underlying supplier is responsible for GST.	Supply not subject to GST.
<i>New treatment</i>	No change.	Marketplace operator is the supplier for GST purposes.	Marketplace operator is the supplier for GST purposes.

156. The existing treatment of remote services supplied through non-resident electronic marketplaces will continue to apply. This means that the non-resident marketplace operator is responsible for returning GST on these supplies, regardless of whether the underlying supplier is a New Zealand resident or a non-resident.

Specific rule for underlying suppliers

157. Non-resident underlying suppliers that sell goods and/or remote services over marketplaces may already be registered for GST under existing rules. It is also possible that some non-resident underlying suppliers may become liable to register in their own right under the new rules for distantly taxable goods if they also make non-marketplace supplies to consumers in New Zealand (for instance, through their own website or mail order).
158. Some of these underlying suppliers may incur GST on inputs purchased from New Zealand businesses for making supplies to customers in New Zealand. Amended section 60(1C) ensures that such underlying suppliers (whether they are non-resident, or resident in New Zealand) can claim input tax deductions for their expenses in making supplies through electronic marketplaces.
159. The provision allows the underlying supplier to treat the supply as two separate supplies – a supply of goods or remote services from the underlying supplier to the operator of the marketplace, and a supply of those same goods or services from the operator to the recipient. The first supply to the marketplace operator is zero-rated under either section 11A(1)(jc) or new section 11(1)(jb), thus enabling the underlying supplier to recover the GST costs incurred in making the supply.

Example 20 – zero-rated supply of remote services from underlying supplier to marketplace operator

Games Pty Ltd., an Australian app developer that is registered for GST in New Zealand, contracts with App Store Co., an operator of an app store, to distribute its smartphone games. App Store Co. collects payments from customers and authorises delivery of the app.

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

Even though section 60C means App Store Co. is treated as the supplier of the app, Games Pty Ltd. can treat its supply of the app as a zero-rated supply to App Store Co. (as a separate supply to the supply that App Store Co. is treated as making). This will allow Games Pty Ltd. to deduct its GST costs incurred in making supplies of the app through App Store Co.

Example 21 – zero-rated supply of distantly taxable goods from underlying supplier to marketplace operator

Page Turners, a US-based book seller that is registered for GST in New Zealand, uses Books Marketplace, an electronic marketplace, to advertise and sell its books to customers in New Zealand. Books Marketplace sets some terms and conditions and collects payments from customers.

Books Marketplace is treated as the supplier under section 60C, and is therefore responsible for GST on the supply. If, as a result of section 60C, Books Marketplace makes supplies that exceed the registration threshold, it will be required to register and return GST on supplies of goods that are made through its marketplace to customers with a delivery address in New Zealand.

Even though Books Marketplace is treated as the supplier, under section 60(1C) Page Turners can treat its supply as a zero-rated supply to Books Marketplace (as a separate supply to the supply that Books Marketplace is treated as making). This will allow Page Turners to deduct its GST costs incurred in making supplies of books through Books Marketplace.

Repeal of residency rule for marketplace operators

160. Sections 60C(1)(b) and 60D(1)(b), which restrict the application of the marketplace rules to marketplaces operated by non-residents, have been repealed. This means that, from 1 December 2019, the marketplace rules for distantly taxable goods and remote services will apply to marketplaces operated by residents, in addition to those operated by non-residents.¹⁹

Example 22 – supply of distantly taxable goods through New Zealand-resident marketplace

Frances, a non-resident merchant, sells some books to Anna over an online marketplace. The entity which operates the online marketplace, NZ Marketplace, is a New Zealand resident for tax purposes.

Because the books each individually have an estimated customs value of NZ\$1,000 or less, are to be delivered to an address in New Zealand and the underlying supplier of the books (Frances) is a non-resident, NZ Marketplace is treated as making a supply of distantly taxable goods under section 60C. This means that NZ Marketplace (instead of Frances) is required to return GST on the supply to Anna.

The same outcome would also apply if NZ Marketplace was a non-resident for New Zealand tax purposes. However, if Frances was a New Zealand resident, NZ Marketplace would not be responsible for GST on the supply to Anna.

Discounts provided by marketplace operators

161. New section 10(7D) contains a special valuation rule to deal with the situation where an operator of a marketplace provides discounts for remote services or distantly taxable goods that it is treated as supplying under section 60C or 60D.

¹⁹ An implication of this is that the electronic marketplace rules will technically apply in the situation where a resident underlying supplier makes a supply of remote services through a resident marketplace, thus having the unintended effect of affecting some domestic commercial arrangements that are already covered by existing agency rules. Officials will seek to correct this in a future omnibus tax bill, so that a New Zealand-resident operator of an electronic marketplace will only be treated by section 60C as making a supply of remote services if the underlying supplier is a non-resident. The application date of the planned amendment would be 1 December 2019.

162. Section 10(7D) provides that where an operator of a marketplace is deemed to make a supply of remote services or distantly taxable goods to a recipient who accepts an offer of a discount by the operator, the supply is made for the discounted price. This means that the amount of GST that the marketplace operator would be required to return on the supply would be 3/23 of the total GST-inclusive amount paid by the recipient.

Example 23 – marketplace provides discount for distantly taxable goods sold by underlying supplier

Trev, a non-resident supplier, sells a rugby league jersey to Mali, a consumer in New Zealand. The jersey is listed on the A Co. marketplace for NZ\$50 plus GST if any with free shipping. The GST-inclusive price of the jersey is therefore NZ\$57.50 (NZ\$50 + NZ\$7.50 in GST).

A Co. offers a discount of NZ\$5 on the price of the jersey, which Mali accepts at the checkout before paying for the goods. The final (GST-inclusive) price paid by Mali is therefore NZ\$52.50. However, A Co. pays for the discount, so Trev still receives the GST-exclusive price of NZ\$50.

A Co. is required to calculate the amount of GST on the price paid by Mali (NZ\$52.50). A Co. returns NZ\$6.85 in GST on the supply (being $3/23 \times \text{NZ\$}52.50$).

Bad debt deduction rule

163. An operator of a marketplace may collect GST on a supply it is deemed to make in one of two ways:
- The marketplace operator arranges for the payment from the customer to be split when the payment is processed, with the amount of GST and the marketplace's facilitation fee or commission remitted to the operator, and the sale price (net of GST and the amount of the marketplace's fee or commission on the sale) remitted to the underlying supplier of the goods or services.
 - The customer may pay the underlying supplier directly, and the marketplace operator collects the GST along with its fee or commission from the underlying supplier.
164. In the second scenario, the marketplace operator may at times be unable to collect the GST from the underlying supplier. To prevent marketplace operators in this situation from being liable for GST that they are unable to collect, new section 26AA will allow them to claim a bad debt deduction if:
- the underlying supplier fails to pass on the GST paid to them for the supply; and
 - the operator of the marketplace has written off all amounts for the supply as a bad debt, including its fee or commission on the sale.
165. Section 26AA(1) specifies that the rule would apply to a marketplace operator that is treated by section 60C or 60D as making a taxable supply of goods or services if the underlying supplier of the goods is not an associated person, and the marketplace operator:
- charges the underlying supplier a fee for making the supply through the marketplace;

- accounts for GST on the supply and files a return for the taxable period during which the supply was made;
 - has an agreement with the underlying supplier under which the underlying supplier is required to pay, from the consideration the underlying supplier receives from the customer, an amount that includes the GST on the supply that the marketplace operator has accounted for; and
 - the marketplace operator writes off as a bad debt the entire amount that the underlying supplier is required to pay (along with the entire amount of the marketplace’s fee, if not already included in this amount).
166. Section 26AA(2) provides that the marketplace operator may deduct input tax (or account for a reduction in its output tax, if the marketplace has registered under the simplified “pay only” system, discussed at [36]) equal to the amount of GST charged on the supply.
167. In the situation where the marketplace operator recovers an amount of the bad debt that was written off in an earlier taxable period, section 26AA(3) will require the operator to account for an amount of output tax that is a fraction of the amount of the input tax deduction (or output tax reduction) claimed earlier. This fraction would be calculated by dividing the amount recovered by the total amount written off.

Example 24 – marketplace writes off amount owed by underlying supplier as a bad debt

Derek, a consumer in New Zealand, purchases a vinyl record listed on the A Co. online marketplace from Retro Audio, a non-resident supplier. The price of the record, including shipping (but excluding GST) is NZ\$40.

At the online checkout, Derek provides an address in New Zealand for the goods to be delivered. Consequently, A Co. is deemed to be the supplier of the vinyl record for GST purposes. The supply of the record is a supply of distantly taxable goods subject to GST at the rate of 15%. The GST-inclusive price of the record is therefore NZ\$46 (NZ\$40 + NZ\$6 in GST).

Instead of paying by a method that would provide A Co. with some control over the processing of the payment (such as by credit card), Derek opts to pay Retro Audio directly by internet banking transfer. A Co. has an agreement with Retro Audio that if a customer pays Retro Audio directly, Retro Audio is required to pay A Co. the amount of GST on the sale, along with A Co.’s commission of five percent on the total sale price. The amount of the debt that Retro Audio owes A Co. is therefore NZ\$8.30 (NZ\$6 in GST, plus commission of NZ\$46 × 5% = NZ\$2.30).

Retro Audio defaults in paying the debt to A Co, so A Co. writes off the full amount of NZ\$8.30 as a bad debt. As A Co. returned the NZ\$6 in GST on the supply to Inland Revenue in a previous GST return, A Co. is entitled to claim a bad debt deduction of NZ\$6 in its GST return.

If A Co. subsequently recovered any of the debt in a later taxable period, it would be required to return output tax in its GST return for that taxable period, to the extent of the amount of the recovery. For example, if A Co. managed to collect NZ\$4.15 from Retro Audio, the fraction given by section 26AA(3) would be $4.15 \div 8.30 = \frac{1}{2}$. A Co. would therefore be required to return NZ\$3 in output tax ($\frac{1}{2} \times \text{NZ\$6} = \text{NZ\$3}$).

If, instead of writing off the full amount as a bad debt, A Co. only wrote off a fraction of the amount as a bad debt, A Co. would not be able to claim a bad debt deduction in relation to the supply.

Redeliverers

168. Some non-resident merchants do not provide shipping of goods to New Zealand. New Zealand consumers can, however, use a redeliverer to ship or arrange the shipment of goods to New Zealand.
169. A redeliverer may be a person that provides a “mailbox” service, meaning that they provide the use of an overseas delivery address for consumers purchasing goods from offshore suppliers. These types of redeliverers would receive or collect the goods from the overseas address and deliver the goods to the consumer’s address in New Zealand, or arrange the collection and delivery of the goods to the customer in New Zealand.
170. In some instances, the definition of “redeliverer” may also cover a person that provides personal shopping services to consumers in New Zealand.
171. When consumers use a redeliverer, it is likely that the merchant (or both the merchant and the marketplace operator, if the supply is made through a marketplace) is unaware of the goods’ ultimate destination, and therefore cannot be expected to return GST on the supply. The new rules therefore require redeliverers to collect and return GST in this situation.

Definition of “redeliverer”

172. The definition of “redeliverer” requires that the person who is acting as a redeliverer has an arrangement with the recipient of the goods. Under this arrangement, the person either delivers the goods to New Zealand, or arranges or assists the delivery of the goods to New Zealand, and does one or more of the following:
- provides the use of an address outside New Zealand to which the goods are delivered;
 - arranges or assists the use of an address outside New Zealand to which the goods are delivered;
 - purchases the goods outside New Zealand as an agent of the recipient; or
 - arranges or assists the purchase of the goods outside New Zealand.
173. Personal shoppers that re-sell goods to consumers in New Zealand (as opposed to purchasing goods as an agent of the customer) are not covered by the redeliverer rules as they are considered to be merchants.

Redeliverer rule

174. New section 60E sets out that a person acting as a redeliverer will be treated as supplying distantly taxable goods in the course or furtherance of a taxable activity if all the following conditions are satisfied:
- no operator of a marketplace is treated as the supplier of the goods;
 - the merchant who sold the goods does not deliver, nor arrange or assist the delivery of the goods to New Zealand; and
 - when the redeliverer is treated as the supplier of the goods, the goods that the redeliverer is treated as supplying are distantly taxable goods (meaning that the

goods individually have an estimated customs value of NZ\$1,000 or less²⁰ or, as discussed later at [293] to [310], the redeliverer has elected under new section 10C to charge GST on items with an estimated customs value above NZ\$1,000).

175. This means that a redeliverer will only be treated as the supplier if neither the merchant, nor an operator of a marketplace, delivers or assists in delivering the goods to New Zealand. If either does deliver or assist in delivering the goods to New Zealand, one of these entities will be responsible for GST on the supply instead of the redeliverer. This is consistent with the policy intent that the redeliverer provisions apply in limited circumstances, where the other entities are unaware that the goods will be sent to New Zealand.

Priority rule where multiple redeliverers are involved

176. In some circumstances, more than one person may meet the definition of a redeliverer in relation to a single supply of distantly taxable goods. This would occur when more than one redeliverer is involved in an arrangement to deliver goods to a place in New Zealand. For example, one entity acting as a redeliverer may contract with another entity to purchase the goods as an agent of the consumer.
177. Section 60E(2) contains a priority rule to deal with the situation where multiple redeliverers may be liable for GST on a supply of distantly taxable goods to a consumer in New Zealand. Under this provision, the redeliverer that first enters into an arrangement with the recipient of the goods is treated as making the supply. If no such arrangement exists, the first redeliverer to enter into an arrangement with any other person acting on the recipient's behalf is treated as the supplier and therefore responsible for GST.

