Inland Revenue
Te Tari Taake

WITHDRAWN – REPLACED BY SPECIAL REPORT: GST ON ACCOMMODATION AND TRANSPORTATION SERVICES SUPPLIED THROUGH ONLINE MARKETPLACES (APRIL 2024)

NEW LEGISLATION > TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY, AND REMEDIAL MATTERS) ACT 2023 > SPECIAL REPORT

Marketplace rules for listed services

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This special report provides early information that explains the GST rules for marketplace operators that are involved in the supply of ride-sharing and ride-hailing, delivery services for food and beverages, and accommodation services, ahead of an upcoming edition of the *Tax Information Bulletin*.

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Introduction

This special report provides information on recently enacted changes to apply Goods and Services Tax (GST) to "listed services" supplied through electronic marketplaces. The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 was enacted on 31 March 2023. The amendments give effect to changes that require operators of electronic marketplaces to collect GST on supplies of "listed services" that include:

- ride-sharing and ride-hailing
- delivery services for beverages, food, or both, and
- taxable accommodation

that are performed, provided, or received in New Zealand.

The changes take effect on 1 April 2024 unless otherwise stated.

Inland Revenue is making changes to its systems and processes in time for 1 April 2024 that will support and provide guidance to marketplace operators and those that provide services through electronic marketplaces. This includes changes to the GST registration process for marketplace operators. Information about these changes will be included on Inland Revenue's website closer to 1 April 2024.

For general enquiries not covered by the guidance included in this special report, email: platformeconomy@ird.govt.nz.

The new legislation extends the scope of existing rules that apply to marketplace operators involved in the supply of remote services since October 2016 and low value imported goods (also referred to as "distantly taxable goods") since December 2019.

All legislative references are to the Goods and Services Tax Act 1985 (the GST Act) unless otherwise stated.

Key features

Scope of the new rules

From 1 April 2024, the supply of "listed services" made through an electronic marketplace will be subject to GST whether the person providing the services through the electronic marketplace is registered for GST or not. The new rules will require operators of electronic marketplaces to collect and return GST on supplies of listed services that they are treated as making. Marketplace operators will only be required to collect and return GST on supplies of

listed services if their total supplies in New Zealand including the listed services exceed, or are expected to exceed, the GST registration threshold of NZ$60,000 in a 12-month period.

The following services, which are further explained later in this report, are included within the scope of "listed services":

- accommodation other than accommodation that would be exempt under the GST Act
- ride-sharing and ride-hailing services
- delivery services for food, beverages, or both

provided that these services are performed, provided, or received in New Zealand.

The new rules apply to marketplace operators regardless of their residence for GST purposes. This means that resident and non-resident marketplace operators need to consider GST registration if they enable the supply of listed services.

Flat-rate credit scheme

A flat-rate credit scheme that requires marketplace operators to pass on a proportion of the GST collected on supplies of listed services to underlying suppliers that are not registered for GST, has been introduced. The flat-rate credit scheme provides a "credit" to underlying suppliers who are not required to be registered for GST because their total supplies are below the GST registration threshold. This is intended to recognise the GST incurred by unregistered underlying suppliers on goods and services used to make supplies of listed services.

Standard GST registration is available for underlying suppliers that do not have to be registered for GST and do not want to apply the flat-rate credit scheme. The flat-rate credit was determined with reference to the average amount of input tax that GST-registered suppliers of listed services recovered. It is not intended to recognise GST on capital assets such as land or vehicles used to make supplies of listed services. This is because a person that supplies listed services, and who is not registered for GST, would not account for output tax on the disposal of such assets.

For underlying suppliers that are registered for GST, they will continue accounting for input tax on their expenses in their own GST returns. They will no longer be responsible for accounting for GST output tax on supplies of listed services as this will be done by marketplace operators unless the underlying supplier has opted out of the marketplace rules.

Opting out of the rules

New provisions enable certain underlying suppliers to opt-out of the marketplace rules. The effect of opting out of the marketplace rules means that underlying suppliers, instead of marketplace operators, would continue being responsible for accounting for GST on supplies of listed services.

Some GST-registered underlying suppliers with larger-scale operations can opt-out of marketplace rules provided they meet certain criteria. Agreement will be required between marketplace operators and underlying suppliers who choose to opt-out of the rules in some circumstances. In other circumstances, underlying suppliers with more significant operations will be able to unilaterally opt-out of the marketplace rules by notifying the marketplace operator. If an underlying supplier opts out of the marketplace rules, they choose to remain responsible for their own GST obligations in respect of supplies they make through electronic marketplaces.

The provisions enabling underlying suppliers to opt-out of the rules came into force on 31 March 2023 to enable these rules to be used ahead of the other rules applying from 1 April 2024.

Consequential amendments

The marketplace rules for listed services are based on existing rules in the GST Act that apply to marketplace operators. These rules have been present in the GST Act since 1 October 2016 when the rules for GST on remote services were introduced. They were expanded on 1 December 2019 with the introduction of GST on distantly taxable goods.

Amendments have been made to the rules for electronic marketplaces, where appropriate, to ensure that those same rules continue to apply to marketplace operators that are treated as suppliers of listed services.

Background

GST is a broad-based consumption tax that applies to the supply of most goods and services made in New Zealand. To ensure GST remains simple, fair, and efficient, a fundamental principle of New Zealand's GST system is that GST should apply to all consumption that occurs in New Zealand.

GST came into force in New Zealand in October 1986 before the introduction of e-commerce and the growth and popularity of the internet. Since then, the scope of GST has been expanded to apply in circumstances not originally envisaged when GST was introduced.

Changes were made in 2016 to ensure that GST applied to cross-border supplies of "remote services". This included remote services that are supplied through electronic marketplaces such as app sales through app stores.

Changes were also made in 2019 to ensure that GST applied to supplies of certain imported goods. These changes included requirements that operators of electronic marketplaces—instead of the seller on the marketplace—would become liable for collecting and returning GST on goods supplied through the marketplace to a consumer providing a delivery address in New Zealand.

These changes were both premised on the principles of maintaining a broad-based GST system, under which GST applied to the broadest possible range of goods and services in New Zealand, and of promoting and protecting the sustainability of the GST base. The application of GST to these cross-border supplies of goods and services also removed distortions that arose when GST was typically being collected by those that provided the same goods and services within New Zealand.

These prior reforms followed consideration and consultation by the Organisation for Economic Co-operation and Development (OECD). In April 2021, the OECD published its report *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration*. This report outlined a range of options that jurisdictions could implement depending on their overarching policy objectives with its VAT/GST system. One option considered in this report is introducing rules requiring platform operators to collect and return GST on supplies of goods and services they enable sellers to make under a "deemed supplier" or "full liability regime" model. The Government enacted rules broadly aligned with this option as part of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 and following the Government discussion document *The role of digital platforms in the taxation of the gig and sharing economy* which was published in March 2022.

Effective date

The amendments incorporating "listed services" into the GST Act generally take effect on 1 April 2024.

The amendments enabling underlying suppliers to opt-out of the marketplace rules, provided criteria are met, have effect from 31 March 2023, being the date the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 received the Royal assent. This includes the amendments enabling the Commissioner of Inland Revenue

(the Commissioner) to issue determinations that set out the criteria a person must meet before they can enter an opt-out agreement with a marketplace operator.

Key terms

There are several terms that have a specific meaning for the purposes of these new rules.

Listed services – This term refers to the services listed in section 8C(2) of the GST Act. The following services are included within the scope of "listed services":

- accommodation other than accommodation that would be GST-exempt
- ride-sharing/ride-hailing services
- delivery services for food, beverages, or both

where these services are performed, provided, or received in New Zealand.

Further information about the scope of "listed services" is included on pages 7 to 11 of this special report.

Underlying supplier – This is the person who would be the supplier of taxable accommodation, ride-sharing/ride-hailing, or food or beverage delivery services for GST purposes (and would therefore be responsible for returning GST on the services to Inland Revenue) in the absence of a specific provision of the GST Act deeming another person (such as the operator of an electronic marketplace) to be the supplier of those services. Generally, this refers to an accommodation host, driver, or deliverer who makes the supply of services to the consumer, using an electronic marketplace to find buyers for their services.

Accommodation host or **Host** – This refers to the person who would be the supplier of accommodation services, ignoring the effect of the marketplace rules which treat the operator of the marketplace as the supplier. This will generally be the owner of the land or property that is used to provide accommodation but could also include the person responsible for the operation of a hotel or motel, for example.

Electronic marketplace – The term "electronic marketplace" is defined in section 2(1). It refers to a marketplace that is operated by electronic means through which a person (the underlying supplier) makes a supply of goods, or of remote services by electronic means, or of listed services, through another person (the operator of the marketplace) to a third person (the recipient). It includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace but it does not include a marketplace that solely processes payments.

