



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

DavidCo Limited
CHARTERED ACCOUNTANTS

Level 2, Shortland Chambers
70 Shortland Street, Auckland
PO Box 2380, Shortland Street
Auckland 1140
T +64 9 921 6885
F +64 9 921 6889
M +64 21 639 710
E arun.david@davidco.co.nz
W www.davidco.co.nz

WEEKLY COMMENT: FRIDAY 22 APRIL 2016

1. This week I continue reviewing the GST on online services amendments proposed in the version of the *Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill* as reported from the Finance and Expenditure Committee on 21 March 2016 (“the RLWT Bill as Reported”).
2. This week I look at zero rating and the reverse charge rule, deductions from output tax, the rules on the provision of tax invoices and correcting errors in output tax, rules for supplies made through electronic marketplaces and other marketplaces, New Zealand agents of non-resident principals, anti-avoidance and the currency conversion rules.
3. All section references are to the *Goods and Services Tax Act 1985* unless otherwise stated.

Services to which s. 8(3)(c) applies that are zero-rated

4. The rule in s. 11A(1)(j) that allows services that are physically performed outside New Zealand to be zero-rated is being modified so as to exclude remote services provided to a New Zealand resident who is not a registered person. However, it will include remote services provided to a New Zealand resident who is a registered person when the services are physically performed outside New Zealand.
5. Where a supply of remote services to a registered person is treated as being a taxable supply because the supplier chooses to treat the supply as being made in New Zealand under s. 8(4D), new s. 11A(1)(x) in cl. 53 of the RLWT Bill as Reported provides for the supply of the remote services to be zero-rated.
6. Zero-rating under s. 11A(1)(x) will not apply, however, if the supplier subsequently chooses to provide a tax invoice under the conditions described in new s. 24(5B) (see paragraph 15 onwards below).

Deduction from output tax payable by a supplier for consumption tax paid overseas

7. New s. 20(3)(dc), in cl. 55(3) of the RLWT Bill as Reported, allows a supplier of remote services a deduction from the output tax for a taxable period, of consumption tax paid in another country or territory, to the extent that the supplier has, in relation to the supply, incurred liability for, returned, and paid the consumption tax in another country or territory, and the remote services are:
 - (a) Physically performed in New Zealand; and
 - (b) Supplied to a non-resident person in New Zealand who is not a registered person.

Reverse charge on zero-rated remote services supplied to a registered person

8. New s. 20(3JC), in cl. 55(4) of the RLWT Bill as Reported, provides for a reverse charge GST for registered person recipients of zero-rated remote services, similar to the reverse charge that applies to recipients of zero-rated supplies of land. The reverse charge applies at acquisition and at the end of each adjustment period.
9. The reverse charge in s. 20(3JC) applies to services that are zero-rated under s. 11A(1)(x) and also to a registered person who receives remote services that are zero-rated under s. 11A(1)(j) – see paragraph 4 onwards above.
10. In each case, if the recipient of the supply estimates that the percentage intended use of the services (at acquisition) or the percentage actual use of the services (at the end of an adjustment period), to make taxable supplies, is less than 95%, then the recipient must:
 - (a) Identify the nominal amount of tax (the **nominal GST component**) that would be chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate; and
 - (b) Based on the percentage intended use or actual use of the services, account for output tax for the proportion of the nominal GST component for any non-taxable use of the services; and
 - (c) Once a reverse charge adjustment has been made at acquisition or at the end of an adjustment period, the recipient must continue to make adjustments at the end of subsequent adjustment periods.
11. For the purposes of this reverse charge rule, where a person carries on business inside and outside New Zealand, a branch or division inside New Zealand is treated as resident and a branch or division outside New Zealand is treated as non-resident, under an amendment to s. 56B in cl. 64 of the RLWT Bill as Reported.
12. The carve-out in s. 10(15C) for reimbursements of wages and interest incurred by a non-resident supplier to a New Zealand resident in the same group of companies will apply to a recipient of a supply of remote services to whom s. 20(3JC) applies.

Recipient is denied an input tax deduction without a tax invoice

13. The general rule carve-out rule in new s. 8(4D) (see paragraph 8 onwards in last week's *Weekly Comment*) is supplies to a registered person are not subject to GST unless the supplier so chooses. Consequently, new s. 20(4C), in cl. 55(5) of the RLWT Bill as Reported, provides that for a supply of remote services to which s. 8(3)(c) applies, a recipient of the supply is denied a deduction of input tax in relation to the supply unless the recipient has obtained a tax invoice under s. 24(5B). The circumstances in which a tax invoice is provided are discussed in paragraph 15 onwards below.
14. New s. 20(4D) provides that the rule in s. 20(4C) does not apply to GST imposed as a reverse charge where the recipient is treated as having made the supply and the recipient has accounted for output tax. This will allow input tax to be claimed at the end of a subsequent adjustment period if the actual use is higher than it previously was.