Special valuation rule for redeliverers' deemed supplies of goods

178. New section 10(7C) is a special valuation rule for supplies of goods treated by section 60E as being made by a redeliverer. Section 10(7C) provides that the value of a supply of distantly taxable goods by a redeliverer equals the consideration paid by the recipient for the goods before the addition of GST.
179. This rule means that the amount of GST on the supply of goods that the redeliverer would be required to return is equal to 15% of the price paid by the recipient to the supplier for the goods. This recognises that the price charged by the supplier of the goods did not include GST.

Amendment to zero-rating rules for international transportation services

180. Under the existing rules in section 11A(1) of the GST Act, the supply of international transportation and associated insurance services is zero-rated, as are services that are supplied directly in connection with moveable personal property situated outside New Zealand at the time the services are performed. This generally means that services provided by redeliverers (which would largely consist of international transportation

²⁰ In the situation where some of the goods in the transaction have an estimated customs value of NZ\$1,000 or less while other goods in the transaction are valued above NZ\$1,000, the supply would be treated as two separate supplies in the manner described earlier in this special report at [91] if the redeliverer has not made an election to treat items valued above NZ\$1,000 as distantly taxable goods.

and handling, storage and logistics provided in relation to goods that are located offshore, or the arranging or facilitation thereof) are effectively not taxed, as the supply of these services would typically be subject to GST at the rate of 0% under existing rules.

181. New section 11A(1D) provides an exception to this general rule. Section 11A(1D) sets out that paragraphs (a), (c), (cb), (d) and (f) in section 11A(1) do not apply to a supply of services provided by a GST-registered redeliverer if those services are provided in relation to distantly taxable goods that are treated as being supplied by the redeliverer. This means that the redeliverer's services would be taxed in the same way as the goods the redeliverer brings or assists in bringing to New Zealand (as any transportation or associated facilitation services provided by the redeliverer would be taxed at the rate of 15% if they are supplied in connection with a supply by the redeliverer of distantly taxable goods).
182. The value of a supply of distantly taxable goods and related transport and facilitation services by a redeliverer will therefore be equal to:
- the consideration paid by the recipient for the distantly taxable goods before the addition of GST (meaning that the amount of GST on the goods is 15% of the price paid by the recipient for the goods, including any additional charges by the merchant for transport and insurance); plus
 - the consideration for the supply of the redeliverer's services with the addition of GST (meaning that the amount of GST on the supply of the redeliverer's services is 3/23 of the GST-inclusive price paid by the recipient).

Example 25 – redeliverer providing a mailbox service

Matt, a consumer in New Zealand, contracts a redeliverer called C Co. to pick up a laptop bag from a UK address that C Co. provided to Matt and deliver it to his home address in Wellington. Matt paid NZ\$40 for the bag including the amount charged by the merchant for shipping from its retail store in London to C Co.'s UK address.

When arranging for the goods to be redelivered to his Wellington address, Matt tells C Co. that he paid NZ\$40 for the goods. C Co. charges NZ\$15 plus GST if any for its services as redeliverer in bringing the goods to New Zealand.

As the estimated customs value of the laptop bag is less than NZ\$1,000, the laptop bag is considered distantly taxable. C Co. charges Matt NZ\$23.25, comprising:

- NZ\$6 in GST, which is 15% of the NZ\$40 Matt paid the UK supplier for the goods;
- NZ\$15 for C Co.'s redelivery services; and
- NZ\$2.25 in GST, which is 15% of C Co.'s GST-exclusive fee for its services.

C Co. returns NZ\$8.25 in GST to Inland Revenue when it files its GST return.

Example 26 – redeliverer providing a personal shopping service

Marie is a redeliverer who regularly purchases clothes as an agent for Carolyn. Marie facilitates the delivery of the goods into New Zealand by arranging for a freight company to deliver the clothes to Carolyn's address in Oamaru. The USA merchants that sell the clothes have no role in bringing the goods to New Zealand.

Carolyn paid NZ\$720 for a dress that Marie purchased as her agent. This included NZ\$20 for the cost of shipping from the USA merchants to Marie's address overseas. Marie charged Carolyn NZ\$40 (exclusive of GST) for her services as a redeliverer in bringing the dress to New Zealand.

As the estimated customs value of the dress is less than NZ\$1,000 (being NZ\$720), the dress is an item of distantly taxable goods. Marie is registered for GST and determines the supply is a taxable supply.

Marie charges Carolyn NZ\$874, made up of:

- NZ\$720 to reimburse Marie for the purchase of the dress (including the NZ\$20 charge for delivery to Marie's USA address);
- NZ\$108 in GST, which is 15% of the NZ\$720 Carolyn paid for the dress;
- NZ\$40 for Marie's facilitation and delivery services; and
- NZ\$6 in GST, which is 15% of Marie's NZ\$40 GST-exclusive fee for her services.

Marie returns NZ\$114 in GST to Inland Revenue when she files her GST return.

New Zealand-resident agents

183. Amended section 60(1A) and 60(1AB) allows New Zealand-resident agents acting for non-residents that supply distantly taxable goods to consumers to agree with the non-resident principal 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.
184. If this option is exercised, the agent would be required to register and return GST on the supplies of distantly taxable goods. Since the agent is a New Zealand resident they would be treated as any other resident supplier of goods and services and, therefore, would be required to return GST on both supplies to New Zealand consumers and GST-registered businesses.

Example 27 – New Zealand-resident agent treated as making supply of distantly taxable goods

Agent Co., a New Zealand resident, sells low-value imported goods to consumers in New Zealand on behalf of Principal Co., a non-resident merchant. Agent Co. and Principal Co. agree that Agent Co. will be treated as making the supplies of distantly taxable goods.

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 Principal Co. in relation to supplies to both New Zealand consumers and GST-registered businesses.

Preventing double taxation

(Sections 12(1B), (1C), 12B, 20(3)(dd), 24BAB, 24BAC and 25(1)(bb))

Changes to the customs de minimis

185. To simplify border processes and reduce the risk of potential double taxation occurring under the new legislation applying to distantly taxable goods, the Government is proposing changes to the Customs and Excise Regulations 1996. The changes consist of:
- increasing the de minimis (the threshold below which GST and other duties are not collected by Customs at the border) from NZ\$60 of duty owing to a consignment with a customs value over NZ\$1,000; and
 - removing the Import Entry Transaction Fee (IETF) and associated Biosecurity System Entry Levy (BSEL) from consignments with a customs value of NZ\$1,000 or less.
186. This means that from 1 December 2019, Customs will collect GST and other duties, as well as the IETF and associated BSEL on imported consignments valued above NZ\$1,000, but will not collect these charges on consignments valued at or below NZ\$1,000.²¹
187. However, requiring merchants, marketplaces and redeliverers to collect GST on imported goods individually having an estimated customs value of NZ\$1,000 or less – while Customs collects GST on consignments valued over NZ\$1,000 – nonetheless creates the potential for double taxation to occur in some situations. For example, a single consignment could be valued over NZ\$1,000, but contain an item or items that, individually, have an estimated customs value of NZ\$1,000 or less.
188. Double taxation could also potentially arise if goods are sold in a foreign currency and the exchange rate used by the supplier at the time of supply to determine whether the goods are distantly taxable goods differs from that used by the customs broker when completing the import entry. Rules and processes, including requirements for suppliers to provide certain information about GST, are therefore required to prevent double taxation, as well as relieve double taxation in the rare event that it occurs. This section of this special report explains how these rules and processes will operate.

Exception to the collection of GST on importation

189. Under new section 12(1B) and (1C), Customs will not collect GST on items imported in consignments with a combined value over NZ\$1,000 if GST has been charged on the item at the point of sale – provided that Customs is notified that GST has already been paid. Customs will still collect other duty, such as tariff duty, and the IETF and associated BSEL on consignments over NZ\$1,000 if GST has already been charged on all the goods in the consignment at the point of sale, including GST applying to the tariff duty, IETF and BSEL.

²¹ As mentioned earlier, consignments containing alcohol and tobacco products are not subject to the de minimis, so Customs will continue to collect GST and excise taxes on these products regardless of their value.

190. Section 12(1B) sets out that for Customs' purposes of collecting GST on imported goods at the border, the value of distantly taxable goods does not include the following:
- the value of the goods determined in accordance with Schedule 4 of the Customs and Excise Act 2018;
 - the amount paid or payable for transport of the goods to New Zealand and associated insurance; and
 - the amount of levy paid or payable on goods under the Climate Change Response Act 2002.
191. This means that if GST was charged on an item at the point of sale, Customs will not collect GST again on the value of the item or on the amount charged for freight and insurance, but will collect GST on any tariff duty applying to the item if the item is imported in a consignment valued over NZ\$1,000.
192. In order for Customs to identify whether GST has already been charged on an item, the information available to Customs at the time the goods are imported needs to sufficiently identify the items in the consignment on which tax was charged at the point of sale, as well as the name and GST registration number of the registered person who is responsible for returning GST on the supply to Inland Revenue.

Example 28 – consignment of distantly taxable goods with total value above NZ\$1,000

Jason purchases a phone for NZ\$900 and noise cancelling headphones for NZ\$200 (excluding GST) from Kim's Phone Warehouse, a GST-registered non-resident supplier. As both items individually have an estimated customs value below NZ\$1,000, Kim's Phone Warehouse treats the goods as distantly taxable and charges Jason GST on both the phone and the headphones.

The phone and headphones are sent to Jason in a single package with a customs value of NZ\$1,100. As the consignment is over NZ\$1,000, Customs will stop the consignment for revenue collection and collect the Import Entry Transaction Fee and associated Biosecurity System Entry Levy (total fees of NZ\$55.71). However, provided that evidence is made available to Customs in the approved form that GST was already collected by Kim's Phone Warehouse on both the phone and the headphones, Customs will not collect GST on either of the two items in the consignment.

Example 29 – distantly taxable goods subject to tariff duty imported in consignment over NZ\$1,000

Fi purchases two designer label dresses from Snazzy Dresses, a non-resident merchant offering free shipping for orders over NZ\$1,000. One dress is priced at NZ\$400 while the other is priced at NZ\$1,100 (plus GST if any).

Snazzy Dresses is registered for GST and charges GST on the supply of the NZ\$400 dress to Fi (as the supply of the NZ\$400 dress is a taxable supply of distantly taxable goods, but the NZ\$1,100 dress is not an item of distantly taxable goods).

The dresses are sent to Fi in a single package with a customs value of NZ\$1,500. As the consignment is over NZ\$1,000, Customs will stop the consignment for revenue collection and collect the Import Entry Transaction Fee and associated Biosecurity System Entry Levy of NZ\$55.71. Evidence is made available to Customs in the approved form that GST was already collected by Snazzy Dresses on the NZ\$400 dress, so Customs only collects GST on the NZ\$1,100 dress of NZ\$165 ($\text{NZ\$1,100} \times 15\% = \text{NZ\$165}$).

However, because both dresses are subject to tariff duty of 5%, Customs will also collect tariff duty (including GST applying to the tariff duty) on both dresses. The amount of the tariff duty excluding GST is NZ\$75 ($\text{NZ\$1,500} \times 5\% = \text{NZ\$75}$) and the amount of GST applying to the tariff duty is NZ\$11.25 ($\text{NZ\$75} \times 15\% = \text{NZ\$11.25}$).

The total amount that Fi will pay to Customs is NZ\$306.96 (NZ\$55.71 in cost recovery charges + NZ\$165 in GST on the NZ\$1,100 dress + NZ\$75 in tariff duty excluding GST + NZ\$11.25 in GST on the tariff duty).

Example 30 – difference in exchange rate used by supplier and that used by Customs

Fi later purchases a 60" ultra-high definition television for AU\$950 from Earl's Electronics, a non-resident merchant. At the time of sale, Earl's Electronics estimates that the customs value of the television is NZ\$998.41, based on a "buy NZD" exchange rate of AU\$0.9515 / NZ\$1. As the estimated customs value at the time of supply is below NZ\$1,000, Earl's Electronics charges Fi GST at the point of sale.

When completing the import documentation, the customs broker converts the AU\$950 figure to New Zealand dollars using the exchange rate published by Customs of AU\$0.9307 / NZ\$1. Based on this exchange rate, the customs broker calculates the customs value to be NZ\$1,020.74 and enters this as the value in the import entry.

As the customs value of the consignment is above NZ\$1,000, Fi is required to pay the Import Entry Transaction Fee and associated Biosecurity System Entry Levy of NZ\$55.71. However, as evidence was made available to Customs in the approved form that GST was already collected by Earl's Electronics, Customs will not collect GST.

Receipt requirement

193. New section 24BAB requires suppliers to issue receipts for supplies of distantly taxable goods if the supplier has charged GST at the rate of 15% on the supply. The purpose of this requirement is to provide the recipient of the supply with a document that they can provide to Customs as evidence that GST was charged at the point of sale, so that Customs does not collect GST again when the goods are imported into New Zealand.
194. The requirement to provide a receipt is not the sole mechanism for preventing double taxation under the new rules. Rather, it serves as a back-up safeguard against double

taxation in the situation where the primary mechanism (discussed below at [204] to [211]) either fails or, in some cases, may not be feasible under current systems.