Marketplace rules – This refers to rules that require operators of electronic marketplaces to account for GST on supplies they are treated as making. These rules apply where an underlying supplier provides listed services through an electronic marketplace to another person (the recipient). Instead of the underlying supplier accounting for GST on the supply of listed services, it is the marketplace operator that accounts for GST on the supply. The supplier, if registered for GST, will be treated as making a zero-rated supply to the marketplace operator and would therefore account for GST on the supply at the rate of 0% (or, in other words, the underlying supplier should include the value of the supply in the "zero-rated sales" box in its GST return).

Flat-rate credit – The term "flat-rate credit" refers to input tax that must be deducted by the operator of an electronic marketplace that is treated as the supplier of listed services where the underlying supplier has not notified the marketplace operator that they are registered for GST. Section 20(3N) sets out the prescribed rate of the flat-rate credit. For a supply of taxable accommodation, ride-sharing/ride-hailing, or delivery services for food and beverages, as at the date of publication of this special report, the prescribed rate is 8.5 percent of the value of the supply. The marketplace operator must pass this on to the underlying supplier.

Detailed analysis

Scope of the new rules

(Sections 2 and the definitions of "electronic marketplace", "flat-rate credit", and "listed services", 8(3), 8C, 10(6B), 60C of the GST Act)

The definition of "electronic marketplace" in section 2(1) is amended to reflect the different types of goods and services that can be provided through an electronic marketplace by an underlying supplier.

The definition now sets out that an electronic marketplace is a marketplace operated by electronic means through which another person (an "underlying supplier") may make a supply of certain goods or services through the operator of the marketplace to a recipient of those goods and services. Those goods and services include a supply of remote services, distantly taxable goods, and listed services. The concept of an electronic marketplace remains unchanged, which is essentially an electronic medium that matches buyers and sellers, or allows them to interact, to facilitate the sale and purchase of goods and services. It includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace and excludes a marketplace that solely processes payments.

For these rules to apply, there must be an arrangement that involves an underlying supplier providing services through an electronic marketplace to a recipient. In circumstances where the recipient of the services contracts directly with a person and there is no electronic marketplace involved, the marketplace rules for listed services will not apply. The GST treatment of the supply of these services will depend on whether the supplier of the services is registered for GST.

New defined terms have been inserted for "flat-rate credit" and "listed services". The flat-rate credit refers to the deduction marketplace operators are required to take as input tax, and that must be passed on to underlying suppliers that are not registered for GST in recognition of the GST on goods and services they use to make supplies of listed services.

The definition of "listed services" refers to those services set out in section 8C(2). Listed services are not set out in the Interpretation provision of the GST Act and are instead set out in section 8C.

Section 8C sets out the substantive rules for listed services and signposts to other provisions in the GST Act that are relevant.

The "listed services" are:

- accommodation other than accommodation that would be GST-exempt
- ride-sharing and ride-hailing services, and
- delivery services for food, beverages, or both.

The services set out in section 8C(2) were identified by the OECD as the services creating the most urgent pressures from a GST perspective.

Setting out the listed services in subsection (2) means that additional services could be included as listed services over time. New legislation is required before additional services are included in listed services. There is no regulation-making power for adding to the list.

Section 8C(7) expands the scope of listed services to include services that are closely connected with these services that are advertised, listed, or otherwise made available through an electronic marketplace.

Accommodation other than accommodation that would be GST-exempt

Included in the definition of "listed services" is accommodation other than accommodation that is exempt from GST under section 14(1)(c). Accommodation is generally exempt under section 14(1)(c) if it is accommodation provided in a dwelling that is used by the person as their principal place of residence and for which they have rights of quiet enjoyment.

All other forms of accommodation provided in New Zealand are taxable, usually at 15%. This includes short-term rental and visitor accommodation. However, the GST Act includes special rules for supplies of certain domestic goods and services provided during a stay of more than four weeks in a "commercial dwelling". These rules provide for a special tax rate of 9% on these supplies. Section 10(6B) overrides these special rules for the purposes of accommodation supplied through an electronic marketplace. This is because it would be impractical for marketplace operators to identify whether the listed services would qualify as domestic goods or services supplied during a stay in a commercial dwelling or another type of taxable accommodation. Therefore, all accommodation services provided through an electronic marketplace (other than exempt accommodation) will be subject to GST at the standard rate of 15% where it is provided or received in New Zealand.

It will generally be straightforward to determine whether accommodation has been provided or received in New Zealand. This is because underlying suppliers of accommodation in New Zealand will provide the marketplace operator through which accommodation is provided with the address of the property where the accommodation is provided.

A person that owns a property in which taxable accommodation is provided through an electronic marketplace may engage the services of a property manager to manage the property, for example holiday house rentals or apartments with management rights arrangements. In such circumstances the person that is supplying the accommodation through the electronic marketplace is the owner of the property and not the property manager. This means that the owner of the property is the underlying supplier.

In some situations, such as motels, a person (the lessee) may purchase a business lease from the freehold property owner (the lessor) and will run the accommodation business. In this situation, the lessee is supplying the accommodation through an electronic marketplace. It is therefore the lessee who is the underlying supplier, not the lessor.

The disposal of property used to provide accommodation through an electronic marketplace is not a listed service.

Ride-sharing and ride-hailing

The definition of ride-sharing and ride-hailing services is set out in section 8C(8). It sets out that these services are provided through an electronic marketplace that involves the engagement of a personal driver to transport a person to their chosen destination.

Ride-sharing and ride-hailing services therefore would not include services where the travel route is pre-determined by the supplier such as a bus route, a ferry service, cruise, or flight between certain destinations. In these cases, the passenger is not usually able to direct the

driver towards a particular place, destination, or route. The passenger will also not usually have control over both the time and the destination.

Many types of transportation services involve the customer purchasing a service directly from a GST-registered supplier of transportation services, such as a bus company or boat charter. In these cases, the services are not provided through an electronic marketplace so the rules for marketplace operators do not apply. This is because the rules for marketplace operators apply only where there is an underlying supplier (of, for example, a listed service), a marketplace operator, and a recipient of the services. In a situation where a person contracts directly with the supplier of the services, there is no marketplace operator involved.

Delivery services for food and/or beverages

The transportation of beverages, food, or both these goods is included as a listed service. This does not include the supply of beverages or food itself. It is only the delivery services that are included in the definition.

The marketplace rules for listed services will not apply in circumstances where a business enters a contract with a person for the delivery of food and/or beverages, and that business engages the services of an independent contractor or an employee to carry out the delivery services. This is because in such circumstances the business is the supplier of the services (and not the independent contractor or the employee). GST will usually already apply to these services because the person providing them will generally be registered for GST.

In contrast, where a person uses an electronic marketplace operated by a third party to enter a contractual relationship with other persons for food and/or beverage delivery services, the marketplace rules for listed services will usually treat the marketplace operator as the supplier of these services for GST purposes. It will therefore be the marketplace operator with the obligation to return GST on the services to Inland Revenue and not the deliverer.

Example 1: Delivery services for food provided but not through an electronic marketplace

Andraya's Eats Ltd carries on a business of delivering restaurant meals to customers via its app. Andraya's Eats Ltd is registered for GST and GST applies to its services.

Andraya's Eats Ltd's business model involves arranging for independent contractors to undertake the delivery of restaurant meals to Andraya's Eats Ltd's customers. There is no contractual relationship between the independent contractors and Andraya's Eats Ltd's customers.

The rules for marketplace operators do not apply because Andraya's Eats Ltd is not an electronic marketplace. This is because the independent contractors that provide delivery services are not providing delivery services under any direct contractual agreement with Andraya's Eats Ltd's customers. The independent contractors are instead providing services to Andraya's Eats Ltd.

Andraya's Eats Ltd should continue to return GST under the standard GST rules.

Closely connected services

Section 8C(7) expands the scope of listed services to include services that are closely connected with a "listed service" referred to in section 8C(2). This means that marketplace operators are required to account for GST on these services if these services are advertised, listed, or otherwise available through the electronic marketplace.

This is intended to include services that are ancillary to the listed service, such as cleaning, where a fee is charged for such services as part of the overall supply of a listed service made through an electronic marketplace.

Example 2: Cleaning services

Jenny seeks accommodation on Waiheke Island for an upcoming holiday. She wants to stay in a holiday home on the beachfront and uses an electronic marketplace that offers accommodation to find a suitable place to stay.

Geoff provides accommodation in his property through the electronic marketplace.

Jenny pays a nightly rate to the electronic marketplace. Jenny is also charged a cleaning fee at the end of her stay. The electronic marketplace collects the cleaning fee as part of the total consideration that it collects from Jenny.

