



GST IMPLICATIONS FOR NON-RESIDENTS

1. Goods and services tax (GST) is charged at the rate of 15% on the *supply* (but not including an exempt supply) in New Zealand of goods and services, *by a registered person* in the course or furtherance of a taxable activity carried on by that person, by reference to the value of the supply.

[Section 8(1), GST Act]

2. GST is charged on all supplies except exempt supplies. There are very few exempt supplies:
 - (a) The supply financial services.
 - (b) The supply of residential accommodation;
 - (c) The sale of property that has been used to supply residential accommodation for at least five years before the date of sale;
 - (d) The supply of fine metal.

General rule regarding residence and GST

3. Goods and services are deemed to be supplied in New Zealand if the supplier is resident in New Zealand, and are deemed to be supplied outside New Zealand if the supplier is a non-resident.

[Section 8(2), GST Act]

4. A “resident” is generally a resident of NZ for income tax purposes, but there are two special GST rules:
 - (a) A person is deemed to be resident in New Zealand to the extent that the person carries on, in New Zealand, any taxable activity or any other activity, while having any fixed or permanent place in New Zealand relating to that taxable activity or other activities.
 - (b) A person who is an unincorporated body is deemed to be resident in New Zealand if the body has its centre of administrative management in New Zealand.

[Section 2 definition of “resident”, GST Act]

5. Under proposed new rules that will allow a non-resident to voluntarily register for GST in order to claim back GST costs incurred in New Zealand (refer to paragraphs 28 onwards below), a clear dividing line is drawn between non-residents and residents. When a person becomes resident or non-resident:

- (a) The day on which the person becomes resident is treated as the end of a taxable period;
and

(b) The day on which the person becomes non-resident is treated as the end of a taxable period.

Exception to the general rule

6. Even if the supplier is a non-resident, goods or services are treated as being supplied in New Zealand if either:
 - (a) The goods are in New Zealand at the time of the supply; or
 - (b) The services are physically performed in New Zealand, by a person who is in New Zealand at the time the services are performed.

[Section 8(3), GST Act]

Non-application of the exception if the supply is to a registered person

7. If goods or services that are treated as being supplied in New Zealand by a non-resident under the above exception to the general rule, are supplied to a registered person for the purpose of carrying on the registered person's taxable activity, the goods and services are treated as being supplied outside New Zealand *unless the supplier and recipient of the supply agree that this rule will not apply to the supply.*

[Section 8(4), GST Act]

8. The reason for this is that there is a high probability that all of the GST that would otherwise be charged by the non-resident, would be able to be deducted as input tax in the GST return of the registered person recipient of the supply. There is no cost to the Inland Revenue Department if GST is not charged in such circumstances.
9. If the non-resident is registered for GST and wishes to charge GST in any case, *there must be an agreement in writing that section 8(4) of the GST Act will not apply.*

New GST rules applying to land transactions

10. Special new GST rules apply to the acquisition of land in New Zealand. Refer to the *GST section* on this website.

Registering for GST

11. Registration for GST is mandatory if, at the end of any month, the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month, in the course of carrying on all taxable activities, has exceeded \$60,000.
12. However there is no liability to become registered if the value of supplies in the following 12 months will not exceed \$60,000.
13. There is an additional liability to register if, at the commencement of any month, there are reasonable grounds for believing that the total value of supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed \$60,000, unless the \$60,000 threshold is going to be exceeded only because of:
 - (a) The ending, or substantial and permanent reduction in size or scale of any taxable activity;
 - or

- (b) The replacement of any plant or other capital asset; or
- (c) The supply to non-residents who are physically present in New Zealand of telecommunications services supplied by a non-resident supplier that are treated as being supplied in New Zealand either because, under s. 8(6), persons physically in New Zealand initiated the supply, or because, under s. 8A, the services are invoiced to a physical address in New Zealand.