Particulars required to be included in the receipt

195. Unless alternative particulars are agreed with the Commissioner of Inland Revenue, section 24BAB requires that the receipt contains the following:

- the name and registration number of the supplier;
- the date of the supply;
- the date of issue of the receipt (if different from the date of the supply);
- a description of the goods supplied;
- the consideration for the supply and the amount of tax included;
- information indicating the items for which tax has been charged; and
- information indicating the items that have not had tax charged.²²

196. If GST has been charged on all of the goods included on the receipt, the last two requirements can be met by including the total GST-inclusive price and stating that this price includes GST (or alternatively by including the amount of GST for each of the goods). However, if GST was charged on only some of the goods supplied, these requirements can be met by including the amount of GST for each of the goods.

197. The amounts shown on the receipt are not required to be in New Zealand dollars.

Option to issue a document that meets the requirements of both a receipt and a full tax invoice

198. Under the special rule in new section 8(4F) (explained later at [311] to [318]), some non-resident suppliers of distantly taxable goods may opt to proactively issue a full tax invoice for all supplies of distantly taxable goods that they make, regardless of whether the customer is a private consumer or a GST-registered business using the goods in its taxable activity.

199. The benefit of this is the non-resident supplier can issue a single document to its New Zealand customers that meets the requirements of both a full tax invoice and a receipt required to be issued to a consumer for a supply of distantly taxable goods, provided the conditions of section 8(4F) (including the requirement that the value of the supply is NZ\$1,000 or less) are met.

200. The requirements of a full tax invoice are broadly similar to those set out in section 24BAB(2) for a receipt required to be issued to a consumer for a supply of distantly taxable goods – the main differences being the requirements for a tax invoice to include the words “tax invoice” in a prominent place, the name and address of the recipient and the quantity or volume of the goods and services supplied.

²² Officials will seek to include an amendment in a future taxation bill so that the supplier is not required to state the amount of tax included on the receipt, as this requirement does not appear to be necessary given the last two requirements in this list. The suggested amendment would be retrospective to 1 December 2019.

201. Table 2 sets out the respective requirements of a full tax invoice under section 24(3) and of a section 24BAB receipt.

Table 2: Requirements for receipts and full tax invoices

Item	Section 24BAB receipt	Tax invoice
Words "tax invoice"	No	Yes
Name of the supplier	Yes	Yes
Registration number of the supplier	Yes	Yes
Name and address of the recipient	No	Yes
Date of supply	Yes	No
Date of issue	Yes	Yes
Description of goods	Yes	Yes
Quantity or volume of goods supplied	No	Yes
Amount of consideration	Yes	Yes
Amount of tax included	Yes – but see footnote 22	Yes – unless the total amount of tax is 3/23 of the consideration, in which case a statement that the consideration includes a charge in respect of tax is sufficient
Indication of which items had GST charged	Yes	No

10-day requirement for issue of receipt

202. Section 24BAB requires that a receipt (or combined tax invoice and receipt) as described above is issued to the recipient at the time of supply. However, if the supplier has not issued a receipt at the time of supply and the recipient requests a receipt, the supplier would be required to issue one within 10 business days after the request.
203. Under new section 143A(1)(fb) of the Tax Administration Act 1994, a supplier who knowingly fails to issue a GST receipt within ten business days of such a request commits a knowledge offence, for which penalties (both civil and criminal) may apply.

GST information to be included on import documents

204. In addition to the requirement outlined above to issue GST receipts, new section 24BAC requires suppliers of distantly taxable goods to take reasonable steps to ensure that relevant GST information is available to Customs at the time of importation of the goods.

205. That information consists of:

- the name and registration number of the supplier;

- information indicating which items in the consignment have had GST charged at the point of sale at the rate of 15%, if applicable; and
- information indicating the items in the consignment for which the amount of GST is zero.

206. If GST was not charged on some items in the transaction, these items must be identified to meet the above requirements. This would allow the new rules in section 12 that prevent double taxation to operate effectively, as GST on importation will only be “switched off” if GST has been charged on the item at the point of sale.

What “reasonable steps” means for merchants and marketplaces that fulfil orders, and redeliverers

207. For non-mail items (goods brought to New Zealand through the freight channel), a supplier who is either the merchant that sold the goods, a redeliverer, or an operator of a marketplace undertaking the fulfilment²³ of the order from the customer, would meet the requirement to take reasonable steps by:

- providing the GST information listed above to the transporter or customs broker in the country of export (one way that the supplier could do this is by including the receipt or tax invoice for the goods in the commercial documentation provided to the transporter or customs broker); and
- asking the transporter or customs broker in the country of export to make sure the information is provided to the transporter or customs broker in New Zealand that will complete the import documentation on behalf of the importer.

What “reasonable steps” means for marketplaces that do not fulfil orders

208. The “reasonable steps” requirement differs somewhat for an operator of a marketplace who is treated as making a supply of distantly taxable goods in the situation where the order is fulfilled by the underlying supplier. In this situation, the marketplace operator would meet the reasonable steps requirement by including GST information on commercial documentation and instructing the underlying supplier to pass this information through the logistics chain on their behalf. As above, this requirement would only apply in relation to non-mail items.

Role of transporters and customs brokers

209. The transporter or customs broker completing the import documentation would report the GST information provided by the supplier or merchant into the Trade Single Window. Transporters and customs brokers only need to report this information into the Trade Single Window if it is provided to them. If this information is not provided, they are not required to take extra steps to source this information and will still be able to report the goods into the Trade Single Window for customs clearance.

210. A field for the supplier’s GST registration number will be added into the Trade Single Window. The required format of the number is nine digits as a single string without separators.

²³ “Fulfilment” of an order is used here in reference to the party (merchant or marketplace operator) that ships or arranges the shipping of the goods to the customer.

211. The information about which goods have and have not had GST charged at the point of sale will be reported into the Trade Single Window by way of a “GST paid” indicator. The format of this indicator is a “Yes” (Y) or “No” (N) response.

Goods brought to New Zealand by international post

212. Current systems may not fully accommodate the transmission of information relating to goods delivered to New Zealand by international post. Therefore, issuing the customer a receipt (as required under section 24BAB) will be sufficient in the meantime to meet the reasonable steps requirement.²⁴
213. In the situation where the value of the consignment is over NZ\$1,000, the consumer should hire a customs broker to complete the import documentation and arrange the clearance of the goods. To ensure that GST is not paid twice on the same goods, the consumer should provide their receipt to the customs broker as evidence that GST was charged at the point of sale.²⁵

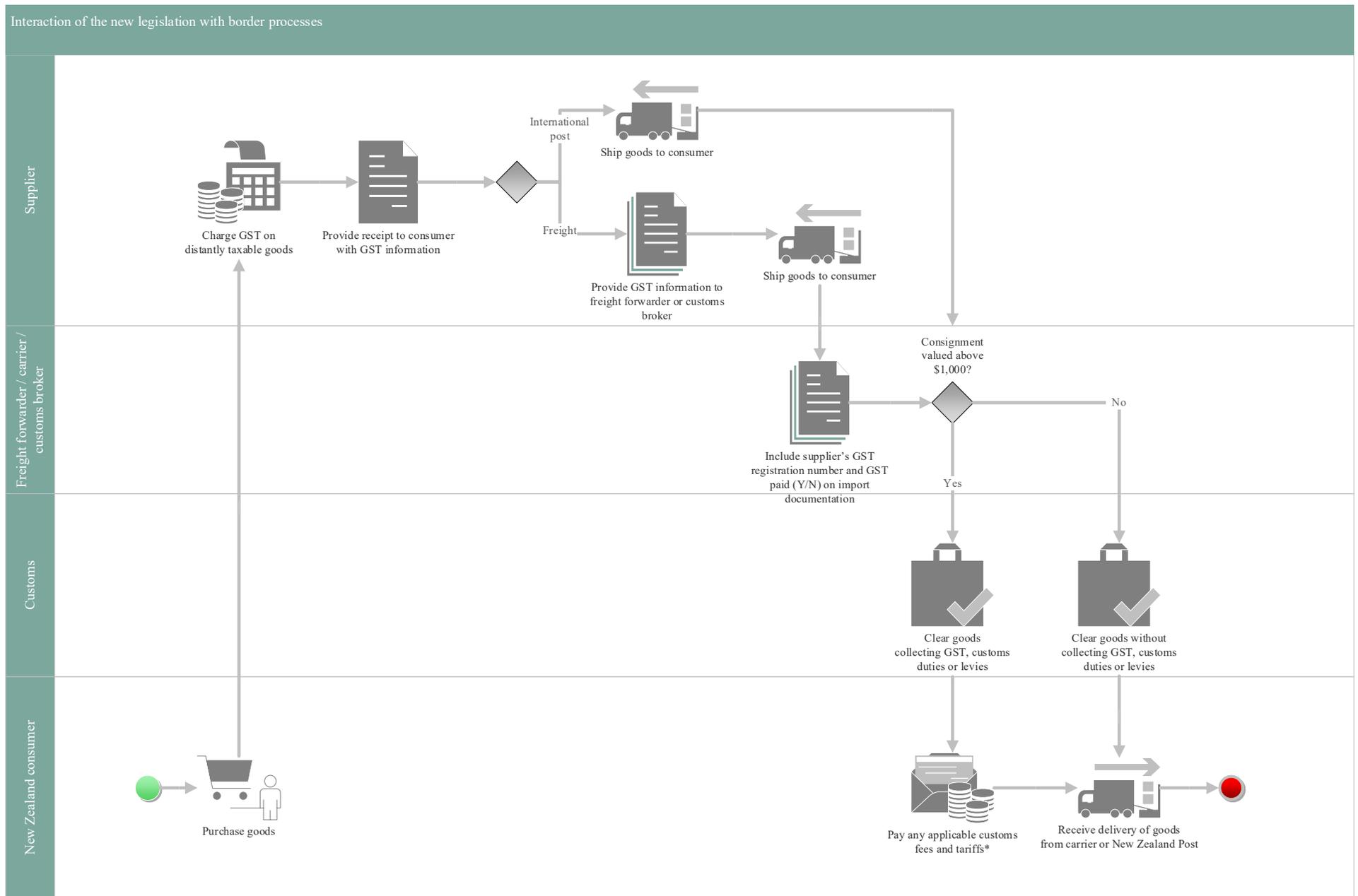
Penalties for knowingly failing to take reasonable steps

214. Under new section 143A(1)(fc) of the Tax Administration Act 1994, a supplier would commit a knowledge offence if they knowingly fail to take reasonable steps to ensure that tax information is available to Customs at the time the goods are imported. Administrative penalties under the Customs and Excise Act 2018 may also apply in relation to an error or omission in an import entry that has been lodged with Customs.

²⁴ What will constitute reasonable steps in relation to mail items might change in the future, owing to the increased availability of electronic advance data in the international postal network that is expected to occur over the next few years.

²⁵ This recommendation also applies in the situation where GST information required to be provided by the supplier in relation to goods imported by freight has not been passed on to the person completing the import documentation. In other words – assuming the consumer was charged GST by the supplier and obtained a receipt – the consumer should provide their receipt to the carrier or customs broker when they are contacted by the carrier or broker to arrange clearance of the goods to avoid paying GST twice.

Figure 3: Interaction of the new legislation with border processes



*Customs or the freight carrier bills the consumer for the Import Entry Transaction Fee, associated Biosecurity System Entry Levy and any applicable duty (such as tariff duty). Applicable tariff duty will be collected, even on items that had GST charged at the point of sale. However, the consumer will only pay GST on goods that did not have GST charged at the point of sale.

Refunds when double taxation occurs

215. Where the relevant GST information is not available to Customs, GST will be collected on importation by Customs on the entire value of a consignment over NZ\$1,000 (as determined in accordance with existing section 12(2)). If some or all the goods in the consignment have already had GST charged at the point of sale, the consumer will need to request a refund of the GST from the supplier.
216. If a consumer requests a refund of the GST charged by the supplier, and the supplier has received a declaration from the recipient or some other confirmation that GST was paid on importation, the supplier will be required to issue a refund of the GST that was charged on the supply (new section 12B). If the supplier complies with this requirement, new section 25(1)(bb) allows the supplier to subtract the amount of GST refunded from its output tax (GST payable) in its GST return.

Mistakes where GST has been incorrectly charged on a supply

217. New sections 12B and 25(1)(bb) would also apply in the situation where a supplier has incorrectly charged GST on a supply of imported goods that is not a supply of distantly taxable goods (for example, because the goods individually have estimated customs values above NZ\$1,000). This means that a supplier in this situation will be required to refund the GST they charged if the recipient has requested a GST refund and the supplier has received a declaration from the recipient (or some other confirmation that GST was paid on the importation of the goods).
218. As above, the supplier will only be entitled to make the adjustment under section 25(1)(bb) if:
- they have reimbursed the recipient for the GST charged; and
 - the supplier has received a declaration from the recipient or other confirmation that GST was paid to Customs on importation.