The marketplace operator would be required to account for GST on the cleaning fee as it corresponds to a service that is closely connected with taxable accommodation, which is a listed service.

An exception to the rule exists for closely connected services that are supplied by a marketplace operator to the recipient of the listed service. This is because the services are separate to the services provided by the underlying supplier. This is intended to exclude services such as a foreign exchange reserve that a marketplace operator may provide its customers.

Example 3: Reserving a foreign exchange rate

David is overseas-based and is looking for accommodation in New Zealand for an upcoming holiday. He uses an electronic marketplace for these purposes.

The marketplace operator offers a service to its customers that enables them to lock-in a foreign exchange rate. David is not sure when he will visit New Zealand but wants to reserve the foreign exchange rate that is available to him at the time he is browsing for accommodation.

This service is not closely connected with the supply of a listed service because the service is offered directly by the marketplace operator to David. The marketplace operator would not account for GST on the supply of this service under the rules for listed services. It may need to account for GST on the supply of this service to David under other GST rules.

A service would not be considered closely connected with a listed service if the service did not arise because of the listed service itself. The effect of this is that services which are not ancillary to a listed service, such as rental vehicle hire or a tourist attraction, would not be included within the scope of listed services and the marketplace operator would not account for GST on these supplies under the rules for listed services.

When marketplace operators are treated as suppliers

Amended section 60C provides that the operator of an electronic marketplace is treated as the supplier of listed services if the marketplace operator:

- authorises a charge for the supply of listed services to the recipient
- authorises the delivery of the supply of listed services to the recipient, and/or
- sets a term or condition under which the supply of listed services is made, whether directly or indirectly.

This applies whether the marketplace operator is a resident or non-resident for GST purposes in New Zealand. It also applies whether the underlying supplier of the listed services is a resident or a non-resident for GST purposes in New Zealand.

These are the same tests that apply to determine whether a marketplace operator is treated as the supplier of remote services supplied in New Zealand.

Example 4: Marketplace operator treated as the supplier of taxable accommodation

Chaz Intermediaries Ltd is a New Zealand tax resident and runs a website that connects accommodation hosts with guests. Hosts create an account on the website where they can upload photographs of their property, list dates that the property is available, and set a nightly rate.

Chaz Intermediaries Ltd offers this service for a fee that it charges hosts. Guests can book properties that are listed by hosts provided the property is available. Chaz Intermediaries Ltd connects the guest to a third-party payment processing portal which processes the payment for the booking.

Because Chaz Intermediaries Ltd authorises the charge for the supply of taxable accommodation, it is treated as the supplier of the accommodation to the guests.

Marketplace operators will not be treated as the supplier of listed services if neither of these tests are met. This means that a person that runs a website that contains a messaging board enabling a person to list properties available for rent may not be a marketplace operator.

Example 5: Website enables accommodation booking – website operator not a marketplace operator

Kraymond's List Ltd developed a smartphone app that lets users post community notices and classified advertisements for a small upfront listing fee. Several short-term accommodation hosts list properties available for rent on it. Guests can use the app to communicate with the hosts directly, although there are no rules preventing hosts and guests from communicating via other mediums such as email, phone, or other messaging apps, nor from posting links to listings on third-party websites.

Hosts manage property bookings directly, often through the messaging service offered by the app. Guests typically pay the hosts a deposit via internet banking transfer before staying in the property, and at the end of their stay, pay the balance of the booking. However, hosts can set their own policies as to whether they require a deposit to be paid upfront and, if so, how much the deposit is.

Aside from removing listings that are fraudulent or offensive, Kraymond's List Ltd does not moderate listings or intervene in disputes between hosts and guests.

Kraymond's List Ltd does not set any terms or conditions under which the supply of accommodation is made. It also does not authorise the charge for the supply of the accommodation. It is therefore not treated as the supplier of accommodation.

Listed services before 1 April 2024

The marketplace rules for listed services take effect on 1 April 2024. This means if a listed service is supplied through an electronic marketplace prior to 1 April 2024, the marketplace operator is not treated as the supplier of the services, and it would not account for GST on the sale of the services.

Example 6: Listed services purchased before 1 April 2024

Gerard and Nicole are based overseas. They purchase accommodation in New Zealand through an electronic marketplace in March 2024. The accommodation is booked for June 2024.

The marketplace operator is not treated as the supplier of the accommodation, and it therefore does not account for GST on the sale.

There are no special rules that determine the time of supply for listed services. The time of supply for listed services will therefore generally be the earlier of the time the marketplace operator issues an invoice, or the time any payment is received for the supply.

When multiple parties are involved in a supply of listed services

Section 60C(3) has been amended to apply in circumstances where it is necessary to determine which marketplace operator has the obligation to account for GST on a supply of listed services it is treated as making. Subsection (3) applies where multiple marketplace operators are involved in a single supply of listed services. Under these rules, it is the first marketplace operator that authorises the charge for the listed service or receives the consideration for the supply of the listed service, which is treated as the supplier.

When a marketplace operator is treated as the supplier of listed services, sections 8C(3) and 60(1C) apply. Under these rules:

- the person that provides the services through the electronic marketplace (the underlying supplier) is treated as having supplied those listed services to the operator

of the electronic marketplace. These services are zero-rated under section 11A(1)(jc) and the underlying supplier therefore does not collect output tax on this supply.

- the operator of the marketplace receives the services from the underlying supplier and does not claim input tax for the services because the supply is zero-rated. The marketplace operator is also treated as supplying those same services to the recipient of the services. The supply of these services is standard rated where the services are performed, provided, or received in New Zealand. This means the marketplace operator is required to account for GST on the supply it is treated as making.

The obligation for the marketplace operator to account for GST on the supply it is treated as making applies in all circumstances provided the relevant tests are met (see *When marketplace operators are treated as suppliers* above for more information).

Whether a person is considered an operator of an electronic marketplace through which an underlying supplier makes a supply of listed services will depend on the specific facts. For instance, automated inventory tracking systems such as those used in the accommodation industry[1] would not be considered electronic marketplaces in and of themselves.

How marketplace operators account for GST on supplies of listed services they are treated as making

Section 8C(3) provides that section 60(1C) applies when a supply of listed services is made through an electronic marketplace. The effect of this is that, for a supply of listed services:

- The underlying supplier is treated as making a supply to the operator of the electronic marketplace and this supply is zero-rated (under section 11A(1)(jc)) if the underlying supplier is GST-registered, or if the underlying supplier is not GST-registered the supply is not subject to GST.
- The marketplace operator is treated as making this same supply, with the addition of GST at the standard rate of 15%, to the recipient of the listed services.

Where a marketplace operator has an agreement that entitles the underlying supplier to the consideration paid by the recipient of the listed services, it will need to consider whether its contracts need to be altered to allow it to retain, and own, enough of the funds paid by the customer so it can fund its GST liability in respect of the listed services.

For GST purposes, this would mean that the consideration paid for the supply that is treated as being made by the marketplace operator to the recipient of the listed services is more

[1] For example, a Central Reservation System or Computerised Reservation System (CRS), or a Global Distribution System (GDS).

than the consideration paid by the marketplace operator for the deemed supply of listed services made by the underlying supplier to the marketplace operator under section 60C(1)(a). In such a situation, paying GST to Inland Revenue does not give rise to additional consideration for facilitation services the underlying supplier receives from the marketplace operator.

Example 7: GST on a supply of listed services where marketplace operator is treated as supplier

A supply of listed services with a value of $115 including GST is made through an electronic marketplace.

For GST purposes, the marketplace operator is treated as the supplier under section 60C.

The parties have agreed the marketplace operator is entitled to retain enough of the funds from the recipient of the listed services to fund its GST liability (in this situation, $15). Therefore, the value of the supply from the perspective of the underlying supplier is $100. This applies whether the underlying supplier is GST-registered or not. If the underlying supplier is GST-registered, they would account for output tax on the supply at the rate of 0%. GST does not apply if the underlying supplier is not registered for GST.

The marketplace operator can use $15 of the $115 paid by the recipient of the listed services to satisfy its GST liability. The remaining $100, the GST-exclusive value of the listed services, is payable to the underlying supplier for its deemed supply to the marketplace operator.[2]

When services are performed, provided, or received in New Zealand

The GST Act has rules that determine where the place of supply for goods or services is. The general rules stipulate that goods or services are deemed to be supplied in New Zealand if the supplier is a resident in New Zealand, and goods and services are deemed to be supplied outside New Zealand if the supplier is a non-resident. These rules are contained in section 8.