[Section 51(1), GST Act]

14. A person who becomes liable to be registered must apply to the IRD in the prescribed form (IR 360) for registration, within 21 days of becoming so liable.

[Section 51(2), GST Act]

15. Even if the registration threshold is not met, any person who is carrying on a taxable activity, or intends to carry on a taxable activity, can apply to the IRD for voluntary registration for GST purposes.

[Section 51(3), GST Act]

16. However, new rules (not yet enacted at the time of writing) will restrict the ability of non-residents to voluntarily register for GST purposes in New Zealand. (Refer to paragraph 29 onwards below.)

Consequences of registration

17. A registered person must charge GST on supplies made in the course of carrying on taxable activities, and pay that GST to the IRD. GST charged on goods or services acquired by the registered person for use in the taxable activity can be deducted from the amount payable to the IRD, under the new GST apportionment rules.
18. GST on goods and services acquired (referred to as “input tax”) cannot be claimed unless the acquired goods and services are used to make taxable supplies. Input tax must be apportioned to the extent that goods and services are acquired for a reason other than to make taxable supplies. Therefore, under existing law (but refer to the discussion below) there is no advantage in registering for GST purposes unless taxable supplies are going to be made in New Zealand.
19. A registered person is required to pay GST on the importation of goods into New Zealand. The GST can be recovered as input tax to the extent that the goods imported are used to make taxable supplies.

GST accounting basis

20. GST can generally be accounted for:
- (a) On an accrual basis (upon issue and/or receipt of tax invoices); or
 - (b) On a payments basis (when payment is received or made); or
 - (c) On a combination of the 2 methods (a “hybrid” basis).
21. However, proposed new rules relating to the GST registration of non-residents will require non-residents to account for GST on a payments basis only. (Refer to paragraph 40 below)

GST taxable periods

22. A GST return covers a “taxable period”, which may be:
- (a) A 6-month period, if taxable supplies in a 12-month period are no more, and are not likely to be more, than \$500,000; or
 - (b) A 2- month period; or
 - (c) A 1-month period, if the person applies to the Commissioner to pay on this basis, or taxable supplies in a 12-month period are more, or are likely to be more, than \$24,000,000.
23. The thresholds apply to taxable supplies made in New Zealand. There is no deeming provision under the proposed new rules for voluntary registration of non-residents (refer to paragraph 28 onwards below) that makes the thresholds apply to taxable supplies outside New Zealand.

Cancellation of registration

24. The rules for cancellation of registration are contained in s. 52 of the GST Act. Under s. 52(1), a registered person ceases to be liable to be registered *at any time* where the Commissioner is satisfied that in the 12 months beginning from that time taxable supplies will not exceed the registration threshold. [s. 52(1)].
25. When a registered person ceases to carry on all taxable activities:
- (a) The Commissioner must be informed within 21 days and the Commissioner will cancel the person’s registration from the last day of the taxable period in which all taxable activities ceased [s. 52(3)]; or
 - (b) The Commissioner may, even if not notified, cancel the person’s registration:
 - (i) From the last day of the taxable period in which he is satisfied that all taxable activities have ceased [s. 52(5)]; or
 - (ii) From the date of the person’s registration if he is satisfied that no taxable activities were in fact carried on [s. 52(5A)].
26. For non-residents, s. 52(7) stipulates that the ‘taxable activities’ referred to in s. 52(5) and 52(5A) were taxable activities carried on in New Zealand.
27. Under the proposed new rules for voluntary GST registration by non-residents, s. 52(7) is to be repealed, so that non-residents will no longer be required to de-register if taxable activities are not carried on in New Zealand. (Refer to paragraph 33 onwards below)

New rules that will allow non-resident businesses to claim GST costs in New Zealand

28. The *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill* (“the Bill”) introduced on 13 September 2012 contains proposals to allow certain non-resident businesses to register for GST and claim input tax deductions for GST costs incurred in New Zealand on approximately the same basis as a resident registered person. The rules are to come into force on 1 April 2014.