Non-double taxation rule

219. New section 20(3)(dd) prevents double taxation from arising on supplies of distantly taxable goods by allowing a deduction that offsets the supplier's liability for GST in New Zealand, to the extent that the supply is subject to a consumption tax in another jurisdiction.
220. Section 20(3)(dd) provides a deduction for the New Zealand GST charged when:
- there is a supply of distantly taxable goods to a person in New Zealand who is not a GST-registered person; and
 - the supplier has, in relation to the supply, incurred liability for, returned and paid a consumption tax in another jurisdiction.
221. The deduction is limited to the GST paid on the supply in New Zealand (15%) and to the extent tax is returned and paid in the other country.

Example 31 – non-double taxation rule in section 20(3)(dd)

Mike, a consumer in New Zealand imports some shirts from a supplier based in Country A, who ships the goods from its warehouse in Country A. The supplier is registered for VAT in Country A and is also registered for GST in New Zealand.

In order for the supplier to charge Country A's VAT at a rate of zero percent on the supply to Mike, VAT legislation in Country A requires the supplier to export the goods within 21 days of the date of the supply. The supplier does not manage to export the goods within this timeframe and is therefore required to charge Country A's VAT at the rate of 20%. In addition, the goods are all distantly taxable goods, so the supplier is also required to charge New Zealand GST at the rate of 15% on the supply.

The non-double taxation rule in section 20(3)(dd) allows the supplier to make an input tax deduction up to the amount of New Zealand GST returned on the supply (15%) if the supplier has returned and paid VAT to Country A.

If Country A's VAT rate was instead 10%, the supplier would only be entitled to an input tax deduction of 10%.

Vouchers

(Section 5(11G))

222. In the situation where a face value token, stamp or voucher is redeemed for distantly taxable goods or remote services, new section 5(11G)(a) clarifies that the supplier of the token, stamp or voucher may treat the supply of goods and services that the token, stamp or voucher is redeemed for as the relevant supply for GST purposes. This means that the seller of a face value voucher would have the option of treating GST as applying on the redemption of the voucher, if the voucher is (or could be) redeemed for remote services or distantly taxable goods. This option to treat the supply as arising on the redemption of the voucher would apply regardless of whether the issuer or seller of the voucher is a different person to the supplier of the goods and services that the voucher is redeemed for.
223. The introductory wording of section 5(11G) has been amended to clarify that if GST is payable on the redemption of a voucher, the party redeeming the voucher for goods and services (or treated as making the supply of goods and services) is responsible for returning the GST.

Example 32 – seller of voucher opts to use redemption basis

Wendy purchases a voucher with a face value of NZ\$50 from A Co. as a gift for her son Karl who lives in Dunedin, New Zealand. The voucher can be redeemed with any merchant on the A Co. marketplace.

A Co. chooses to treat the supply for GST purposes as arising on the redemption of the voucher (instead of the sale of the voucher). This means that GST will apply when Karl redeems the voucher for goods and services, and not on the sale or issue of the voucher itself.

Karl redeems the voucher with a non-resident merchant on the A Co. marketplace by purchasing NZ\$50 worth of distantly taxable goods. Because A Co is treated by section 60C as the supplier of the goods, it is required to return NZ\$6.52 in GST ($3/23 \times \text{NZ\$}50 = \text{NZ\$}6.52$) on the redemption of the voucher.

If A Co. was not treated as the supplier, the underlying supplier would (if registered for GST or required to register for GST) instead be required to return GST on the supply.

Converting foreign currency amounts to New Zealand dollars

(Sections 77(2), (3) and (5))

224. 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.
225. Section 77(2) has been amended to provide non-resident suppliers of distantly taxable goods with the option of expressing amounts in a foreign currency at the time of supply.

Currency conversion to determine whether GST applies

226. In accordance with new section 77(5), suppliers of distantly taxable goods may use the spot exchange rate applying at the time of supply, or a currency conversion method approved by the Commissioner of Inland Revenue when determining the value of goods under section 10B. The method approved by the Commissioner for this purpose is set out below.

Exchange rates that may be used

227. Under the approved method, a supplier may use any one of the following exchange rates:
- the rate published by the New Zealand Customs Service;
 - the Reserve Bank of New Zealand (RBNZ) rate, or a reference rate published by another central bank;²⁶

²⁶ “Another central bank” refers to a central bank or monetary authority outside New Zealand that exercises functions that correspond with, or are similar to, the RBNZ. This would include organisations such as the Reserve Bank of Australia, the Federal Reserve and the European Central Bank.

- an exchange rate provided by a foreign exchange organisation²⁷ or foreign exchange data vendor.
228. “Exchange rate” for these purposes means the unit of foreign currency per New Zealand dollar, which has been published within 30 calendar days of the conversion time. If a rate other than the most recently published rate is used, the practice for sourcing the rate must be consistent.
229. Other than the requirement that a supplier’s chosen exchange rate be used consistently (discussed below), there are no restrictions on the specific type of exchange rate (sell NZD, buy NZD, or midpoint rate) that suppliers may use for converting foreign currency amounts. This means that suppliers would have a choice of using a sell NZD rate, a buy NZD rate or a midpoint rate when converting foreign currency amounts to establish whether GST applies.

Currency conversion formula

230. In working out the estimated customs value of goods, suppliers can convert foreign currency to New Zealand dollars using the following formula:

(Amount expressed in a foreign currency) ÷ (the supplier’s chosen exchange rate on the conversion day)

Sourcing exchange rates and updating business systems

231. A supplier may adopt a practice of updating their business systems with the particular rate they have chosen from the source data according to a schedule set by them. This schedule must be consistent in terms of the frequency and time of setting the rate. The maximum period permitted under such a schedule is 30 calendar days. A supplier cannot test and select a more favourable exchange rate at other times, or decide not to accept the published rate at the scheduled time of setting.
232. A supplier may only change their exchange rate or their schedule for sourcing and updating the exchange rate in their systems if they have sound commercial reasons for doing so. For instance, if a supplier changes the exchange rate they use with the purpose of affecting whether goods are distantly taxable, the supplier will not have used the rate consistently and, accordingly, will not have followed the currency conversion method approved by the Commissioner. However, different exchange rates may be used for distinct parts of the supplier’s business, provided the exchange rate chosen for each respective part of the business is used consistently within that part.

²⁷ A “foreign exchange organisation” means an organisation that provides exchange rates publicly.

Example 33 – supplier using exchange rate published by New Zealand Customs

Pilko's Phones & Electronics (Pilko) is a non-resident merchant that supplies consumer electronics such as tablets and mobile phones. It prices goods in USD. Pilko is registered for GST in New Zealand under the rules applying to supplies of distantly taxable goods.

To determine the estimated customs value of an item at the time of sale, Pilko has its point of sale systems set up to convert USD to NZD using the exchange rate published by the New Zealand Customs Service.

Customs publishes its exchange rates fortnightly, 11 calendar days in advance of when they come into effect. Pilko has a practice of sourcing the most recently published exchange rate and updating the exchange rate in its point of sale systems seven days after the exchange rate was published on the Customs website.

This currency conversion method is Commissioner-approved. The schedule set by Pilko for sourcing the exchange rate and updating its systems is consistent in terms of its frequency and time of setting the rate. The time between setting the previous rate and updating the rate is 14 calendar days (within the 30-day maximum). Under Pilko's schedule, the maximum possible length of time between the publication date and the time of conversion is 21 calendar days. This is within the 30-day maximum.

Example 34 – supplier using midpoint exchange rate published by retail bank

Witte Fashion Co. (Witte) is a non-resident merchant that supplies high-end clothing. It prices goods in AUD. Witte is registered for GST in New Zealand under the rules applying to supplies of distantly taxable goods.

To determine the estimated customs value of an item at the time of sale, Witte has its point of sale systems set up to convert AUD (being the currency the goods Witte sells are priced in) to NZD using a mid-point rate published by a bank.

The bank publishes the close-of-trading foreign exchange rates from the previous day each morning (except for Saturdays and Sundays). Witte has a practice of sourcing the most recently published exchange rate and updating the exchange rate in its point of sale systems once every four weeks on a Tuesday.

This currency conversion method is Commissioner-approved. The schedule set by Witte for sourcing the exchange rate and updating its systems is consistent in terms of its frequency and time of setting the rate, and the time between setting the previous rate and updating the rate is 28 calendar days (within the 30-day maximum). Under Witte's schedule, the maximum possible length of time between the publication date and the time of conversion is 28 calendar days. This is within the 30-day maximum.

Example 35 – currency conversion to determine whether goods are distantly taxable

Consider Witte Fashion Co. (Witte) in the previous example. Witte sells a suit valued at AU\$880 to Gordon, plus AU\$50 for shipping to Gordon's address in Wellington, New Zealand.

At the time of the sale, the midpoint exchange rate used in Witte's systems for estimating the customs value of items sold is AU\$0.9270 to NZ\$1. Based on this, Witte determines that the estimated customs value of the suit in New Zealand dollars is NZ\$949.30 (AU\$880 / AU\$0.9270 = NZ\$949.30).

As the estimated customs value is less than NZ\$1,000, the suit is distantly taxable. Witte charges Gordon GST of AU\$139.50 (AU\$930 × 15%).

Currency conversion when determining the amount of GST payable

233. When converting foreign currency amounts to New Zealand dollars to determine the amount of GST required to be returned, section 77(3) provides that a supplier can use the conversion rate applying on either:
- the last day of the relevant taxable period;
 - the date the supplier files their return for the relevant period (or the due date for filing, if the return is filed past the due date); or
 - another date as agreed with the Commissioner of Inland Revenue.
234. If the supplier elects to use an option other than expressing amounts in New Zealand currency at the time of supply, they may not change their method for a period of 24 months, unless they agree otherwise with the Commissioner.

Example 36 – currency conversion to determine amount of GST to be returned in New Zealand dollars

Consider Witte Fashion Co. (Witte) again. At the time of preparing its GST return, Witte determines that the total amount of GST it charged for the most recent taxable period is AU\$9,000.

Witte has elected to use the exchange rate applying on the date that it files its GST return to determine the amount of GST to be returned to Inland Revenue in New Zealand dollars. The exchange rate applying on the date that Witte files its return is AU\$0.9294 / NZ\$1.

The amount of GST returned by Witte in its GST return is NZ\$9,683.67 (AU\$9,000 / AU\$0.9294 = NZ\$9,683.67).

Witte must use this method for 24 months. It must convert GST from AUD to NZD on the date it files each GST return (or the due date if a return is filed late).

Methods for electronic marketplaces and redeliverers to determine GST treatment of supplies

(Sections 60F and 60G)

235. As discussed earlier at [138] and [174], new sections 60C and 60E treat operators of electronic marketplaces and redeliverers as supplying goods that are actually sold by third party merchants, but only if the goods are destined for a delivery address in New Zealand, and – in the specific case of marketplace operators – if the underlying supplier of the goods is a non-resident.
236. In some situations, an electronic marketplace operator or redeliverer may not have the precise information that is required to determine the GST treatment of a supply of goods, as this information may only be available to the underlying supplier and/or the recipient. In these situations, the electronic marketplace operator or redeliverer will need to rely on information collected from the underlying supplier or the recipient to determine the GST treatment of these supplies.

237. New section 60G sets out a range of methods for redeliverers and operators of electronic marketplaces to use when determining if they are the supplier of distantly taxable goods under section 60C, and/or the amount of GST required to be returned on a supply of distantly taxable goods. These methods (which are all based on information that may be commercially available to redeliverers or operators of electronic marketplaces) are explained below.

Electronic marketplaces – methods for determining residency of underlying suppliers

238. An operator of an electronic marketplace that does not know the residency of an underlying supplier²⁸ is required by section 60G(3) to treat the underlying supplier as a non-resident, unless the marketplace operator has any of the following:

- information that the underlying supplier is a company that is incorporated in New Zealand or has its centre of management in New Zealand (see section 60G(3)(b)(i));
- a New Zealand business number for the underlying supplier (see section 60G(3)(b)(ii)); or
- at least two of any of the following items of information that support the conclusion that the underlying supplier is a New Zealand resident (see section 60G(3)(b)(iii) and (6)):
 - an address of a physical location for the underlying supplier, such as a mailing or billing address;
 - a New Zealand GST registration number for the underlying supplier;
 - bank details (including the account the underlying supplier uses for making payments, or the billing address held by the bank, or the account to which the marketplace operator makes payments of amounts owed to the underlying supplier);
 - the internet protocol (IP) address of the device used by the underlying supplier or another geolocation method;
 - the mobile country code of the international mobile subscriber identity stored on the subscriber identity module (SIM) card used by the underlying supplier;
 - the location of the underlying supplier’s fixed land line;
 - the location from where the goods are shipped; or
 - other commercially relevant information.

239. It might be the case that neither of the first two proxies indicate that the underlying supplier is resident in New Zealand, but the evidence under the third proxy is mixed

²⁸ In some cases, a marketplace operator may already know with absolute certainty the residency status of an underlying supplier, or may otherwise have good reasons to consider that the underlying supplier is very unlikely to be a tax resident of New Zealand. In such cases, the marketplace operator will not need to take steps to determine the underlying supplier’s residency status. For example, some marketplaces may only list goods offered for sale by merchants based in a particular geographic region. In other cases, the underlying supplier may be a related entity of the marketplace operator, or there may be publicly available information about the underlying supplier from which a clear conclusion about the tax residency status of the underlying supplier can be drawn (for example, the underlying supplier is a company that was incorporated in New Zealand, and therefore will be a New Zealand resident under the GST Act).