Tax invoices and correcting overpayments of output tax

15. The general rule in relation to tax invoices for remote services, in s. 24(5)(b) contained in cl. 57(2) of the RLWT Bill as Reported, is that notwithstanding any other provision of the GST Act, a supplier is not required to provide a tax invoice if the supplier is a non-resident supplier of remote services to which s. 8(3)(c) applies.
16. However, new s. 24(5B) provides that despite s. 24(5), a supplier may choose to provide a tax invoice to the recipient of the remote services, other than in relation to a supply of a contract of insurance, if:
 - (a) The supplier is a non-resident supplier of remote services to which s. 8(3)(c) applies, and:
 - (i) Section 8(4D), which requires supplies of remote services to a registered person to be treated as supplied outside New Zealand, was incorrectly applied so that the services were treated as being supplied in New Zealand when they should have been treated as being supplied outside New Zealand; or
 - (ii) Section 11A(1)(x), which allows a supply of remote services to a registered person to be zero-rated if the supplier so chooses, was incorrectly applied to the treatment of the supply, so that the supply was not zero-rated when it should have been; and
 - (b) The consideration in money for the supply, in New Zealand currency as at the time of the supply, does not exceed \$1,000; and
 - (c) The recipient:
 - (i) Notifies the supplier that they are a registered person;
 - (ii) Provides their registration number or New Zealand business number to the supplier.
17. Officials agreed that the NZ\$1,000 threshold for the option to issue a tax invoice should be determined by reference to the foreign currency amount converted into New Zealand currency at the time of supply. Officials recognised that, depending on the conversion method chosen by the supplier, this means that currency movements could lead to a mismatch between the amount on the tax invoice and the amount returned by the supplier (see paragraph 39 onwards below).
18. The tax invoice cannot be a simplified tax invoice under s. 24(4), which applies to other supplies not exceeding \$1,000, and the full tax invoice requirements in s. 24(3) will apply.
19. If the supplier does not provide a tax invoice under s. 24(5B) and tax has been overcharged due to either s. 8(4D) or s. 11A(1)(x) having been incorrectly applied, the supplier may deduct the overpaid GST in the GST return covering the period in which the overpayment became apparent, under new sections 25(1)(aab) and 25(1)(abb) and existing s. 25(2).
20. It is noted in the Officials' Report that it is expected that the majority of offshore suppliers will only be required to return GST (if they only make supplies of remote services) as they are unlikely to incur New Zealand GST. An optional simplified GST return is therefore being developed for these "pay-only" offshore suppliers, which will remove the ability to claim input tax deductions and receive refunds.
21. When a non-resident supplier accidentally treats a GST-registered business as an individual consumer and therefore charges the GST-registered business GST, the amendments to s. 25(1)

will allow a supplier to make adjustments to the payment of output tax in the return in which it is apparent that the mistake has been made.

Electronic marketplaces

22. When a supply of remote services to a New Zealand resident is made through an electronic marketplace operated by a non-resident, the operator of the marketplace is treated as making the supply in the course or furtherance of a taxable activity, under new s. 60C in cl. 66 of the RLWT Bill as Reported.
23. If more than 1 operator of an electronic marketplace is liable for the GST on a supply of remote services:
- (a) The first operator that authorises a charge or receives consideration for the supply is treated as making the supply; or
 - (b) If there is no operator that authorises a charge or receives consideration, the first operator that authorises delivery of the supply is treated as making the supply.
24. However, this rule does not apply if:
- (a) The documentation provided to the recipient identifies the supply as made by the underlying supplier and not the marketplace; and
 - (b) The underlying supplier and the operator of the marketplace have agreed that the supplier is liable for the payment of tax (officials agreed that there does not have to be a signed document, but some form of evidence must be kept to confirm that an agreement was entered into); and
 - (c) The marketplace does not:
 - (i) Authorise the charge to the recipient; or
 - (ii) Authorise the delivery of the supply to the recipient; or
 - (iii) Set the terms and conditions under which the supply is made.
25. Under the definition to be inserted into s. 2, an “electronic marketplace”:
- (a) Means a marketplace that is operated by electronic means through which a person (the underlying supplier) makes a supply of remote services by electronic means through another person (the operator of the marketplace) to a third person (the recipient); and
 - (b) Includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace; and
 - (c) Does not include a marketplace that solely processes payments.
26. Officials agreed in the Officials’ Report that the definition of electronic marketplace is not intended to include “click-through entities”, where the ultimate purchaser can click-through a link on their webpage to the supplier. This is because the click-through entity does not make the supply.