The proposed new GST registration requirements for non-residents

29. The proposed rules for GST registration of non-residents are contained in cl. 91 of the Bill, which will insert a new s. 54B into the GST Act. The proposed rules restrict the ability of a non-resident to voluntarily register unless the Commissioner is satisfied that:
- (a) The non-resident is registered for a GST-type tax in their country of residence, or if that country does not have a GST-type tax, the non-resident would be liable to register in New Zealand under s. 51(1) if they were carrying on the taxable activity in New Zealand because the value of their supplies would exceed the registration threshold; and
 - (b) The amount of the non-resident's input tax for the first taxable period after the date of registration in New Zealand is likely to be more than \$500; and
 - (c) The non-resident's taxable activity does not involve a supply of services in relation to which it is reasonably foreseeable that the services will be received in New Zealand by a person who is not GST-registered.
30. The example to explain the last requirement contained in the *Commentary on the Bill* is:
- "... tourism, where tourism products (such as coach tours and accommodation) are received in New Zealand by individual non-residents who are not themselves registered for GST. Given that these products are ultimately enjoyed in New Zealand by individuals, the policy is that GST applies to them. Although allowing registration would require the non-resident business to charge GST to the tourist, this would be difficult to enforce."
31. The most important point is that the new GST registration requirements for non-residents effectively apply from 13 September 2012 – the date of introduction of the Bill. Proposed new s. 54C(4), contained in cl. 91 of the Bill, will allow the Commissioner to cancel the registration of a non-resident who voluntarily registers between 13 September 2012 and 1 April 2014 if the new registration requirements in new s. 54B are not met.
32. For compliance purposes, under proposed new s. 54B, a clear dividing line is drawn between non-residents and residents. When a person becomes resident or non-resident:
- (a) The day on which the person becomes resident is treated as the end of a taxable period; and
 - (b) The day on which the person becomes non-resident is treated as the end of a taxable period.

The proposed new rules for cancellation of a non-resident's GST registration

33. Section 52(7), that stipulates that the 'taxable activities' referred to in s. 52(5) and 52(5A) are taxable activities carried on in New Zealand, is to be repealed under the new rules, so that non-residents will no longer be required to de-register if taxable activities are not carried on in New Zealand.
34. The new rules for cancellation of a non-resident's registration are contained in cl. 91 of the Bill that proposes a new s. 54C. The new rules expand on the Commissioner's powers to cancel registration under s. 52(5) and 52(5A). The Commissioner may cancel a non-resident's registration if:

- (a) The Commissioner is satisfied that the non-resident no longer meets the requirement in s. 54B(1)(a) to be registered for a GST-type tax in their home country or the alternative requirement to be liable to be registered if New Zealand was their home country; or
 - (b) The non-resident has not filed a return or has filed late returns for 3 consecutive taxable periods, in which case:
 - (i) The cancellation date is the first day of the third taxable period; and
 - (ii) The non-resident and associated persons will be barred from becoming GST-registered again for at least 5 years from the date of cancellation.
 - (c) The non-resident registers for GST between 13 September 2012 – the date of introduction of the Bill – and 1 April 2014 and from 1 April 2014 the voluntary registration requirements of s. 54B(1), as set out in paragraph 29 above, are not met.
 - (d) The non-resident is a registered New Zealand person who has become non-resident and does not meet the voluntary registration requirements of s. 54B(1) after becoming non-resident.
35. When a non-resident ceases to be a registered person, proposed new s. 5(3B), contained in cl. 75 of the Bill, states that:
- (a) Goods that are part of the assets of the non-resident's taxable activity, that are present in New Zealand at the time the non-resident ceases to be registered, are treated as supplied by the non-resident in the course of the taxable activity immediately before the cessation of registration; and
 - (b) Services that would be supplied in New Zealand as part of the non-resident's taxable activity, at the time the non-resident ceases to be registered, are treated as supplied by the non-resident in the course of the taxable activity immediately before the cessation of registration.