(that is, the marketplace operator has more than one set of information listed under section 60G(6), where one set indicates that the underlying supplier is resident in New Zealand and the other set indicates that the underlying supplier is a non-resident). In this situation, the marketplace operator is required to choose the more reliable set of evidence. Which specific items of evidence are considered to be more reliable will depend on the circumstances.

Example 37 – methods for determining residency of underlying supplier

Gardening Tools Co. sells a pair of gardening gloves to Maraina over the A Co. marketplace. Maraina provides a New Zealand delivery address at the checkout.

A Co. does not have any information that would suggest that Gardening Tools Co. is a New Zealand resident for tax purposes. The mailing and billing address, IP address and bank details that A Co. has for Gardening Tools Co. all suggest that Gardening Tools Co. is resident in the United States. A Co. also has information that the goods are shipped from China.

Without there being any information that would lead A Co. to conclude that Gardening Tools Co. is a New Zealand tax resident using any of the three proxies listed under section 60G(3), A Co. is required to treat Gardening Tools Co. as a non-resident (meaning that A Co. is responsible for returning GST on supplies made on its marketplace by Gardening Tools Co. to consumers in New Zealand, including the supply of gardening gloves to Maraina).

If A Co. had either a New Zealand business number for Gardening Tools Co. or information that Gardening Tools Co. is a New Zealand-incorporated company, A Co. would be required to treat Gardening Tools Co. as a New Zealand resident (meaning that A Co. would not be responsible for returning GST on supplies made by Gardening Tools Co). Alternatively, if Gardening Tools Co. had at least two pieces of non-contradictory information listed under section 60G(6) (such as a mailing or billing address or bank details) indicating that Gardening Tools Co. is a New Zealand resident, and did not have two or more pieces of information leading to the opposite conclusion and which are considered to be more reliable, A Co. would be required to treat Gardening Tools Co. as a New Zealand resident.

Exception to electronic marketplace rule for underlying suppliers that are both resident and non-resident

240. New section 60C(2C) contains a limited exception to the electronic marketplace rule in section 60C. Section 60C(2C) provides that an operator of an electronic marketplace will not be treated as the supplier of goods sold by a non-resident underlying supplier if all the following conditions are met:
- the underlying supplier of the goods is a non-resident for income tax purposes that has a branch in New Zealand;
 - the operator of the marketplace treats the underlying supplier as a New Zealand resident in relation to the supply (meaning that the operator does not return GST on the supply); and
 - in treating the underlying supplier as a New Zealand resident, the operator of the marketplace relies on a method for determining the underlying supplier's residency that is set out in section 60G, or on an alternative method agreed with or prescribed by the Commissioner under section 60G(7) (discussed at [249]).
241. This exception ensures that the underlying supplier is liable for GST where the marketplace operator has used a section 60G method to determine that it is not the supplier of the goods for GST purposes.

Example 38 – non-resident underlying supplier with New Zealand branch treated by marketplace as resident

Clothes ‘N’ Stuff Pty Ltd is an Australian-incorporated company that is non-resident for income tax purposes. It sells goods in New Zealand through its retail outlet in Auckland. Because it has a retail outlet in Auckland through which it carries on a taxable activity, Clothes ‘N’ Stuff is treated as a New Zealand resident for GST purposes to the extent of the activity carried on through the Auckland retail outlet and accordingly is registered for GST in New Zealand.

Clothes ‘N’ Stuff also sells goods to customers in Australia and New Zealand through the A Co. online marketplace. In most cases the goods are shipped directly from a warehouse in Sydney, but in some cases goods sold to a New Zealand customer may instead be sourced from the retail outlet in Auckland in order to provide faster delivery times.

A Co. has on record a New Zealand GST registration number for Clothes ‘N’ Stuff, as well as the physical address of the Auckland retail outlet and the fixed landline number for the Auckland retail outlet. On the basis of the information that it holds and in accordance with the requirements in section 60G, A Co. determines that Clothes ‘N’ Stuff is a New Zealand resident for GST purposes. A Co. therefore does not collect and return GST on Clothes ‘N’ Stuff’s supplies to consumers in New Zealand.

Although Clothes ‘N’ Stuff is likely to be a non-resident in relation to most of the supplies it makes through the A Co. marketplace (insofar as this sales activity is unrelated to the Auckland retail outlet), the liability for New Zealand GST on any supplies of distantly taxable goods to consumers in New Zealand would remain with Clothes ‘N’ Stuff. This is because section 60C would not apply to treat A Co. as the supplier of the goods (owing to the exception in section 60C(2C)).

Electronic marketplaces – proxies for determining if delivery address is in New Zealand

242. While it is expected that operators of electronic marketplaces will generally have information about the delivery address for a supply of goods, there may be some instances where the recipient of the goods does not provide the delivery address through the marketplace but instead communicates with the underlying supplier through another medium. In this situation, the best that an operator of an electronic marketplace may be able to do is to rely on proxies for determining the country or territory that the recipient’s delivery address is most likely to be in, based on the information that it does have.
243. Under section 60G(4) and (6), an electronic marketplace operator that does not know the address to which the goods are to be delivered is required to determine whether a supply of goods is made to the recipient at a place in New Zealand on the basis of two non-conflicting pieces of evidence (similar to the rule in section 60G(3)(b)(iii) for determining the residency of an underlying supplier and in section 8B(2) for remote services).
244. Section 60G(6) provides a list of indicators that can be used for these purposes:
- an address of a physical location for the recipient, such as a mailing or billing address;
 - bank details (including the account the recipient uses for making payments, or the billing address held by the bank, or the account to which the marketplace operator makes payments of amounts owed to the recipient, if applicable);

- the internet protocol (IP) address of the device used by the recipient or another geolocation method;
 - the mobile country code of the international mobile subscriber identity stored on the SIM card used by the recipient;
 - the location of the recipient's fixed land line;
 - other commercially relevant information.
245. Electronic marketplace operators can use one or more pieces of other commercially relevant information to determine whether a person is located in New Zealand, rather than using the specific indicators listed. This information may include the recipient's trading history (such as a previous billing address) 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, may also be used.
246. Section 60G(4)(a)(ii) contains a tie-breaker rule to address the situation where the marketplace operator has more than one set of evidence that meets this test, where one set supports the conclusion that the recipient is located in New Zealand and the other supports the opposite conclusion. In this situation, the marketplace operator is required to choose the more reliable set of evidence.

Example 39 – method for determining location of recipient

Dave purchases a GPS from an Australian merchant over the Electronic Marketplace Co platform. Dave has not provided his delivery address to the merchant through the Electronic Marketplace Co platform, but instead provided his delivery address to the merchant via email.

Electronic Marketplace Co collects two pieces of evidence that support the conclusion that Dave is located in New Zealand – his credit card information and the records of his delivery addresses from his purchase history on Electronic Marketplace Co over the past year.

Electronic Marketplace Co also has two pieces of evidence that suggest Dave is located in the United States – his IP address and a landline phone number (the latter of which has not been updated in Dave's trader profile since 2016). Section 60G(3) requires Electronic Marketplace Co to use the set of evidence that is more reliable to determine whether GST applies in New Zealand.

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

Redeliverers – default method for determining estimated customs value of goods

247. Section 60G(5) contains a default rule for redeliverers to determine the estimated customs value of goods that they bring or assist in bringing to New Zealand. The default rule applies to a redeliverer who is not responsible for the purchase of goods that it brings or assists in bringing to New Zealand in its capacity as a redeliverer. This rule requires the redeliverer to:
- prior to the delivery of the goods to a place in New Zealand, obtain a declaration from the recipient of the amount paid for the goods; and

- obtain a receipt or invoice issued by the merchant or other confirmation by the merchant of the amount paid for the goods.
248. The second requirement above is not intended to require the redeliverer to have any interaction with the merchant who sold the goods. If the merchant has included an invoice in the package in which the goods were shipped to the redeliverer, checking the amount of consideration shown on the invoice against the amount declared by the recipient would be sufficient to satisfy the second requirement. Similarly, this requirement would also be met if the redeliverer requires the recipient to provide the receipt or invoice issued by the merchant.

Commissioner discretion to agree or prescribe alternative methods

249. In some instances, a redeliverer or an operator of an electronic marketplace may not have sufficient commercially available information to apply the default methods described above. In other cases, another potential method for determining the GST treatment which is not covered by the default rules may be more reliable than the default method, or may reduce compliance costs without resulting in a material under- or overpayment of GST.
250. To provide more flexibility, new section 60G(7) allows the Commissioner of Inland Revenue to prescribe or agree to methods for marketplace operators and redeliverers to make conclusions relevant to whether they are treated by section 60C or 60E as making a supply of distantly taxable goods in the course or furtherance of a taxable activity, and/or determine the amount of GST payable.
251. An agreement with the Commissioner under section 60G(7) may cover requirements for the amount of information that the marketplace operator or redeliverer is required to obtain, as well as methods for checking the accuracy of the information and the conclusions drawn from the information.
252. Allowing the Commissioner to prescribe or agree on alternative methods minimises compliance costs for marketplace operators and redeliverers while also assuring Inland Revenue that the methods used to determine the GST treatment of supplies broadly achieve the correct result. The intention is not that marketplace operators and redeliverers should have to collect extra information beyond what is already commercially available to them under their existing business processes. To the extent possible, an agreed or prescribed method should instead be based on information that is already collected by the person under existing commercial arrangements, and/or on processes that are to some extent already part of the person's existing business practices.

Information that should be included in an application for an alternative method

253. Section 60G(8) allows the Commissioner to take the following factors into account when exercising the discretion:
- Commercially relevant information that is available to the marketplace operator or redeliverer and the reliability of this information.
 - Compliance costs of the marketplace operator or redeliverer in complying with the requirements of the default method.

- The existing mechanisms the marketplace operator or redeliverer has to prevent and address situations where incorrect information is provided.
254. Ideally, an application for an agreed method would briefly cover all the points listed above, along with an explanation of why the proposed method is fair and reasonable. Specifically, the application would ideally outline how the proposed method reflects the outcome that would be reached under the default method – or, if the alternative method is being proposed because it is considered more reliable than the default method, why it is more reliable than the default method.
255. For example, a redeliverer may wish to rely on the value declared by the recipient rather than being required in all cases to obtain an invoice or receipt issued by the merchant to confirm the value of the goods. In this case, the application for an agreed method would ideally include some analysis showing that the outcome reached by relying on the value declared by the recipient is not materially different from the outcome that would be obtained if documentation issued by the merchant was instead used to confirm the value.
256. Alternatively, an application by a redeliverer might propose some mechanisms for preventing and (to the extent feasible) correcting any mistakes arising from undervaluation by consumers. What can feasibly be done in terms of discouraging or identifying undervaluation will be dependent on the redeliverer’s business processes, which would be taken into account by the Commissioner when considering the proposed method.

Liability for GST if person has relied on a section 60G method

257. Under new section 60F, a marketplace operator or redeliverer that has relied on a default method set out in section 60G (or that has a safe harbour agreement with the Commissioner under section 60G(7)), cannot be held liable for GST that should have been returned if they have underpaid GST to Inland Revenue solely as a result of relying on incorrect or misleading information provided by another party.
258. Section 60F applies when a redeliverer or an operator of an electronic marketplace returns a deficient amount of output tax for a taxable period as a consequence of relying on inaccurate, incomplete or misleading information provided by the recipient of a supply of goods or by the merchant or underlying supplier of the goods.
259. In this situation, section 60F(2) provides that the electronic marketplace operator or redeliverer has a reduction in its total output tax allocated to the relevant taxable period that is equal to the amount of the deficiency, provided that the requirements of section 60G are met.
260. This means that in the situation where the electronic marketplace operator or redeliverer has relied on information provided by a third party and discovers there is a shortfall in the amount of output tax returned, the marketplace operator or redeliverer would not be liable to account for the output tax shortfall – provided that the reliance on information provided by a third party was in good faith and on reasonable grounds (see section 60G(1)(c)) and, if applicable, is consistent with a method prescribed in the legislation or agreed with the Commissioner.

Example 40 – agreed method for determining residency of underlying suppliers

A Co. is a marketplace operator, whose underlying suppliers may be resident in New Zealand or in other countries. A Co. agrees with the Commissioner on the method it will use to determine the residency of underlying suppliers, based on the information that is commercially available.

As part of the agreement, A Co. has governance mechanisms to prevent mistakes, which include:

- deploying technology to detect when underlying suppliers provide incorrect information relevant to their residency;
- educating underlying suppliers on the consequences of providing incorrect information (which include tax penalties that may apply);
- taking actions to remove the underlying supplier from its marketplace where incorrect information has been provided, if necessary; and
- in agreed circumstances where a significant amount of tax is at stake, providing information to the Commissioner about underlying suppliers that have provided incorrect information, to allow the Commissioner to use her powers to collect GST from the underlying supplier.

This agreement means that A Co. can rely on certain information to support conclusions that it is not responsible for GST on a supply because the underlying supplier is a New Zealand resident. If it is later discovered that the underlying supplier is not a New Zealand resident, A Co. will not be exposed to additional GST liability (as the amount of the output tax reduction given under section 60F(2) would offset the amount of output tax that should have been returned).