Amendments to section 8 override the general rules. The amendments (to section 8(3)(c) and new section 8(3)(d)) ensure that a supply of listed services that is performed, provided, or

[2] For simplicity, this example ignores the fees charged by marketplace operators for providing facilitation services to underlying suppliers.

received in New Zealand is treated as a supply made in New Zealand and will therefore be subject to GST. This applies even if the underlying supplier of a listed service is a non-resident (such could be the case for accommodation provided in New Zealand, as the underlying landowner could be a non-resident) or the marketplace operator is a non-resident.

Unlike the rules for remote services and distantly taxable goods, there are no special rules that enable a different GST treatment for listed services. This means that they will always be subject to GST at the standard rate when they are performed, provided, or received in New Zealand. It also does not matter if the recipient of the services is a non-resident. For example, a non-resident tourist staying in accommodation in New Zealand would be required to pay GST on their accommodation.

There are also no special rules that apply to determine whether listed services are "performed, provided, or received" in New Zealand. The ordinary meaning of these terms will apply to determine whether the services are listed services that would be subject to GST when provided through an electronic marketplace.

GST treatment of facilitation services and commissions related to listed services

Marketplace operators typically charge underlying suppliers a fee for facilitation services related to the supply of listed services, often in the form of a commission on the sale. "Facilitation services" involve connecting underlying suppliers with buyers.

The GST treatment of facilitation services will be subject to the ordinary GST rules if the supplier of the services (being the marketplace operator) is a tax resident in New Zealand. In this situation, the facilitation services will be subject to GST at the standard rate, regardless of whether the recipient (the underlying supplier of listed services) is registered for GST.

The GST rules for remote services apply to determine the GST treatment of facilitation services supplied by a person who is a non-resident for GST purposes. In this case, a supply of facilitation services is subject to GST at the standard rate if the supply is to a New Zealand-resident person who is not registered for GST. Under these rules, GST does not normally apply if the recipient of the services is a GST-registered person, although the marketplace operator can choose in this situation to treat the supply as zero-rated.

The following example sets out how GST applies in a situation where a marketplace operator is:

- treated as the supplier of listed services to a recipient (where GST applies at the standard rate of 15% if the services are performed, provided, or received in New Zealand), and
- supplying separate facilitation services to the underlying supplier of the listed services.

Example 8: Marketplace operator supplying facilitation services to a GST-registered underlying supplier and treated as supplying listed services to another person

2K's Ride Services Ltd (2KRS) is an electronic marketplace through which underlying suppliers make supplies of listed services. It is not resident in New Zealand for GST purposes.

Wiremu provides ride-sharing services through 2KRS. He is registered for GST and has notified 2KRS of his GST registration.

Richeile also provides ride-sharing services through 2KRS and has notified the marketplace operator she is not registered for GST.

2KRS has an agreement with drivers that use 2KRS's app that entitles it to retain 20% of the total GST-exclusive fare for ride-sharing services that drivers supply to passengers using 2KRS's app. This 20% fee is the amount 2KRS charges for its facilitation services.

Two passengers purchase rides from Wiremu and Richeile through 2KRS for $57.50 including GST (a GST-exclusive value of $50).

Facilitation services

Because Wiremu is GST-registered, 2KRS can choose whether the facilitation services ($10) it provides to Wiremu are treated as supplied outside New Zealand, in which case, there are no associated GST obligations with the supply. Alternatively, it can choose to treat the supply of facilitation services as zero-rated, in which case it would include this in its GST return (in the "zero-rated sales" box).

Because Richeile has notified 2KRS she is not registered for GST, 2KRS is required to account for GST on the supply of its facilitation services to Richeile. It must include the facilitation services supplied to Richeile in the "Total sales and income" box of its GST return.

Listed services

2KRS is required to account for GST on the supply of listed services it is treated as making (that is, the rides provided by Wiremu and Richeile to their passengers).

The value of the listed service ($50) is not reduced by the value of the facilitation services ($10) supplied by 2KRS to Wiremu or Richeile.

Adjustments for supplies of listed services

The amendments treat the marketplace operator, instead of the underlying supplier, as the supplier of listed services. It follows that when adjustments for inaccuracies need to be made, marketplace operators will need to apply the rules as if they were the supplier of services, even though another person (an underlying supplier) is the contractual supplier of the services. This means that, in these circumstances, it is the marketplace operators (instead of the underlying suppliers) that must provide the supply correction information to the recipient and make the adjustments.

Section 25 applies when a GST-registered supplier returns too much or too little GST because of either a mistake, subsequent alteration to, or cancellation of a supply. This includes instances where, for example, the previously agreed consideration has been reduced through the offer of a discount or refund (whether partial or in full). In the situation where a marketplace operator has returned too much or too little GST to Inland Revenue as the result of an inaccuracy referred to in section 25(1) (such as an incorrect amount of consideration), section 25(2) provides that it should make an adjustment in its GST return when it is apparent that too much or too little GST has been returned.

GST-registered underlying suppliers

In most situations, the marketplace rules for listed services apply regardless of the underlying supplier's GST registration status. This means that for any listed services provided through an electronic marketplace, it is the operator of the marketplace that is responsible for collecting and paying GST to Inland Revenue.

In limited circumstances, certain underlying suppliers can opt-out of the marketplace rules. This enables them to continue accounting for GST on supplies of listed services they make through an electronic marketplace by including the supplies in their own GST returns. See *Opting out of marketplace rules* below for more information.

GST-registered underlying suppliers will continue providing their own GST returns. They will need to keep a record of what supplies are made through an electronic marketplace and what supplies are made directly to their customers. This is because the supply of listed services made through an electronic marketplace is zero-rated under section 11A(1)(jc) and therefore must be included in the zero-rated sales box in the GST return. Other supplies will continue being accounted for in the usual way.

GST-registered underlying suppliers will purchase or acquire goods and services they use to make supplies of listed services through an electronic marketplace. The process for deducting input tax for these goods and services does not change. GST-registered underlying suppliers will continue to deduct input tax on their expenses in their own GST returns in the usual way.

Example 9: Accounting for sales and expenses associated with listed services as a GST-registered underlying supplier

Manjula provides ride-sharing/ride-hailing services through an electronic marketplace. He is registered for GST because he also drives a taxi for a taxi company, and the company includes GST in its pricing which Manjula is required to use. Manjula has notified the marketplace operator that he is registered for GST.

Manjula pays for goods and services that enable him to provide his ride-sharing/ride-hailing services such as fuel, vehicle maintenance, and insurance. The total cost of these goods and services for the month is $3,450 including GST. Manjula can recover the GST component of these costs as an input tax deduction by including these expenses in his GST return.

Manjula earns $2,500 from providing ride-sharing/ride-hailing services through the electronic marketplace for the month. He also earns $5,000 that month from his activities conducted off the electronic marketplace.

To complete his GST return, Manjula includes:

- $2,500 of sales in the "Zero-rated supplies" box on his GST return. These are sales of listed services that Manjula is treated as making to the marketplace operator. By including the sales in the zero-rated sales box, he will not have an output tax liability on these sales. Instead, the marketplace operator is required to account for output tax on these sales.
- $5,000 of sales in the "Total sales and income" box in his GST return. These are the sales from Manjula's activities conducted off the electronic marketplace.

- $3,450 of costs in the "Total purchases and expenses" box in his GST return. He will then calculate input tax deductions of $450.

Flat-rate credit

(Sections 2 and the definition of "flat-rate credit", 8C, 20(3)(de), 20(3N), 20(3JD), 20(4E), and 60H of the GST Act, and section 141(1) and clause 3B, Part A, schedule 7 of the Tax Administration Act 1994)

The flat-rate credit is a credit available to underlying suppliers that are not registered for GST. The flat-rate credit represents the average amount of GST that underlying suppliers, if they were registered, would be able to recover as input tax on goods and services they purchase and use to make supplies of listed services. The prescribed amount for the credit is set out in section 20(3N).

For listed services that are taxable accommodation, ride-sharing/ride-hailing services, or delivery services for food and/or beverages, the prescribed amount is 8.5 percent of the value of the listed services. This percentage was determined with reference to the average amount of input tax deducted by GST-registered taxi drivers and holiday homeowners. The 8.5 percent rate represents the average amount of input tax these suppliers would be able to recover if they were registered for GST and accounting for input tax deductions. It does not consider those with greater expenses and purchases than sales, as it was assumed that in such circumstances, the underlying supplier would prefer to be registered for GST and would do so voluntarily.

The flat-rate credit is not available to GST-registered underlying suppliers. This is because GST-registered underlying suppliers will be entitled to deduct input tax for their actual expenditure. The flat-rate credit is also not available to a person in their capacity as an employee. This is because the employee of a marketplace operator who performs listed services as part of their employment duties is not an "underlying supplier".