The proposed new rules for non-residents claiming deductions

36. Under proposed new s. 20(3L), contained in cl. 83 of the Bill, a non-resident may deduct input tax to the extent to which the goods or services are used for, or are available for use in, making taxable supplies, *treating all supplies made by the person as if they were made and received in New Zealand.*
37. This rule means that if a non-resident makes supplies that would be exempt supplies if made in New Zealand, input tax cannot be deducted to the extent that such supplies are made. The *Commentary on the Bill* contains, at page 45, the following example:

“Bank Co is a financial services and insurance provider that is registered for GST in Australia and is looking to expand into New Zealand. It registers for GST in New Zealand and incurs GST on professional services fees it receives from a New Zealand provider. Its Australian business comprises 50% household mortgages, 25% life insurance and 25% health and contents insurance.

Both the mortgage provider and life insurance components of its business would be exempt if they were made and received in New Zealand on the basis that they are financial services. Bank Co can therefore claim 25% of the GST incurred as a deduction in its New Zealand return.”

The proposed new GST grouping rules involving non-residents

38. The proposed new GST grouping rules involving non-residents are contained in cl. 92 of the Bill. Proposed new s. 55(1B) states that a GST group cannot have both resident and non-resident members. In addition, proposed new sections 55(9) and (10) contain a transitional measure that states that if a group of companies formed after 13 September 2012 (the date of introduction of the Bill) has a registered non-resident member:
- (a) The representative member must apply for an alteration to either exclude the non-resident member, or exclude a resident member, so that the group does not have both resident and non-resident members; or
 - (b) If an alteration is not applied for, the Commissioner may treat the group as consisting only of resident members and notify the representative member that the membership of the non-resident member is terminated from a specified date.

39. It is noted on page 44 of the *Commentary on the Bill* that:

“This is a departure from the current rules, but is considered necessary as a base protection measure... A tax advantage could be provided through offsetting input claims of a non-resident with the output liabilities of resident group members, which would be more apparent for non-residents with no economic activity in New Zealand. It would be preferable from a tax administration perspective to have some visibility on the level of input deductions being claimed by non-residents so that any tax base risk can be more readily identified. Having this change apply only from the date of introduction will save existing groups from having to separate.”

The GST accounting basis for non-residents

40. Proposed new s. 19(1B), contained in cl. 79 of the Bill, states that a non-resident registered person must account for tax payable on a payments basis. New s. 19A(1)(iv), contained in cl. 80 of the Bill, requires the Commissioner to direct a non-resident person to account for tax payable on a payments basis.
41. It is stated on page 45 of the *Commentary on the Bill* that:

“The provision is designed to limit the possibility of a non-resident claiming a refund on the basis of invoices provided by registered residents on which no payment is made and, therefore, no GST is paid. This is a tax base protection measure.”

Refunds, tax investigations, and use-of-money interest, and taxable periods

42. Proposed new s. 46(1B), contained in s. 89 of the Bill, extends the period from 15 days to 90 days after a non-resident's GST return was received by the Commissioner for the purposes of:
- (a) Refunds to be paid by the Commissioner;
 - (b) The period within which the Commissioner must give a request for information concerning a return; and
 - (c) The period within which the Commissioner must give notice of an intention to investigate the return or withhold payment.

43. A related change to s. 120C of the Tax Administration Act 1994, contained in cl. 68 of the Bill, will mean that use of money interest on GST refunds to a non-resident will not start from 15 days after a non-resident provides a GST return.

44. There are no special rules for taxable periods for non-residents, so the usual rules will apply.

Zero-rating of certain goods supplied to an unregistered non-resident

45. Proposed new s. 11(1)(p), contained in cl. 78 of the Bill, provides for goods supplied to an unregistered non-resident recipient to be zero-rated if those goods are: jigs, patterns, templates, dies, punches, and similar machine tools to be used in New Zealand solely to manufacture goods that will be for export from New Zealand.