Example 41 – agreement allowing redeliverer to rely on value declared by recipient

Redeliverer Co. is a redeliverer which provides a US postal address to consumers in New Zealand and brings goods from US merchants to New Zealand. The US merchant is unaware that the consumer has engaged Redeliverer Co to bring the goods to New Zealand.

Redeliverer Co charges a facilitation fee to the consumer based on the weight and size of the parcel. The receipt issued by the US merchant to the recipient is generally not a piece of information that is commercially available to Redeliverer Co, unless it asks for proof of the value of the goods because the recipient is also purchasing insurance.

Rather than changing its systems to require a receipt to be submitted, Redeliverer Co agrees with the Commissioner of Inland Revenue that it can use the amount declared by the customer to determine how much GST to collect from the consumer, provided that it puts certain governance mechanisms in place to prevent mistakes.

Such mechanisms may include the following:

- Warning recipients about the consequences of undervaluing goods, including penalties that may apply under the tax legislation and under the Customs and Excise legislation.
- Using the value on a receipt from the merchant if this is commercially available (for example, where it is included with the goods when they arrive at Redeliverer Co's warehouse in the US or when provided by the recipient if they buy insurance).
- Taking a random sample of goods regularly to identify any undervaluation, and correct it if possible.
- In agreed circumstances where a significant amount of tax is at stake, providing information to the Commissioner about consumers that have underdeclared values, to allow the Commissioner to use her powers to collect GST from the consumer.

Reliance on other types of information resulting in underpayment of GST

261. In some cases, information that a marketplace operator or redeliverer might use to determine the GST treatment of a supply of goods may be completely unrelated to the residency of an underlying supplier and the delivery address for the supply (if the supply is made through an electronic marketplace) or the amount paid by the recipient for the goods (if the goods are brought to New Zealand by a redeliverer).
262. In situations where reliance on such information results in the marketplace operator or redeliverer underpaying GST, the marketplace operator or redeliverer will be relieved from the liability to return and pay the output tax that should have been paid if the reliance on information provided by the third party was in good faith and on reasonable grounds.

Example 42 – misclassification of item by underlying supplier resulting in treatment as exempt supply

An item of gold jewellery is listed for sale on the A Co. marketplace. On the basis of the classification of the item by the underlying supplier, A Co. is led to believe that the item is fine metal as defined in section 2(1), and concludes that the supply of the item is exempt from GST. However, it turns out that the item is not fine metal, and therefore GST should have been returned on the supply.

Section 60F applies to relieve A Co. from being required to return output tax on the supply, provided that A Co. has relied on the information in good faith and on reasonable grounds (meaning that A Co. did not know that the information relied on was incorrect, nor could have reasonably been expected to know the information was incorrect).

Generally speaking, a marketplace operator that does not actually have the goods could not reasonably be expected to know if the classification of an item of gold jewellery by an underlying supplier as “fine metal” is incorrect. However, if a marketplace operator was aware that a particular underlying supplier had a history of misclassifying items for sale, then this may affect whether the marketplace operator had relied on the information on reasonable grounds.

Example 43 – reliance on information by marketplace operator not on reasonable grounds

DG Book Supplies, a non-resident supplier, sells some university textbooks to Jan (a consumer providing a New Zealand delivery address) over the A Co. marketplace. DG tells A Co. that supplies of educational books are zero-rated for New Zealand GST purposes, which A Co. relies on when determining the GST treatment of the supply to Jan.

It is later discovered that the supply to Jan should have been treated as standard-rated (subject to GST at the rate of 15%) and that, as a consequence of relying on the incorrect information provided by DG, A Co. has underpaid GST to Inland Revenue. A Co. does not have a reduction in its output tax under section 60F(2), as it should have known that the information provided by DG was not reliable. A Co. is therefore required to return and pay 3/23 of the consideration for the supply as output tax to Inland Revenue.

Reverse charge (GST-registered recipient of remote services)

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

263. An amendment to the reverse charge rule in section 8(4B) will require GST-registered recipients of distantly taxable goods (that are treated by section 8(4E) as not being

supplies in New Zealand) to return output tax if the percentage of intended or actual taxable use of the goods is less than 95 percent of the total use.

264. The amendment also extends the reverse charge to business-to-business supplies of goods that are in New Zealand at the time of supply (which are treated by section 8(4) as not being supplied in New Zealand).²⁹

Example 44 – application of reverse charge to distantly taxable goods

Melissa is a self-employed project manager who is registered for GST. She purchases a phone from a non-resident supplier for NZ\$400. At the time of purchase, she identifies herself as a GST-registered person and therefore is not charged GST. She uses the phone fifty percent for her taxable project management services and fifty percent for private use.

Under the reverse charge, Melissa is treated as making a taxable supply to herself of NZ\$400 at the 15% rate. She must return output tax of NZ\$60 (NZ\$400 × 15%).

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

265. An exception (amended section 20(4D)) to the prohibition on input tax deductions in section 20(4C) allows a recipient of distantly taxable goods, that is required to return output tax under the reverse charge, to claim a deduction of input tax (GST paid on goods and services purchased) to the extent that the goods are used for, or available for use in, making taxable supplies.

Example 45 – input tax on goods subject to the reverse charge

Consider Example 44 where Melissa acquires a phone from a non-resident supplier for NZ\$400. Melissa can claim an input tax deduction for the portion of her total use of the phone that is for taxable purposes (fifty percent). The amount of the input tax deduction is NZ\$30 (NZ\$60 of GST × fifty percent). Her net position in the relevant return (assuming no other supplies) is therefore an output tax liability of NZ\$30 (NZ\$60 output tax minus NZ\$30 input tax).

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

266. There may be instances when a GST-registered recipient applies the reverse charge and the non-resident supplier also inadvertently charges the recipient GST. In this situation, GST would 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 refunds the GST charged to the GST-registered recipient and makes an adjustment under section 25 as described previously. Note that an adjustment may still be necessary under section 25AA(1)(a)(iii) to ensure the correct amount of tax is accounted for under the reverse charge in section 8(4B).

²⁹ As this amendment has been inadvertently drafted too widely, officials will seek to include a retrospective amendment in a future taxation bill so that the reverse charge (as it applies to goods) only applies to goods imported by the recipient of the supply in a consignment valued below NZ\$1,000, where the recipient did not pay GST to Customs nor to the supplier. A savings provision to protect tax positions taken on the basis of the amendment would be optional for taxpayers to apply.

267. To ensure the correct amount of tax is paid in the alternative scenario where the supplier provides a tax invoice under section 24(5B), existing section 25AA would allow the GST-registered recipient to correct the amount of output tax returned and input tax deductions claimed. The recipient would then be able to claim, in the normal manner, a deduction for the portion of the GST that was charged by the non-resident supplier, to the extent that the goods are used for, or available for use in, making taxable supplies.

Example 46 – supplier inadvertently charges GST on supply to registered person and recipient applies the reverse charge

Consider the earlier example again, where Melissa has applied the reverse charge under section 8(4B). However, she subsequently finds out that the price for the phone included GST at the standard rate of 15% ($3/23 \times \text{NZ\$}400 = \text{NZ\$}52.17$).

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

The tax invoice enables Melissa to claim an input tax deduction to the extent the phone is used for, or available for use, in making taxable supplies, which means she can deduct NZ\$26.09. The non-resident supplier is also not required to make any adjustments under section 25.

Under section 25AA(1)(a)(v), Melissa makes an adjustment in the return for the taxable period in which it is discovered that a mistake has been made to correct the amount of output tax and input tax deductions claimed as a result of applying the reverse charge in section 8(4B). Melissa claims a deduction under section 20(3) for the output tax that she accounted for (NZ\$60 – section 25AA(2)) and returns output tax for the input tax deduction she claimed earlier (NZ\$30 – section 25AA(3)).

Administration of the supplier registration system

(Sections 5(27), (28), 15(7), 51B(7), 51B(8) and 75(3F) of the Goods and Services Tax Act 1985. Sections 24BA(1B) and 143A(1)(c) of the Tax Administration Act 1994)

Taxable periods

268. Under amended section 15(6), non-resident suppliers that only supply distantly taxable goods and/or remote services will have calendar quarterly taxable periods (1 April to 30 June, 1 July to 30 September, 1 October to 31 December, and 1 January to 31 March). This is intended to align with these suppliers' filing obligations in other jurisdictions.
269. However, for the period beginning 1 December 2019 to 31 March 2020, non-resident suppliers of distantly taxable goods will have a taxable period of four months (see new section 15(7)). This initial four-month taxable period will apply to non-resident suppliers of distantly taxable goods that become liable to register for GST in the period 1 December to 31 December 2019 – including non-residents who also supply remote services to New Zealand-resident consumers but did not register for GST before 1 December 2019 due to being below the NZ\$60,000 registration threshold.

Commissioner discretion to agree alternative taxable period end date

270. Section 15E(2) provides that a supplier may apply to the Commissioner of Inland Revenue to have an alternative taxable period end date. Under this provision, the Commissioner may approve an end date that is not more than seven days before or after the last day of a month.

Example 47 – alternative taxable period end date

Retro Audio is registered for GST as a non-resident supplier of distantly taxable goods and, from 1 April 2020, will be required to have quarterly taxable periods.

Retro Audio does an accounting cut off on 29 March, 28 June, 28 September and 30 December. These accounting periods are all quarters but do not end on the last day of the typical calendar quarter, and it would be expensive for Retro Audio to re-run periods outside of this accounting cycle.

The Commissioner of Inland Revenue approves Retro Audio to have an initial four-month taxable period of 1 December 2019 to 29 March 2020, and from 30 March 2020, the following quarterly taxable periods on an ongoing basis:

- 30 March to 28 June;
- 29 June to 28 September;
- 29 September to 30 December; and
- 31 December to 29 March.

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

271. 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. Amended section 75(3F) provides an automatic exception to this requirement for non-resident suppliers of distantly taxable goods or remote services that are subject to GST under either section 8(3)(ab) or (c).

Exception from the bank account requirement

272. Section 24BA of the Tax Administration Act 1994 generally requires an offshore person to have a fully functional New Zealand bank account in order to obtain an IRD number. However, subsection (1B) provides an exception to this requirement for a non-resident supplier who requires an IRD number solely because they are a non-resident supplier of goods and services.

Consumers and underlying suppliers providing false or misleading information

273. Sections 5(27), 5(28), 51B(7) and 51B(8) provide the Commissioner of Inland Revenue with discretion to require a person to register and pay GST that should have been charged, when:
- the person (being the recipient of the supply or a non-resident underlying supplier) knowingly provides altered, false or misleading information which has resulted in GST being underpaid; and
 - the amount of GST is substantial or the behaviour is repeated.

274. In the situation where a consumer provides false or misleading information that results in an underpayment of GST, section 5(27) only applies if the consumer made the misrepresentation with the purpose of avoiding being charged GST or to reduce the amount of GST charged.
275. In addition to the situations where a consumer makes a misrepresentation to a non-resident merchant, marketplace operator or redeliverer, or where a non-resident underlying supplier makes a misrepresentation to a non-resident operator of an electronic marketplace, the provisions cover the situation where a consumer or a non-resident underlying supplier deliberately provides false, altered or misleading information to a New Zealand-resident resident agent, redeliverer or marketplace operator.
276. In cases where discretion is exercised by the Commissioner to require the consumer or underlying supplier to register and pay the GST shortfall, section 5(27)(b)(iii) and (28) set out that the consumer or underlying supplier would be treated as making a supply charged with GST at the rate of 15%. Under amended section 51B, the person is treated as being registered from the date on which the first supply the discretion is exercised for is made (see subsections (7) and (8)).
277. 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(1)(c) and (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.

Example 48 – consumer makes misrepresentation that they are registered for GST

Luke purchases a number of distantly taxable goods and remote services online, including clothing, nutritional supplements, 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 first supply of goods was made or the services were physically performed (whichever is earlier), and requires him to pay the GST that was not charged, plus penalties and interest.

Remote services – consumer misrepresents residency status or location

278. Section 5(27)(a) has been amended so that it may apply in the situation where a consumer purchasing a remote service deliberately provides false, altered or misleading information pertaining to his or her location or residency status to avoid being charged GST. Under the former drafting of section 5(27)(a), the provision only applied in the situation where a consumer made a misrepresentation that they were registered for GST in order to avoid having GST charged.
279. If a customer has provided incorrect or misleading 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, in cases where it is clear that the person made the

misrepresentation to avoid being charged GST, the amendment to section 5(27)(a) means that the Commissioner will be able to exercise her discretion to require the person to pay GST if the amount of GST at stake is substantial or the behaviour is repeated.

Interaction with safe harbour rules for electronic marketplaces and redeliverers

280. Where distantly taxable goods are treated by section 60C or 60E as having been supplied by an electronic marketplace operator or a redeliverer, the Commissioner's discretion to require the underlying supplier or the consumer to pay the GST shortfall will only apply if the marketplace operator or redeliverer used a method set out in section 60G or a method agreed with or prescribed by the Commissioner under section 60G(7).
281. This is intended to ensure there is a clear hierarchy where the marketplace operator or redeliverer is the supplier for GST purposes, and therefore incentivises the person to take reasonable precautions to prevent an incorrect GST treatment from arising.
282. Unlike section 5(27), new section 5(28) (which applies to an underlying supplier providing incorrect or misleading information to an operator of an electronic marketplace) does not require the incorrect information to have been provided for the purpose of avoiding GST applying to the supply. This is because the underlying supplier's intention may be difficult to establish in practice.