If an underlying supplier considers the flat-rate credit inappropriate for their circumstances, they may choose to register for GST voluntarily. This will enable them to deduct input tax for their actual expenditure, but also means that they will need to account for GST on all supplies they make from their taxable activities (including at the zero percent rate on supplies of listed services made through an electronic marketplace where the marketplace operator is treated as the supplier of the services). This includes accounting for output tax on assets used principally for making taxable supplies in the event those assets are disposed of or the taxable activity ceases.

Operation of the flat-rate credit

Section 20(3)(de) requires marketplace operators that are treated as supplying listed services to deduct input tax for the flat-rate credit. The deduction is calculated based on the prescribed rate of the flat-rate credit for the relevant listed service that is set out in section 20(3N). It must be taken as a deduction if the underlying supplier of listed services has not notified the marketplace operator that the underlying supplier is registered for GST at the time of supply of the listed services. Marketplace operators are then required to "pass on" the flat-rate credit to underlying suppliers. They must also notify, at least monthly, underlying suppliers of the total amount of flat-rate credit that has been passed on.

Example 10: Basic operation of the flat-rate credit on supplies of listed services

Henry provides short-term accommodation through an electronic marketplace. The marketplace operator is responsible for collecting GST on these supplies.

Henry notifies the marketplace operator that he is not a GST-registered person.

Josie books accommodation from Henry through the electronic marketplace for $200 plus GST for the stay. The marketplace operator collects GST of $30 on the supply of accommodation they are treated as making to Josie.

The marketplace operator applies the flat-rate credit scheme knowing Henry is not a GST-registered person. This results in the marketplace operator calculating:

- GST of $30 at 15% of the value of the supply of the accommodation, and
- the input tax deduction of $17 for the flat-rate credit at 8.5 percent of the value of the supply of the accommodation.

The marketplace operator is required to deduct input tax of $17 from the $30 of output tax payable to Inland Revenue. It is also required to pass on the $17 to Henry as a flat-rate credit.

The marketplace operator must also pay the remaining $13 to Inland Revenue as the net GST payable on the supply of accommodation.

To enable marketplace operators to apply the flat-rate credit, section 60H(1) requires underlying suppliers to notify the marketplace operator of their name, tax file number (IRD number), and GST registration status. Section 60H(2) requires underlying suppliers to notify marketplace operators of any subsequent change to their GST registration status, as this would affect entitlement to the flat-rate credit.

Section 60H(4) provides protection to marketplace operators that have relied on information from underlying suppliers if it is later discovered that the marketplace operator should not have passed on the flat-rate credit to an underlying supplier that was registered for, or liable to be registered for, GST. In such circumstances, absent the rules set out in section 60H(4), the marketplace operator could have a deficiency of tax equal to the amount of the input tax deducted for the flat-rate credit. Instead, section 60H(4) provides that the deficiency in tax attributable to a taxable period that arises because of the marketplace operator relying on the information provided by the underlying supplier is treated as a reduction in the total output tax allocated to the taxable period.

Information requirements for underlying suppliers entitled to the flat-rate credit

To enable marketplace operators to apply the flat-rate credit scheme, it is necessary for them to know whether the underlying supplier of listed services is a GST-registered person.

Underlying suppliers are therefore required under section 60H(1) and (2) to notify marketplace operators of their name, tax file number (IRD number), and GST registration status. Underlying suppliers are also required to notify marketplace operators of any changes to their GST registration status as soon as practicable (that is, if they become a GST-registered person or cease to be a GST-registered person).

If an underlying supplier does not notify a marketplace operator that they have become registered for GST, this could result in the marketplace operator passing on the flat-rate credit which the underlying supplier is not entitled to. In these circumstances, the underlying supplier would be required to account for this as an output tax adjustment in its GST return. They may also be liable for shortfall penalties.

Conversely, if an underlying supplier ceases to be a GST-registered person but does not notify the marketplace operator of this change, the marketplace operator will not know to deduct input tax for the flat-rate credit and pass this on to them.

A person who has appropriate authority to act on behalf of an underlying supplier can also provide information about the underlying supplier's name, IRD number, and GST registration status.

Reporting the flat-rate credit

Marketplace operators are required to provide underlying suppliers with a statement showing the flat-rate credit passed on to them. Section 8C(6) requires this statement to be provided to underlying suppliers at least once a month. If a marketplace operator wants to

provide information about the flat-rate credit to underlying suppliers more frequently than monthly, this is also permitted.

This requirement is necessary to ensure that GST-registered underlying suppliers who receive the flat-rate credit (which they are not entitled to) will be alerted to it. GST-registered underlying suppliers are required to account for any flat-rate credit they receive as output tax in their own GST returns. This reverses the benefit of the flat-rate credit for GST-registered persons who will be deducting input tax for goods and services related to their supplies under the usual GST rules.

The statements to be provided by marketplace operators to underlying suppliers should show the total amount of the flat-rate credit passed on to them for the month (or, if the marketplace operator has chosen to provide a statement more frequently, for that period). This information could be included in existing statements provided to underlying suppliers which show the total amount of consideration underlying suppliers are due, or have received, for services performed for the relevant period.

If a marketplace operator offsets other fees and charges for services it provided to an underlying supplier against the underlying supplier's flat-rate credit, the statement must still show the full amount of the flat-rate credit that was deducted as input tax by the marketplace operator in respect of the listed services made by the underlying supplier. In other words, the amount of the flat-rate credit reported to the underlying supplier should not be reduced or offset by other fees or charges.

Requirement to pass on the flat-rate credit

Marketplace operators that have taken a deduction of input tax for the flat-rate credit must then pass this on to the underlying supplier. This is required by section 8C(3)(b)(ii).

The GST Act does not explicitly set out a timing requirement for marketplace operators to pass on the flat-rate credit to underlying suppliers that have purported to be unregistered persons. This ensures there is sufficient flexibility to allow marketplace operators to pass on the flat-rate credit to underlying suppliers alongside other funds due to the underlying supplier (for example, the fare for the ride-sharing/ride-hailing services or the amount of the booking for the accommodation).

Disclosure of GST registration status by Inland Revenue

The Commissioner can, despite the confidentiality rules in the Tax Administration Act 1994 (TAA), provide information about a person's GST registration status to a marketplace operator to ensure the effective operation of the flat-rate credit scheme. The Commissioner

can disclose this information under clause 3B, part A of schedule 7 of the TAA. Section 8C(5) sets out that if the Commissioner notifies a marketplace operator of an underlying supplier's GST registration status, the marketplace operator must act on this notification as soon as practicable.

Inland Revenue intend to explore creating a GST registration verification service for these purposes. Such a verification service could provide confirmation of an underlying supplier's GST registration status as recorded by Inland Revenue at the time of the query. For this service to function, marketplace operators would need to have collected the underlying supplier's name and tax file number (IRD number) as required under section 60H(1)(a).

The service would be useful for assisting marketplace operators in determining whether to take a deduction for the flat-rate credit. However, underlying suppliers are required to notify marketplace operators of their GST registration status for the purposes of the flat-rate credit scheme so the service would only be used to verify information that should have already been provided.

If the service provided verification that an underlying supplier was not registered for GST at the time the listed services were supplied, the marketplace operator would be able to take a deduction for the flat-rate credit and pass this on to the underlying supplier.

If the verification service showed the underlying supplier *was* registered for GST at the time the listed services were supplied, the marketplace operator would not apply the flat-rate credit scheme.

The verification service would enable the Commissioner to notify marketplace operators of the GST registration status of underlying suppliers in terms of section 8C(5). Once a marketplace operator is notified of an underlying supplier's GST registration status, they are required to act on this notification as soon as practicable. The effect of this is that marketplace operators should apply the flat-rate credit scheme based on information provided by the Commissioner's verification system.

Marketplace operators may choose not to use the GST verification system for the purposes of the flat-rate credit scheme. In such circumstances, marketplace operators will need to rely on the information they collect and maintain from underlying suppliers as to their GST registration status. Under section 60H(4), marketplace operators are protected from deficiencies of GST in their GST returns to the extent that any such deficiency arises because of information provided to them by an underlying supplier.

Requirements of GST-registered persons who receive the flat-rate credit

If a GST-registered person receives the flat-rate credit they must account for this as an output tax adjustment in their GST return. The output tax adjustment is required for the taxable period in which the flat-rate credit was received. These requirements are set out in section 20(3JD) and 20(4E).

Example 11: GST-registered person receives flat-rate credit and must make an output tax adjustment to reverse the benefit

In completing her GST return for the period ending 31 March 2025, Poppy realises she received flat-rate credits from a marketplace operator related to listed services she supplied through an electronic marketplace. Poppy identifies this by reviewing the statement she receives from the marketplace operator that informs her of her total flat-rate credit for the month of March.