Other marketplaces

27. The new rules provide for remote services that are supplied through a marketplace other than an electronic marketplace. There is a new definition of “marketplace” in s. 2 which means:
- (a) An electronic marketplace;
 - (b) A marketplace approved under s. 60D as a supplier of remote services.
28. New s. 60D, in cl. 66 of the RLWT Bill as Reported, provides that when a supply of remote services to a New Zealand resident is made through a marketplace other than an electronic marketplace operated by a non-resident, on application by the operator of the marketplace, the Commissioner may agree to treat the operator, and not the underlying supplier, as making the supply in the course or furtherance of a taxable activity.
29. In exercising this discretion, the Commissioner may take into account the following:
- (a) Whether the marketplace is best placed to determine whether the recipient of the supply of remote services:
 - (i) Is resident in New Zealand;
 - (ii) Is a registered person;
 - (b) Whether the number of underlying suppliers to the marketplace means that return requirements are better satisfied by the marketplace rather than the individual underlying suppliers.
30. The insertion of this rule allowing the operator of a marketplace other than an electronic marketplace to be treated as the supplier was in response to a submission relating to supplies of insurance. It concerns situations when insurance services are arranged through a marketplace, on behalf of a syndicate (a vehicle through which its members group together to underwrite insurance). This structure could also involve a New Zealand coverholder who is acting as an agent for syndicate members.
31. Officials agreed in the Officials’ Report that a non-electronic marketplace would be able to register on behalf of its members if agreed with the Commissioner. This would allow the Commissioner to ensure that the marketplace was in the best position to return the GST as opposed to its members. This is particularly important for the insurance industry, as the marketplace would need to be in the position to return GST on both premiums received and claim deductions on payments made so that the margin-based approach for calculating the value of general insurance supplies can be properly applied.
32. Officials also agreed that New Zealand coverholders should be able to register and return GST instead of the underlying non-resident insurer or marketplace as they are also likely to be in a better position to return the GST. An amendment to the agency rules (see paragraph 34 onwards below) will allow New Zealand coverholders to make returns and be liable for the GST instead of the principal (the offshore insurance provider), essentially treating the New Zealand coverholders as making the supply of insurance. The New Zealand coverholder would be treated like any other New Zealand-resident supplier.

Resident supplier selling through a marketplace operated by a non-resident

33. Where a New Zealand resident supplier makes supplies through an electronic marketplace or an approved marketplace operated by a non-resident, new s. 60(1C) in cl. 65(2) of the RLWT Bill as Reported provides that the supply can be treated as 2 separate supplies:
- (a) A supply from the New Zealand supplier to the operator of the marketplace; and
 - (b) A second supply from the operator of the marketplace to the New Zealand recipient.

New Zealand resident agents of non-resident principals

34. The general rule for supplies by agents of principals, in s. 60(1), is that the supplies are deemed to be made by the principal and not by the agent.
35. New s. 60(1AB) provides an exception to this rule in relation to a New Zealand resident agent who makes supplies of remote services to a New Zealand resident on behalf of a non-resident principal.
36. In such a case, the principal and the agent may agree that the agent, and not the principal, is treated as making the supply in the course and furtherance of a taxable activity carried on by the agent.

Anti-avoidance output tax rule and deemed registration

37. A new anti-avoidance rule in s. 5(27) covers the circumstances where a New Zealand resident recipient of remote services provides false information to avoid the imposition of GST. The Commissioner may treat the person as if they were making a supply of services that is chargeable with GST under s. 8(1) if the following conditions are met:
- (a) The person has, for the purposes of avoiding the payment of tax, knowingly notified a fact or provided information under s. 8B(5) that is altered, false, or misleading; and
 - (b) After the date on which the services have been physically performed, it is found that the notification or provision of information has led to the supply being treated as zero-rated or not supplied in New Zealand; and
 - (c) Either:
 - (i) The act of the person is a repeated occurrence; or
 - (ii) The amount of tax that was not charged on the supply through the act described is substantial.

38. New s. 51B(7) provides that a recipient of remote services who is treated as a supplier under s. 5(27) is treated as registered from the date on which the services are physically performed.

Conversion into New Zealand currency

39. The general rule in s. 77 is that all amounts of money must, for the purposes of the GST Act, be expressed in terms of New Zealand currency, and in any case where and to the extent that any such amount is consideration in money for a supply, that amount must be expressed in terms of New Zealand currency as at the time of that supply.

40. New s. 77(2) in cl. 68 of the RLWT Bill as Reported provides an exception to this rule, and allows a non-resident supplier of remote services to choose to express the amount of consideration in money for their supplies in a foreign currency as at the time of supply.
41. Instead, a non-resident supplier who chooses to express consideration in foreign currency must convert the foreign currency amounts into New Zealand currency amounts on:
- (a) The last day of the relevant taxable period; or
 - (b) The earlier of:
 - (i) The date the supplier files their return for the relevant period;
 - (ii) The due date for filing their return for the relevant period; or
 - (c) Another date agreed between the supplier and the Commissioner.
42. An election, once made, cannot be revoked for at least 24 months after making the election, unless the Commissioner agrees otherwise.
43. Officials have stated in the Officials' Report that the Commissioner will accept the exchange rates offered by a registered bank or a bureau de change at the relevant time, which is consistent with the practice for converting amounts to New Zealand currency under the current rules. See public ruling BR Pub 04/01 (Supplies paid for in foreign currency – GST treatment).



Arun David, Director,
DavidCo Limited