Example 49 – non-resident underlying supplier makes misrepresentation that they are resident in New Zealand

Jave Dordan, a non-resident underlying supplier on the NZ Marketplace website, deliberately provides false information about himself (including using a VPN to fake a New Zealand IP address, providing a false mailing address in New Zealand and falsely stating that the goods are shipped from New Zealand) with the intention of misleading potential customers in New Zealand. The fact that NZ Marketplace will not charge GST on the supply as a result of Jave's deception is not Jave's primary objective in making the misrepresentations, but is merely a secondary benefit from Jave's perspective.

After a crackdown on non-resident underlying suppliers misrepresenting themselves as New Zealand businesses, NZ Marketplace discovers that Jave is not a New Zealand tax resident but is in fact a non-resident. As NZ Marketplace previously had no knowledge of Jave's residency status and had relied in good faith on the information provided by Jave in accordance with the methods prescribed in section 60G(3) to determine Jave's residency status, NZ Marketplace will not be liable to return GST on supplies made by Jave to consumers in New Zealand prior to Jave's dishonesty being discovered.

NZ Marketplace has an agreement with the Commissioner of Inland Revenue that it will provide the Commissioner with the details of underlying suppliers that misrepresent their location or residency status resulting in a significant amount of tax being underpaid. NZ Marketplace provides Inland Revenue with information about Jave, including the value and volume of sales made by Jave on NZ Marketplace.

As Jave has deliberately misrepresented his residency status over a long period of time, resulting in a substantial amount of GST due not being returned to Inland Revenue, the Commissioner registers Jave for GST, makes an assessment of the GST due and requires Jave to pay the GST that should have been returned. The fact that Jave did not make the misrepresentations with the purpose of avoiding having GST charged on his sales has no impact on the Commissioner's ability to apply her discretion.

Optional rules aimed at reducing costs for suppliers

(Sections 8(4F), 10C, 20(3L), 20(3LB) and 85C)

Claiming GST deductions for New Zealand expenses

283. Special rules applying to non-resident businesses that do not make any supplies in New Zealand were introduced in 2014 to allow these businesses to claim refunds of GST incurred on business expenses. For the purposes of claiming input tax (GST on purchases), a deduction rule in section 20(3L) allows non-resident businesses registered under section 54B to claim back input tax relating to their worldwide taxable activity (for example, GST incurred in sending employees to a conference in New Zealand).
284. Section 20(3L) has been amended to allow non-resident suppliers of distantly taxable goods and remote services to claim back New Zealand GST incurred on business expenses.
285. Amended section 20(3L) provides that a non-resident person who is registered under section 54B or who is a non-resident supplier of distantly taxable goods or remote services may deduct input tax to the extent to which the relevant goods and services are used for, or are available for use in, making taxable supplies, **treating all the supplies made by the person as if they were made and received in New Zealand** [emphasis added].
286. This means non-resident suppliers of distantly taxable goods and remote services that have registered under the standard GST registration system as a “pay and claim” registrant will be able to deduct GST they have paid on business inputs sourced from New Zealand suppliers, without being required to “trace” the use of these inputs to making taxable supplies to consumers in New Zealand.
287. This will generally enable these suppliers to deduct GST incurred on inputs used in making supplies to other non-residents or to GST-registered New Zealand businesses. However, input tax cannot be deducted to the extent that the relevant inputs are applied to a private (rather than business) use or are used in making supplies that would be exempt if those supplies were made and received in New Zealand (such as supplies of financial services).

Attribution rule for GST paid to Customs

288. A special “attribution rule” will apply in the situation where a non-resident supplier of distantly taxable goods or remote services imports goods into New Zealand for delivery to another person in New Zealand and pays GST to Customs on the importation of the goods. In this situation, amended section 20(3LB) provides that subsection (3LC) will treat the recipient of the goods as having paid the import GST to Customs, and the non-resident supplier as not having paid the GST to Customs. This prevents the non-resident supplier from being able to make an input tax deduction for the GST paid to Customs.
289. The attribution rule will only apply in the situation where the goods are delivered to a person in New Zealand other than the supplier. If the supplier is the person in New

Zealand who receives the goods and is not delivering the goods to another person in New Zealand, the supplier will be able to make an input tax deduction for the GST paid to Customs.

Example 50 – application of the attribution rule in section 20(3LB) and (3LC) where the non-resident supplier pays the import GST

Gordon buys an NZ\$1,200 bicycle from Moving Parts, a non-resident bicycle and cycling accessories shop that is registered for GST in New Zealand under the rules for distantly taxable goods. Moving Parts supply the bicycle to Gordon on delivered-duty-paid terms, so that they pay the GST to Customs on Gordon's behalf.

Under the attribution rule in section 20(3LB) and (3LC), Moving Parts is not able to claim an input tax deduction for the import GST paid to Customs.

290. The attribution rule in section 20(3LB) and (3LC) aims to prevent non-taxation, which would arise if a non-resident making a non-taxable supply of imported goods to a consumer in New Zealand claimed an input tax deduction for the GST paid on importation of the goods to Customs. The following example illustrates this scenario.

Example 51 – non-taxation where non-resident supplies high-value imported goods to consumer and pays the import GST

Consider the scenario in the previous example, except this time assume that the attribution rule in section 20(3LB) and (3LC) does not exist.

The supply of the bicycle by Moving Parts to Gordon is not a taxable supply, as the bicycle is outside New Zealand at the time of supply and is not an item of distantly taxable goods (because the estimated customs value of the bicycle is NZ\$1,200 and Moving Parts has not made the election to treat its high-value goods as distantly taxable goods, discussed later in this special report).

Gordon paid NZ\$50 to Moving Parts for freight and insurance of the bicycle. Moving Parts pays import GST to Customs of NZ\$187.50 (15% of the full landed value of the goods, being NZ\$1,250). Moving Parts claims an input tax deduction in its GST return of NZ\$187.50 for the import GST under section 20(3L), resulting in non-taxation of a supply to a consumer in New Zealand.

Pre-existing zero-rating of supplies of remote services to GST-registered businesses

291. Section 11A(1)(x) – which has applied since the start of the GST on remote services rules in October 2016 – currently allows non-resident suppliers to zero-rate their supplies of remote services to GST-registered New Zealand businesses. This allows non-resident remote services suppliers to claim back GST on inputs used for making supplies to GST-registered businesses.
292. Section 11A(1)(x) has been retained as a legacy provision, so that non-resident suppliers of remote services who are accustomed to zero-rating these supplies and wish to continue what they are doing at present may do so. However, if they wish to, non-resident suppliers of remote services can use the input tax deduction rule in section 20(3L) as an alternative to zero-rating their business-to-business supplies of remote services.

Option to charge GST on high-value goods

293. Distinguishing between low-value goods (items individually having an estimated customs value of NZ\$1,000 or less) and high-value goods (items with an estimated customs value above NZ\$1,000) may create complexity for suppliers. To minimise compliance costs, suppliers who are required under the new rules to charge GST on low-value goods supplied to consumers in New Zealand will be able to elect to treat high-value goods as distantly taxable if certain conditions are met. These requirements are outlined below.

Self-assessed 75 percent test – reasonable grounds requirement

294. New section 10C provides that a supplier (referred to in the section as the “electing supplier”) may elect to treat goods that individually have an estimated customs value exceeding NZ\$1,000 as distantly taxable goods if all the following conditions are met:

- the Commissioner has not before the date the election is made by the supplier cancelled a previous election by the supplier to treat high-value goods as distantly taxable goods (see subsection (1)(a));
- the supplier notifies the Commissioner of the election before the start of the first taxable period that it is intended to be effective for (see subsection (1)(b)); and
- at the time of the election, there are reasonable grounds for believing that 75 percent or more of the total value of distantly taxable goods that the supplier will supply in the 12-month period, starting on the first day that the supplier intends the election to be effective for, will consist of items having an estimated customs value of NZ\$1,000 or less (see subsection (2)(a)).

295. The “reasonable grounds” test described above implicitly requires an electing supplier to firstly assume that it will have made an effective election for the initial year – meaning that for the purposes of determining whether the 75 percent threshold is met, the supplier should include high-value goods supplied to customers in New Zealand (both consumers and GST-registered businesses) in the “total value of distantly taxable goods supplied by the electing supplier to places in New Zealand”.

296. Having made the above starting assumption, the test then requires the electing supplier to determine whether it is reasonable to believe that the total value of its low-value goods supplied to customers in New Zealand during the 12-month period will be at least 75 percent of the total value of the distantly taxable goods that it will supply in the initial year.

297. The reasonable grounds requirement referred to above means different things for different types of electing suppliers:

- For an electing supplier who is a merchant, or an electing supplier who is a redeliverer treated by section 60E as the supplier of low-value goods that it brings to New Zealand: The reasonable grounds requirement means the electing supplier has a reasonable belief that 75 percent or more of the total value of goods that it will bring (or assist in bringing) to New Zealand in the initial year of the election will consist of items that individually have an estimated customs value of NZ\$1,000 or less.

- For an electing supplier who is an operator of a marketplace (and who is treated by either of sections 60C or 60D as the supplier of low-value goods sold through its marketplace by non-resident underlying suppliers): The reasonable grounds requirement above means the marketplace operator has a reasonable belief that 75 percent or more of the total value of goods that would be purchased on the marketplace in the initial year of the election, and supplied by non-resident underlying suppliers to customers in New Zealand, will consist of items that individually have an estimated customs value of NZ\$1,000 or less.

298. In either case, the electing supplier should not include alcohol or tobacco products for the purposes of assessing whether the 75 percent test is met.

Example 52 – merchant making election under self-assessed 75 percent test

Big Ben’s Bikes, an online British bike, bike parts and bike accessories store, sells and ships goods from its warehouse in London to customers around the world. Big Ben’s Bikes wishes to treat its high value goods supplied to New Zealand consumers as distantly taxable from the start of their first taxable period, being 1 December 2019.

Big Ben’s Bikes sold £78,000 worth of low-value imported goods to customers in New Zealand in the year 1 July 2018 to 30 June 2019. Big Ben’s Bikes also sold £22,000 worth of high-value imported goods to New Zealand customers in that year. Therefore, 78 percent of the total value of goods that Big Ben’s Bikes sold to customers in New Zealand that year consisted of goods individually valued at or below NZ\$1,000. This percentage is typical of Big Ben’s Bikes’ annual sales to New Zealand customers (in previous years, Big Ben’s Bikes’ sales of goods valued at or below NZ\$1,000 as a proportion of its total sales to New Zealand customers have been within the range of 76 percent to 80 percent).

Based on this historical information and without any information to suggest that this percentage is likely to be less than 75 percent for the 12-month period beginning 1 December 2019, it is reasonable to assume that Big Ben’s Bikes meets the 75 percent test. On this basis, Big Ben’s Bikes self-assesses that it is eligible to make the election and notifies Inland Revenue that they will be charging GST on supplies of high-value goods under the self-assessed test.

Example 53 – marketplace operator making election under self-assessed 75 percent test

A Co. is an operator of an electronic marketplace who wishes to make the election to charge GST on high-value goods supplied by non-residents through its marketplace. Data from previous years shows that, low-value goods make up well over 80 percent of the total value of goods sold by non-resident underlying suppliers on the A Co. marketplace to customers in New Zealand (including goods that are shipped from a location within New Zealand if A Co. has determined that the underlying supplier of the goods is a non-resident). A Co. has no reason to expect that this percentage will drop below 75 percent for the period 1 December 2019 to 30 November 2020.

On this basis, A Co. determines that they are eligible to make the election and notifies Inland Revenue that they will be charging GST on supplies of high-value goods under the self-assessed test.

Example 54 – redeliverer making election under self-assessed 75 percent test

Redeliverer Co. wishes to make the election under section 10C to charge GST on the high-value goods they bring to New Zealand from overseas. Based on data from previous years, Redeliverer Co. estimates that approximately 90 percent of the value of the goods that they brought to New Zealand in a typical year (including any amounts for freight and insurance charged by the overseas merchant) consisted of low-value goods. Redeliverer Co. has a reasonable expectation that they will easily exceed the 75 percent threshold for the 1 December 2019 to 30 November 2020 year.

Redeliverer Co determines that they are eligible to make the election and notifies Inland Revenue that they will be charging GST on high-value goods under the self-assessed test.

299. Suppliers making the election under the self-assessed test will need to notify Inland Revenue. Operators of marketplaces that decide to charge GST on their supplies of high-value goods will also need to let their underlying suppliers know (as some non-resident underlying suppliers might already be returning GST on their sales if the goods are in New Zealand at the time of supply).
300. An electing supplier who is a non-resident that is not already registered for GST in New Zealand may notify Inland Revenue of the election by answering “yes” to the question in the IR994 registration form about whether they intend to make the election to charge GST on high-value goods and meet the 75 percent test.
301. An electing supplier that is already registered for GST (under the ordinary GST rules or under the GST rules applying to remote services) may notify Inland Revenue of the election by emailing info.lvg@ird.govt.nz with “Election” in the subject line of the email.