Poppy became a GST-registered person in February 2025. She forgot to notify the marketplace operator of this change in her circumstances. Poppy is keen to correct the error. The total amount of flat-rate credits Poppy received for February and March was $6,000.

To correct this error, Poppy must include $6,000 as an output tax adjustment in her GST return for the taxable period ending 31 March 2025. The $6,000 of output tax will be offset by any input tax deductions that Poppy can take for the period.

A GST-registered person who receives the flat-rate credit will also have a tax shortfall equal to the amount of the flat-rate credit they received. Section 141(1) of the TAA provides that a tax shortfall may arise because of a provision in an Inland Revenue Act. In these circumstances, a tax shortfall arises because of section 8C(3)(c)(ii), which means the person could be liable for shortfall penalties. Having a tax shortfall does not mean that penalties will be imposed automatically. The Commissioner may consider making an assessment of shortfall penalties in cases where a person continuously misrepresents their GST registration status to claim amounts of the flat-rate credit that they are not entitled to.

Example 12: GST-registered person receives flat-rate credit resulting in a tax shortfall

Bradd is a registered person and provides taxable accommodation through an electronic marketplace. He has notified the marketplace operator that he is not a GST-registered person.

Bradd has a six-monthly taxable period. The only supplies Bradd makes is through an electronic marketplace. Between April 2024 and September 2024, Bradd makes supplies through the electronic marketplace equal to $46,000 excluding GST.

Bradd acquired goods and services that he used in making supplies through the electronic marketplace. The total value of these goods and services was $17,500 including GST. He deducted input tax of $2,282.60 in his GST return.

Because Bradd notified the marketplace operator that he was not a GST-registered person, the marketplace operator also passed on the flat-rate credit to Bradd for his listed services. The amount of flat-rate credit Bradd received totalled $3,910.

Bradd therefore has a tax shortfall equal to this amount and could be liable for a shortfall penalty.

If a GST-registered underlying supplier of listed services receives a flat-rate credit spanning multiple taxable periods (and therefore multiple GST returns), an output tax adjustment would need to be made in the GST return for each taxable period that the underlying supplier received the flat-rate credit. Section 20(4E) sets out the timing rules for the adjustments.

Example 13: GST-registered person receives flat-rate credit spanning multiple taxable periods

Marley is a GST-registered underlying supplier of listed services. He incorrectly receives the flat-rate credit as he had not notified the marketplace operator of his GST registration.

Marley has a six-monthly taxable period, providing GST returns for the periods covering 1 April to 30 September and 1 October to 31 March.

Marley receives the following flat-rate credits:

- $600 in February
- $400 in March
- $800 in April.

Marley becomes aware of his mistake and notifies the marketplace operator of his status as a GST-registered person at the end of April.

Marley is required to make an output tax adjustment of:

- $1,000 ($600 + $400) in his GST return for the taxable period ending 31 March, and
- $800 in his GST return for the taxable period ending 31 October.

Income tax implications of the flat-rate credit

The flat-rate credit is treated as excluded income for income tax purposes under section CX 1(c) of the Income Tax Act 2007. In this way it is treated the same as way as input tax payable under the GST Act to a GST-registered person.

Section DB 2(2B) of the Income Tax Act 2007 treats a person that is not registered for GST as if they were registered for GST for the purposes of determining deductions for income tax. This applies to the extent that the person would have a deduction for expenditure that is attributable to supplies of listed services that are made through an electronic marketplace.

This means that deductions for expenditure incurred for income tax purposes must be taken on a GST-exclusive basis if the expenditure is attributable to deriving income exclusively through an electronic marketplace. This is because the flat-rate credit is a proxy for input tax that would be deductible if the person was registered for GST, and GST-registered persons are unable to take a deduction for GST-inclusive expenditure for income tax purposes.

Expenditure related to income derived from other activities will continue being deducted on a GST-inclusive basis. A person may incur expenditure for goods and services that are used partly to derive income from sales through an electronic marketplace and partly for non-marketplace-based sales. In these circumstances, the person will have incurred expenditure with a mixed purpose, and they will only be able to take a deduction for income tax on a GST-inclusive basis for expenditure attributable to income they derive from activities that are not conducted through an electronic marketplace.

If a person has mixed purpose expenditure – being expenditure related to deriving income through an electronic marketplace and through other means – the person should undertake the following process to determine their total annual deduction for income tax purposes:

- Identify the GST-inclusive and GST-exclusive amount of mixed purpose expenditure for the income year.
- Determine what proportion of expenditure must be taken on a GST-exclusive basis by applying the calculation under the heading "Formula for determining GST-inclusive and GST-exclusive deductions for expenditure with a mixed purpose".
- Add deductions for expenditure incurred in deriving income that is not derived through an electronic marketplace.
- Include, in the total annual deduction, any amount deductible under the depreciation rules.

For persons not registered for GST, the value of depreciable property for depreciation purposes will continue to be calculated on a GST-inclusive basis (if GST applies).

The following paragraphs explain how to determine the proportion of expenditure to take as a deduction for income tax purposes on a GST-inclusive basis and on a GST-exclusive basis where the expenditure relates to both income derived through an electronic marketplace and not through an electronic marketplace.

Determining GST-inclusive and GST-exclusive deductions for expenditure with a mixed purpose

To determine the total GST-inclusive deductions for mixed purpose expenditure, it is necessary to determine the proportion of income derived from sales that are not made through an electronic marketplace. This can be established by completing the following formula:

$$\frac{a}{(a+b)} = c$$

Where:

a is the income derived from making sales not through an electronic marketplace for the income year, and

b is the income derived from making sales through an electronic marketplace for the income year. This is the GST-exclusive amount because GST output tax is not taxable income.

c is the percentage applied to the total amount of GST-inclusive expenditure for income tax purposes that had a mixed purpose.

Example 14: GST-inclusive deductions for mixed purpose expenditure

Calvin derives income from sales of accommodation he provides through an electronic marketplace and through a website he maintains himself (which is not an electronic marketplace as defined in the GST Act). Calvin is not registered for GST and is not liable for GST registration.

Calvin identifies he derived income for the 2024–25 income year from sales of accommodation of:

- $20,000 (excluding GST) through an online booking platform, and
- $8,000 through his own website.

Applying the formula above:

$$\frac{8{,}000}{8{,}000 + 20{,}000} = 28.57\%$$

Calvin can take a deduction equal to 28.57% of the GST-inclusive value of the expenditure incurred in deriving income from sales through an electronic marketplace and sales not made through an electronic marketplace.

Calvin would then need to add this to the GST-exclusive value of his remaining mixed purpose expenditure to determine his total deduction for income tax purposes. This is explained in the following paragraphs.

The remaining expenditure with a mixed purpose must be taken on a GST-exclusive basis. To determine the total deduction for expenditure on a GST-exclusive basis, the following formula can be applied:

$$(100\% - \mathrm{c}) \times \mathrm{d}$$

Where:

c is the percentage of GST-inclusive expenditure with a mixed purpose that can be taken as a deduction for income tax purposes, calculated on the previous page

d is the total amount of mixed purpose expenditure expressed on a GST-exclusive basis.

Example 15: Income tax deductions for mixed purpose expenditure

Calvin provides taxable accommodation through an online booking platform. He also advertises the accommodation himself through his own website. Calvin is not registered for GST or liable for GST registration.

The sales he makes through the online booking platform are listed services and the marketplace operator accounts for GST on these supplies. The sales he makes through his own website are not listed services and are not subject to GST.

For the 2024–25 tax year, Calvin identifies he made sales of:

- $20,000 (excluding GST) through an online booking platform, and
- $8,000 through his own website.

Calvin incurred the following expenses, all inclusive of GST, for the year:

- $4,000 of commissions charged by the online booking platform
- $3,500 of local council rates
- $1,200 for house and contents insurance, and
- $600 for repairs and maintenance.

For income tax purposes, Calvin would include in his income tax return:

- Income from rents of $28,000 ($20,000 excluding GST from online bookings and $8,000 from sales Calvin made directly), and
- Deductions of $8,284.67. The calculation of total deductions is explained below.

Calvin had deductions related to his own sales of $1,514.21. This is the total of the GST-inclusive amount for the local council rates, house and contents insurance, and repairs and maintenance. These deductions can be attributed to Calvin's activities outside of the electronic marketplace (that is, $8,000 / $28,000, being his sales through his own website divided by his total sales excluding GST).

Calvin had deductions related to his sales made through an electronic marketplace of $6,770.25 excluding GST. This is calculated as:

- 71.43% multiplied by his total mixed purpose expenditure excluding GST, plus
- the GST-exclusive amount of commissions charged by the online booking platform of $3,478.26. Calvin cannot claim the GST-inclusive amount of the total commissions ($4,000) as an income tax deduction because he received the flat-rate credit.

Effect of the flat-rate credit when person becomes registered for GST

If a person becomes registered for GST, for the period prior to GST registration, assets that they used to make supplies of listed services will be treated as having a non-taxable use for the purposes of the apportionment and adjustment rules.

Once registered for GST, the person may choose to perform an adjustment at the end of their adjustment period (their balance date) which reflects the new percentage of use that relates to making taxable supplies – if this new percentage is a permanent change which is likely to be maintained for the foreseeable future.

Inland Revenue has published a special report on recent changes to the apportionment and adjustment rules.[3] Further information is also available on Inland Revenue's website (keyword search: GST apportionment).

Opting out of marketplace rules

(Sections 60C(2BB), (2BC), (2BD), (2BE), and (2BF), 60H(3), and 85D of the GST Act)

Marketplace rules will generally treat the operator of an electronic marketplace that another person makes supplies through (the underlying supplier) as the supplier. This means that the marketplace operator becomes responsible for accounting for GST on these supplies.

Marketplace rules may not be appropriate for larger suppliers that already have established accounting systems and practices in place for managing compliance with their GST obligations. This is because marketplace rules could require these taxpayers to change their existing accounting systems and practices which would increase compliance costs for limited benefit to tax collection and tax administration.

The marketplace rules for listed services therefore include provisions that enable certain underlying suppliers to "opt-out" of the rules. In certain circumstances, an underlying supplier can opt-out of marketplace rules by notifying the marketplace operator that they will remain responsible for their own GST obligations. This is available to underlying suppliers that are required to maintain a monthly or two-monthly taxable period, which is those that make taxable supplies of more than $500,000 in a 12-month period.

Some underlying suppliers may also be able to enter into an opt-out agreement with the marketplace operator. If an agreement was in place, these underlying suppliers would continue being responsible for their own GST obligations. Agreements can be entered into

[3] See *Special report on GST apportionment and adjustment rules* published by Policy and Regulatory Stewardship, Inland Revenue (April 2023) available at: https://www.taxpolicy.ird.govt.nz/publications/2023/2023-sr-gst-apportionment-and-adjustment-rules

provided the underlying supplier meets specific criteria. If an underlying supplier stops meeting the criteria for an opt-out agreement, the agreement must be withdrawn. In these circumstances, the underlying supplier should notify the marketplace operator they no longer meet the criteria to opt-out of the marketplace rules.

Suppliers over $500,000 in a 12-month period

Underlying suppliers that are required to maintain a two-month or one-month taxable period under section 15 of the GST Act can unilaterally opt-out of the marketplace rules by notifying the marketplace operator that they choose to be liable for the payment of GST on supplies they make and will continue to remain responsible for all obligations under the GST Act.

Marketplace operators will not be required to verify that an underlying supplier meets this criterion. They will be able to rely on information they receive, by election, from the underlying supplier. This information must be retained by the marketplace operator in accordance with the general record keeping requirements for GST set out in section 75. This provides that records must generally be kept for seven years following the end of the taxable period to which they relate.

It is expected that only non-natural persons would be able to opt-out of the marketplace rules because they make more than $500,000 of supplies in a 12-month period.

Suppliers eligible to enter agreements to opt-out of marketplace rules

An underlying supplier can enter an opt-out agreement with a marketplace operator provided they:

- meet the requirements set out in a determination made by the Commissioner, or
- provide taxable accommodation and meet the 2,000-night threshold.

Criteria set out in a determination issued by the Commissioner

The Commissioner has the power under section 60(2BC) to issue determinations that set out the circumstances in which a person can enter into an opt-out agreement.

Before making a determination, the Commissioner is required to have regard to several factors. These factors, set out in section 60(2BD), are the compliance costs that would arise for underlying suppliers in making changes to their accounting systems and practices, and the size, scale, and nature of the services and activities undertaken by underlying suppliers.

The Commissioner has not issued a determination at the time of the publication of this special report. If a determination is issued, it will be published, and any underlying supplier that meets the requirements set out in the determination would be able to enter into an opt-out agreement with a marketplace operator

The 2,000-night threshold

Underlying suppliers that supply taxable accommodation through electronic marketplaces may be able to enter an opt-out agreement provided they list more than 2,000 nights of accommodation on an electronic marketplace in a 12-month period. This also includes circumstances where the underlying supplier has a reasonable expectation that they can meet this requirement in the 12-month period.

Example 16: Reasonable expectation for more than 2,000 nights

Harris Hotels Ltd operates a multinational hotel chain. It runs a hotel business in Auckland, Christchurch, and Wellington.

Each hotel has 100 rooms. The rooms are available all-year round and are advertised on an electronic marketplace.

Harris Hotels Ltd therefore has a total of 109,500 nights of accommodation available through electronic marketplaces. This is calculated based on 300 rooms available for 365 nights.

It is not possible to aggregate accommodation nights across multiple electronic marketplaces for these purposes. This means that if a person has 1,000 nights available through one electronic marketplace and 1,500 nights available through another electronic marketplace, they would not be able to enter into an opt-out agreement under this test.

Example 17: More than 2,000 nights across multiple marketplaces – not eligible

Will and Nicole own six properties that they lease for short-term accommodation through multiple electronic marketplaces.

Five properties are available for rent all-year round through an electronic marketplace, Accommodation4U. This equates to 1,825 nights of accommodation available through Accommodation4U (5 x 365 nights).

The other property is available through another electronic marketplace. It is not available all-year round so Will and Nicole choose for this not to be advertised on Accommodation4U.

This means Will and Nicole are unable to enter an opt-out agreement with the marketplace operator for Accommodation4U based on having more than 2,000 nights of accommodation available in a 12-month period through the electronic marketplace.

Example 18: More than 2,000 nights on one electronic marketplace – eligible on other marketplaces

Heyes Hotels Co lists rooms available for rent through an electronic marketplace, A Co. It has 40 rooms available across its two New Zealand locations and these rooms are available all-year round. All rooms are listed through A Co. It therefore satisfies the criteria to enter into an opt-out agreement with A Co.

The owners of Heyes Hotels Co want to list rooms on another electronic marketplace, B Co. It wants to trial providing accommodation through B Co and is not able to commit to listing more than 2,000 nights in a 12-month period through B Co until it sees whether B Co improves Hayes Hotels Co's bookings.

Heyes Hotels Co can enter an opt-out agreement with B Co because it satisfies the 2,000-night criterion on another electronic marketplace, A Co.

Example 19: 2,000-night criterion not satisfied – nights available exceed 2,000 in aggregate, but not on an individual electronic marketplace

Lucy and Richard have six investment properties – three in Wanaka and three in Waiheke. The properties are available for short-term rental accommodation.

The Wanaka properties are available for booking through an electronic marketplace, Sam's Stays Ltd. The Waiheke properties are available for booking through another electronic marketplace, Ben's Baches Co.

All properties are available all-year round and in aggregate, the 2,000-night threshold is satisfied. However, because the properties are listed on separate electronic marketplaces, Lucy and Richard are not eligible to enter an opt-out agreement with the operators of Sam's Stays Ltd or Ben's Baches Co.

Marketplace operators are not required to monitor whether underlying suppliers that have entered into an opt-out agreement with them list more than 2,000 nights of accommodation available through them in each 12-month period.

If a person is a member of a group of companies, the 2,000-night threshold can be applied on a group basis. This means that, provided the group of companies satisfies the 2,000-night threshold, all members of the group can individually enter into an opt-out agreement with marketplace operators. This is provided for in section 60C(2BE). The definition of "group of companies" that applies for these purposes refers to the definition set out in the Income Tax Act 2007 which requires common voting interests of at least 66%.[4]

Further requirements for opt-out agreements

Provided underlying suppliers meet the criteria for an opt-out agreement as set out above, and the marketplace operator agrees to an opt-out, section 60C(2BB) contains further requirements before an agreement is valid. Under these rules:

- the documentation provided to the recipient of the services must identify the supply as being made by the underlying supplier and not the electronic marketplace, and
- there must be an agreement, with that agreement being recorded in a document, that the underlying supplier is liable for the payment of tax for supplies of listed services and will continue to remain responsible for their tax obligations under the GST Act. This includes the requirement to provide the recipient with taxable supply information, if required, and providing GST returns and paying GST to Inland Revenue.

If these requirements are not satisfied, the marketplace operator will be treated as the supplier of listed services and will therefore be required to account for GST on these supplies.