Commissioner discretion to allow suppliers to charge GST on high-value goods

302. Section 10C(2)(b) provides that the Commissioner may allow a supplier to make an election to treat its high-value goods as distantly taxable goods, even if the self-assessed 75 percent test outlined above is not met.
303. The Commissioner will exercise this discretion if she considers that doing so will not undermine the integrity of the tax system, taking the following factors into account:
 - whether the electing supplier and any associated persons have a good history of previous compliance with New Zealand tax legislation and the tax laws of countries and territories outside New Zealand;
 - the total value of high-value goods supplied by the electing supplier to New Zealand consumers; and
 - any other relevant factors.
304. The ability for the Commissioner to allow suppliers to charge GST on high-value goods supplied to consumers recognises that the costs to a supplier in configuring their point-of-sale systems to distinguish between low-value and high-value goods may be disproportionate to any potential revenue risk from allowing the supplier to charge GST on high-value goods (effectively replacing the collection of GST on these goods by Customs), even if the 75 percent test is not met.

305. In this situation, the Commissioner may be satisfied that it is appropriate to allow the supplier to charge GST on its supplies of high-value goods to consumers if the supplier has a good tax compliance history. Alternatively, if the supplier does not have a tax compliance history that the Commissioner is aware of, the Commissioner may be satisfied that it is appropriate to exercise the discretion if the value of the supplier's sales of high-value imported goods to consumers in New Zealand is not significant.
306. In practice, there will be a general presumption in favour of exercising the discretion unless there is information available to Inland Revenue which suggests that allowing a particular supplier to charge GST on its high-value goods may result in a revenue risk.

Example 55 – exercise of Commissioner's discretion

Dapper Menswear is a non-resident supplier of designer European menswear. Dapper Menswear wishes to treat their supplies of high-value goods to consumers in New Zealand as distantly taxable, and intends that this election be effective from the start of their first taxable period, being 1 December 2019.

Dapper Menswear undertakes some analysis of the composition of their sales to customers in New Zealand over the past year. They find that they sold NZ\$70,000 worth of low-value goods to customers in New Zealand in the past year. They also sold NZ\$30,000 worth of high-value goods to New Zealand customers in that year. Therefore, only 70 percent of Dapper Menswear's supplies of goods in that year were low-value goods. Given that Dapper Menswear expects the composition of its sales to New Zealand customers to be much the same in the period 1 December 2019 to 30 November 2020, Dapper Menswear does not have a reasonable expectation that the 75 percent test will be met.

Dapper Menswear applies to the Commissioner to be allowed to charge GST on their supplies of high-value goods. In considering the application, the Commissioner looks at whether Dapper Menswear (including any associated entities) has a compliance history for New Zealand tax purposes and finds there is none. However, according to information that the Commissioner has obtained under double tax agreements from overseas jurisdictions that have similar rules, Dapper Menswear has registered for VAT/GST in those other jurisdictions.

There is no evidence available to the Commissioner to suggest that Dapper Menswear is not fully compliant with the tax laws in those other jurisdictions, so the Commissioner does not consider that Dapper Menswear poses any significant compliance risk. Further, the total value of supplies of high-value goods made to New Zealand customers annually by Dapper Menswear (approximately NZ\$30,000) is relatively small. On this basis, the Commissioner exercises her discretion to allow Dapper Menswear to make the election to charge GST on supplies of high-value goods to consumers.

Cancellation of election

307. Under section 10C(2), an election to treat high-value goods as distantly taxable is effective from the first day of the initial taxable period that the supplier intends the election to be effective for until the election is cancelled.
308. Cancellation of an election may be initiated upon request by the supplier or, if certain conditions are met, the Commissioner may unilaterally cancel a supplier's election.
309. If a supplier who has made an election requests that the election be cancelled, new section 10C(5)(a) provides that the Commissioner may cancel the election by notifying the supplier of the date on which the election ends.

310. In the situation where the Commissioner unilaterally cancels an election by a supplier (in cases of non-compliance by the supplier), section 10C(5)(b) provides that the Commissioner is required to:

- notify the electing supplier of the date of the proposed cancellation and the reasons for the proposed cancellation;
- consider any arguments against the proposed cancellation that are provided by the electing supplier within 30 days from the date of notification, or within a shorter or longer period if the Commissioner considers that period is appropriate in the circumstances; and
- notify the supplier of the date on which the election is cancelled.

Option to charge GST on low-value supplies to GST-registered businesses

311. Under new section 8(4F), a non-resident supplier will be able to elect to treat a supply of distantly taxable goods to a GST-registered business as a supply made in New Zealand, provided that:

- at the time of the election, the non-resident supplier reasonably expects that more than 50 percent of the value of the supplies they make to customers in New Zealand during the 12-month period from the election will be made to persons who are not GST-registered; and
- the value of the supply (excluding GST) is NZ\$1,000 or less.

312. Under new section 24(5BB), a non-resident supplier is required to provide a tax invoice if the supplier has chosen to apply section 8(4F) to the supply so that the supply is treated as made in New Zealand.³⁰

313. These amendments are aimed at allowing non-resident suppliers to simply charge GST on low-value supplies (regardless of the business-to-consumer or business-to-business nature of the supply) and issue a tax invoice to the customer at the time of supply or shortly after. As discussed earlier at [198] to [201], non-resident suppliers exercising this option will be able to issue a single document that meets the requirements of both a full tax invoice and a receipt required under section 24BAB to be issued to a consumer for a supply of distantly taxable goods.

Relationship with rule in section 24(5B)

314. While non-resident suppliers are able to choose to provide a tax invoice for a supply of distantly taxable goods under section 24(5B) if the value of the supply is NZ\$1,000 or less, this only applies in the situation where GST is inadvertently charged on the supply – meaning that the tax invoice would be issued to the recipient following a request for a tax invoice or a refund of the GST (as opposed to the supplier being able to proactively issue the recipient with a tax invoice in anticipation of the possibility that the recipient may be GST-registered).

³⁰ Although the intention is that the tax invoice issued by the supplier should meet the requirements of a full tax invoice, the legislation as enacted does not require this. Officials will seek to include an amendment to section 24(4)(g) in a future tax bill so that a tax invoice issued under new section 24(5BB) is required to be a full tax invoice, consistent with the rule in section 24(5B).

315. Therefore, the ability to elect to charge GST on low-value supplies to GST-registered businesses may reduce compliance costs for both non-resident suppliers of distantly taxable goods and New Zealand businesses making low-value purchases from these suppliers, as the GST-registered recipient would be able to use the tax invoice to support an input tax deduction without needing to interact with the supplier any further.
316. Given the amendments allow non-resident suppliers to charge GST on low-value supplies and issue a tax invoice to the customer at the time of supply if they decide that works best for them, there is no requirement for the non-resident supplier to inform Inland Revenue of the election or to keep records that the election was made. The amendments merely validate the supplier's treatment of a low-value supply in the situation where the supplier has charged GST and proactively issued a tax invoice, and it transpires that the supply was to a GST-registered business using the goods in its taxable activity.
317. Consistent with the rule in section 24(5B), if the value of the supply exceeds NZ\$1,000, the non-resident supplier should not issue a tax invoice, and the recipient of the supply will not be entitled to make an input tax deduction. This means that, if the value of the supply is above NZ\$1,000, the receipt or invoice issued to the recipient should not include the phrase "tax invoice". In this situation, the supplier's only option is to refund the GST charged, if it transpires that GST was charged on a supply to a GST-registered business using the goods and services in its taxable activity.

Example 56 – non-resident supplier elects to charge GST on low-value supplies to GST-registered businesses under section 8(4F)

Good Books is an online book retailer resident in Hong Kong. Good Books is registered for GST in New Zealand as a supplier of distantly taxable goods to consumers. Good Books' sales to customers in New Zealand total around NZ\$10 million a year, excluding GST, of which it estimates that around NZ\$2 million a year are to GST-registered businesses.

Based on this historical average of around 80 percent of the value of its sales to New Zealand customers being to persons who are not registered for GST (which Good Books expects will continue going forward), Good Books has a reasonable expectation that more than 50 percent of the value of the sales it will make to customers in New Zealand in the next 12 months will be to customers who are not GST-registered.

Good Books sells two books valued at NZ\$40 each (excluding GST) to a customer providing a delivery address in New Zealand and charges NZ\$20 plus GST for shipping. As the estimated customs value of each item (NZ\$40) is less than NZ\$1,000, Good Books determines that the supply is of distantly taxable goods and charges GST of NZ\$15, based on the value of the supply of NZ\$100 (2 books at NZ\$40 each + NZ\$20 shipping = NZ\$100, 15% of NZ\$100 = NZ\$15).

In the event that the supply is to a GST-registered business, Good Books intends that the goods are treated as supplied in New Zealand under section 8(4F) (subject to GST). Since the value of the supply excluding GST (NZ\$100) is less than NZ\$1,000, the treatment of the sale as a taxable supply is correct (even if the customer is a GST-registered business, as section 8(4F) will apply in this scenario).

Good Books issues the recipient with a receipt at the time of supply containing the following particulars:

- the words "tax invoice" in a prominent place (see section 24(3)(a));
- Good Books' name and GST registration number (see sections 24(3)(b) and 24BAB(2)(a));
- the name and address of the recipient (see section 24(3)(c));

- the date the receipt was issued (which in this case is the same as the date of supply – see sections 24(3)(d) and 24BAB(2)(b) and (c));
- a description of the goods and services supplied, along with the quantity or volume (see section 24(3)(e) and (f), and section 24BAB(2)(d));
- the consideration for the supply excluding tax (NZ\$100), the amount of tax included (NZ\$15), and the consideration inclusive of tax (NZ\$115) (see sections 24(3)(g)(i) and 24BAB(2)(e); and
- information indicating the items for which the amount of tax included is zero or more than zero (in this example, GST was charged on all the items in the supply, so information indicating that tax was included for all the items will suffice – see section 24BAB(2)(f) and (g)).

The receipt meets the requirements of section 24(3) for a full tax invoice, so if the recipient of the supply is a GST-registered business intending to use the goods and services purchased for making taxable supplies, they will be able to make an input tax deduction in their GST return. The receipt also meets the requirements of section 24BAB(2) for a receipt required to be issued for the purposes of preventing double taxation on a supply of distantly taxable goods to a consumer.

Example 57 – prohibition on issuing a tax invoice for a high-value supply of distantly taxable goods

Consider Good Books in the previous example again. Good Books sell 20 items valued at NZ\$50 each (excluding GST) to a recipient providing a delivery address in New Zealand and charges NZ\$40 plus GST for shipping. As the estimated customs value of each item (NZ\$50) is less than NZ\$1,000, Good Books determines that the supply is of distantly taxable goods and charges GST of NZ\$156, based on the value of the supply of NZ\$1,040 (20 books at NZ\$50 each + NZ\$40 shipping = NZ\$1,040, 15% of NZ\$1,040 = NZ\$156).

As the value of the supply excluding GST (NZ\$1,040) is over NZ\$1,000, Good Books issues a receipt to the recipient with the words “tax invoice” omitted. Because the document is not a valid tax invoice (and because of the deduction prohibition rule for supplies valued over NZ\$1,000 in section 20(4C)), the recipient cannot make an input tax deduction even if they are registered for GST and will use the supply in their taxable activity.

The recipient is registered for GST and intends to use the goods wholly for making taxable supplies. However, because the document issued by Good Books is not a valid tax invoice (and because of the deduction prohibition rule for high-value supplies of distantly taxable goods by non-residents), the GST-registered recipient contacts Good Books to ask for a refund of the GST.

Questions to consider when deciding whether the election might be a useful option

318. In deciding whether the election to charge GST on low-value supplies to GST-registered businesses might be a useful option, non-resident suppliers of distantly taxable goods may want to consider the following questions:

- Is it reasonably likely that at least 50 percent of the value of the sales that you will make to New Zealand customers in the next 12 months will be to customers that are not registered for GST?
- In the context of your business, is it likely that any given sale of goods to a customer in New Zealand will always have a value below NZ\$1,000 (excluding GST)? If not, are your business systems capable of issuing different

documentation for supplies valued at NZ\$1,000 or less, versus supplies valued above NZ\$1,000?

Transitional rule for fixed-term contracts entered into before 1 December

319. Section 85C contains a new transitional provision similar to the transitional rule under section 85B, which was provided for the introduction of GST on remote services in 2016. The new transitional provision applies:

- to contracts for distantly taxable goods that are for a fixed term and entered into before 1 December 2019; and
- to periodic payments made under the contract that are treated under section 9(3)(a) as successive supplies;³¹ 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.

320. The transitional provision allows a non-resident supplier to treat distantly taxable goods provided under the contract as not being successively supplied under section 9(3), and therefore, those payments made after 1 December 2019 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 58 – contract for magazine subscription entered into before 1 December 2019

Rosalie purchases a subscription to a Canadian model train collectors' magazine for a 12-month period on 15 August 2019 and opts to pay the subscription in monthly instalments. The non-resident supplier is able to treat those monthly instalments as not being successively supplied under section 9(3) and, therefore, payments made after 1 December 2019 will not be subject to GST up until the 12-month contract ends.

³¹ The transitional provision should also apply to periodic payments made under the contract that are treated under section 9(3)(aa) as successive supplies. Officials will seek to correct this cross-referencing error in a future taxation bill.