Transitional provision for supplies of listed services

Section 85D applies to enable eligible underlying suppliers to enter into an agreement with marketplace operators, or notify marketplace operators, that they are opting out of the marketplace rules. This provision allows eligible underlying suppliers to opt-out of the marketplace rules before they come into effect on 1 April 2024.

[4] See section IC 3 of the Income Tax Act 2007.

The Commissioner also has the power, from 31 March 2023 to issue determinations setting out criteria a person must meet if they wish to opt-out of the marketplace rules but do not meet the statutory criteria.

Consequential amendments

(Sections 5(11G), 8C, 10(7D), 15(6), 19K(3), 26AA, 51, 60, 60H, 75 and 77)

Several existing provisions affecting operators of electronic marketplaces have been amended to now refer to "listed services". These amendments are consequential in nature and reflect that the marketplace rules now apply to a new category of services supplied through electronic marketplaces.

GST registration

(Section 51)

The rules for listed services require marketplace operators to register for, and return, GST on supplies of listed services that are performed, provided, or received in New Zealand if the value of these supplies exceeds, or is expected to exceed, $60,000 in a 12-month period.

Non-resident marketplace operators can use a fair and reasonable method of converting foreign currency amounts to New Zealand dollars to determine whether they have exceeded the GST registration threshold. This is provided for in section 51.

Generally, the Commissioner is unable to allocate a tax file number (IRD number) to an offshore person, unless they have provided the Commissioner with evidence of their New Zealand bank account number. An exception to this requirement exists where the offshore person needs an IRD number solely because they are a non-resident supplier of goods or services under the GST Act. This exception applies for the purposes of non-resident suppliers of listed services that would not need to provide evidence of a New Zealand bank account number if the only reason for obtaining a tax file number is so they can comply with their GST obligations.

Taxable supply information

(Sections 8C(3)(a)(i) and 19K(3))

The general rules for taxable supply information require the person making a taxable supply to another registered person to provide the recipient with taxable supply information for the supply. This enables the recipient of the supply to deduct input tax. Under the general rules,

taxable supply information may not need to be provided if the consideration for the supply is below a prescribed threshold.

Despite the general rules for taxable supply information, section 19K(3) provides that for listed services, taxable supply information must be provided to the recipient of the listed services in all circumstances without the need for a request. The purpose of this is to ensure that the recipient of listed services will receive sufficient information enabling them to deduct input tax, if applicable, for listed services they receive. It is also intended to reduce compliance costs for marketplace operators by removing the need for them to have bespoke systems for responding to requests for taxable supply information.

The rules for taxable supply information are explained on Inland Revenue's website (search keyword: taxable supply information).

Marketplace operators are also treated as receiving supplies of listed services from underlying suppliers that operate through the electronic marketplace. No taxable supply information is required to be provided by underlying suppliers for these supplies under section 8C(3)(a)(i).

Taxable periods

(Section 15(6))

Section 15 specifies the taxable periods for GST-registered persons.

The general rules for taxable periods are explained on Inland Revenue's website.

Section 15(6) provides that a non-resident marketplace operator that is treated as the supplier of listed services will have a quarterly taxable period based on a first quarter ending on 31 March. This means that a non-resident marketplace operator that supplies listed services will have the following taxable periods and due dates:

Table 1: Taxable periods for non-resident marketplace operators

Taxable period	GST payment and return due date
1 January to 31 March	7 May
1 April to 30 June	28 July
1 July to 30 September	28 October
1 October to 31 December	28 January of the following year

Marketplace operators that are tax resident in New Zealand will be subject to the ordinary rules for taxable periods.

Bad debt deductions

(Section 26AA)

Marketplace operators may collect GST on a supply of listed services it is treated as making in one of two ways:

- The marketplace operator arranges for the payment from the recipient of the services to be split when the payment is processed, with the amount of GST and the marketplace operator'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 services.
- The recipient of the services may pay the underlying supplier directly, and the marketplace operator collects the GST along with its fee or commission from the underlying supplier.

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, 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 owed to it in relation to the supply as a bad debt, including its fee or commission on the sale.

This rule will apply to a marketplace operator that is treated as the supplier of listed services if the underlying supplier is not an associated person under section 2A, and the marketplace operator:

- charges the underlying supplier a fee for making the supply through the marketplace
- accounts for GST on the supply and provides a return for the taxable period in 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 recipient, 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).

Section 26AA(2) provides that the marketplace operator may deduct input tax equal to the amount of GST charged on the supply.

If the marketplace operator recovers an amount of the bad debt that was written off in an earlier taxable period, section 26AA(3) requires the marketplace operator to account for an amount of output tax that is a fraction of the amount of the input tax deduction taken earlier. This fraction is calculated by dividing the amount recovered by the total amount written off.

Record keeping

(Section 75(3F))

GST-registered persons can apply to the Commissioner for authorisation to keep records at a place outside New Zealand or in a language other than English.

Section 75(3F) overrides this requirement for a non-resident supplier of listed services. This enables non-resident suppliers of listed services to keep records outside of New Zealand or store them in a language other than English without the need for approval from the Commissioner.

Use of foreign currency

(Section 77(2))

Section 77(2) enables non-resident marketplace operators to account for GST on supplies of listed services they are treated as making in a foreign currency at the time of supply. This overrides the general rule that all amounts be expressed in New Zealand currency at the time of supply.

New Zealand resident agents

(Section 60(1A)(b))

A non-resident supplier of listed services may enter into an agency agreement with a New Zealand resident agent. If this applies, the agent (instead of the non-resident principal) is treated by section 60(1AB) as supplying listed services in the course of furtherance of the agent's taxable activity.

Vouchers

(Section 5(11G)(a))

Generally, the issue or sale of a token, stamp or voucher with a face value is treated as a supply of goods and services by the issuer or seller. This applies unless the supplier of the token, stamp or voucher treats the supply as arising on the redemption of the token, stamp or voucher for goods and services. If the supplier of the token, stamp or voucher treats the supply as arising on redemption, the person who redeems the token, stamp or voucher for goods and services is treated as making the supply at the time of redemption, rather than at the time the voucher was issued or sold.

Section 5(11G)(a) has been amended to refer to "listed services" in addition to distantly taxable goods and remote services. This enables the seller of a face value voucher to treat GST as applying on the redemption of the voucher if the voucher is (or could be) redeemed for listed services. This is consistent with how the GST rules for vouchers apply to remote services and distantly taxable goods.

Example 20: Seller of voucher opts to use redemption basis

Charles purchases a voucher with a face value of $100 from Smithy's Siestas Ltd, a popular electronic marketplace through which short-stay accommodation can be booked, as a gift for his daughter, Lucy. The voucher can be redeemed for short-stay accommodation purchased through Smithy's Siestas Ltd.

Smithy's Siestas Ltd chooses to treat the supply for GST purposes as a rising on the redemption of the voucher (instead of the sale of the voucher). This means that GST will apply when Lucy redeems the voucher for listed services, and not on the sale or issue of the voucher itself.

Lucy uses the voucher as a credit towards short-stay accommodation she purchases through Smithy's Siestas Ltd. Because Smithy's Siestas Ltd is treated as the supplier of the accommodation for GST purposes (rather than the underlying supplier of the accommodation), it is required to return GST equal to $13.04 (3/23 x $100) on the redemption of the voucher.

Discounts

(Section 10(7D))

Section 10(7D) contains a special valuation rule to deal with the situation where a marketplace operator provides discounts for remote services, distantly taxable goods, or listed services that it is treated as supplying under the marketplace rules.

This special valuation rule provides that where a marketplace operator is deemed to make a supply to a recipient who accepts an offer of a discount funded by the operator, the supply is for the discounted price. This means that the amount of GST that the marketplace operator is required to return on the supply is 3/23 of the total GST-inclusive amount paid by the recipient.

Example 21: Marketplace operator provides a discount for listed services provided by an underlying supplier

Kelvin is seeking accommodation for an upcoming trip in Kaikohe. He uses an electronic marketplace, Graeme's Getaways Ltd, to find an appropriate bed and breakfast that suits his needs for the weekend trip.

William owns a property in Kaikohe which is regularly booked through Graeme's Getaways Ltd. He sets the price as $250 per night plus GST. The GST-inclusive price is therefore $287.50 per night ($250 + $37.50 in GST).

Graeme's Getaways Ltd offers a discount of $10 per night on the accommodation, provided it is booked well in advance of the guest's arrival date. Kelvin accepts this offer, and so the final (GST-inclusive) price paid by Kelvin for the accommodation is $555. Accommodation4UGraeme's Getaways Ltd pays for the discount, so William still receives the GST-exclusive consideration of $500.

Graeme's Getaways Ltd is required to calculate GST on the price paid by Kelvin ($555). It returns GST on the supply equal to $72.39 (3/23 x $555).

About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.