

## WEEKLY COMMENT: FRIDAY 31 OCTOBER 2025

1. The *Taxation (Annual Rates for 2019-20, GST offshore Supplier Registration, and Remedial Matters) Act 2019* (“the GST Offshore Supplier Amendment Act 2019”), with a date of assent of 26 June 2019, introduced the GST rules on distantly taxable goods.
2. This is week 3 of my review of the GST rules relating to distantly taxable goods. This week, I look at a supplier as an operator of a marketplace and bad debt deductions by a marketplace operator.

### **A supplier as an operator of a marketplace**

3. Under s 4B(1)(c)(ii), distantly taxable goods may be supplied by a person who is a supplier under s 60C or s 60D, as an operator of a marketplace, and the underlying supplier of the goods is a non-resident.
4. The “underlying supplier” is defined in s 2 as the person that would be the supplier of the goods and services in the absence of the marketplace rules. A “redeliverer” (to be covered in next week’s *Weekly Comment*) is only responsible for GST if neither a marketplace operator nor the merchant who sold the goods is liable to return the GST. Therefore, the “underlying supplier” would be the merchant who sold the goods.
5. The electronic marketplace rules have been considered in the context of listed services in *Weekly Comment* 7 June 2024.
6. For distantly taxable goods, the electronic marketplace rules apply if:
  - (a) The supply of the goods is made through an electronic marketplace; and
  - (b) In relation to a marketplace operated by a resident person the underlying supplier is a non-resident; and
  - (c) The supply is of goods made to a person involving delivery at a place in New Zealand.
7. Section 60G sets out a range of methods for operators of electronic marketplaces (and redeliverers – to be covered in next week’s *Weekly Comment*) to use when determining if they are the supplier of distantly taxable goods under s 60C, and/or the amount of GST required to be returned on a supply of distantly taxable goods. These methods (which are all based on information that may be commercially available to redeliverers or operators of electronic marketplaces) are as follows:

- (a) An electronic marketplace operator that does not know the tax residence of the underlying supplier is required by s 60G(3) to treat the supplier as a non-resident unless the marketplace operator has any of the following:
    - (i) Information the underlying supplier is a NZ incorporated company or has its centre of management in NZ;
    - (ii) A NZ business number for the underlying supplier;
    - (iii) At least 2 of these items that support a conclusion the underlying supplier is a NZ resident: a mailing or billing address, a GST registration number, bank details, IP address, the mobile country code stored on the SIM card, the fixed landline location, the location from where the goods are shipped, or other commercially relevant information;
  - (b) If the first 2 proxies are inconclusive and evidence in the 3rd proxy is mixed, the marketplace operator must choose the more reliable set of evidence in the circumstances;
  - (c) If the electronic marketplace operator does not know the address to which goods are to be delivered, under sections 60G(4) and (6), determining whether a supply is made to a recipient at a place in NZ must be based on 2 non-conflicting pieces of evidence: a mailing or billing address, bank details, IP address of the recipient, mobile country code stored on the SIM card, fixed landline location or other commercially relevant information;
  - (d) Other information to determine the delivery location could be the recipient's trading history, product purchased if linked to a geographic location, or information provided by a third party, such as a payment service provider;
  - (e) Where information on the delivery location is mixed or inconclusive, s 60G(4)(a)(ii) contains a tiebreaker rule under which the marketplace operator must choose the more reliable set of evidence.
8. Section 60C(2) states that the operator of the marketplace is treated as making, in the course or furtherance of a taxable activity, a supply to the recipient of items of goods meeting the requirements of s 4B(1)(a) to (d) for distantly taxable goods, for which:
- (a) The underlying supplier of the goods is a non-resident; and
  - (b) The operator or the underlying supplier makes or arranges or assists the delivery of the supply to the recipient at a place in New Zealand; and
  - (c) Each item has an estimated customs value under s 10B equal to or less than the entry value threshold (covered week-before-last in *Weekly Comment* 17 October 2025), if the operator has not made an election under s 10C that is effective at the time of the supply (covered last week in *Weekly Comment* 24 October 2025).
9. Section 60C(2B) provides an exception and states that the operator of a marketplace is not treated as the supplier 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; and
  - (c) The marketplace does not:
    - (i) Authorise the charge for the supply to the recipient;
    - (ii) Make or authorise the delivery of the supply to the recipient;
    - (iii) Directly or indirectly set a term or condition under which the supply is made.
10. Inland Revenue notes in the Distantly Taxable Goods TIB Item that the meaning of “authorise the charge for the supply to the recipient” is broad, covering the situation where the marketplace authorises the charge on behalf of the merchant or as a processing agent for the merchant. However, providers that solely process payments are excluded from the definition of “electronic marketplace” as these providers merely facilitate the exchange of money between the supplier and consumer, rather than the sale and purchase of the goods or services. The following additional points are made:
- (a) An electronic marketplace would authorise the charge to the recipient if it communicates the liability to pay to the customer, or otherwise influences whether or when the customer pays for the supply;
  - (b) This may be done by initiating the process through which the recipient is charged and includes situations where the marketplace connects the recipient to a third-party payment processor who receives the marketplace operator’s instruction;
  - (c) To authorise the charge, it is not necessary for the marketplace operator to collect or receive the payment, or that it is involved in each of the steps in the payment authorisation process.
11. Inland Revenue similarly notes that the meaning of “directly or indirectly set a term or condition under which the supply is made” is very broad. This concept looks beyond the formal contractual relationship to the influence exercised by the marketplace operator. The marketplace operator does not need to have any direct involvement in determining the contractual arrangements between underlying suppliers and buyers using the marketplace in order to be responsible for GST on supplies.
12. Inland Revenue notes that a requirement for underlying suppliers to comply with the marketplace’s listing policies will in many cases mean that the marketplace does (at least indirectly) set a term or condition under which the supply is made, meaning that the marketplace operator will be responsible for GST on the supply. Inland Revenue also notes that:
- (a) A requirement in a contract between the marketplace operator and the underlying supplier that goods sold on the marketplace must comply with NZ laws and regulations will not, in itself, be a term or condition set by the marketplace operator; but
  - (b) There are several marketplace listing policies that will meet this test, such as information to be communicated through the marketplace, acceptance of payment and delivery methods, providing packaging etc. (Inland Revenue lists several on pages 21-22 of the Distantly Taxable Goods TIB Item);

- (c) In practice, this means there will be very limited circumstances where an electronic marketplace operator will not be responsible for GST on sales made by a non-resident underlying supplier through the marketplace.
13. Section 60C(2C) provides another exception for distantly taxable goods under which the operator of a marketplace is not treated as the supplier (and the underlying supplier is liable for GST) if:
- (a) The underlying supplier of the goods is a non-resident that has a branch in New Zealand; and
  - (b) The operator of the marketplace treats the underlying supplier as a New Zealand resident in relation to the supply; and
  - (c) In treating the underlying supplier as a New Zealand resident, the operator of the marketplace meets the requirements of s 60G(1) for information held by the operator relating to the residence of the underlying supplier (which section allows the marketplace operator to rely on information in good faith and on reasonable grounds – see **paragraph 7** above).
14. Inland Revenue notes in the Distantly Taxable Goods TIB Item, page 38, that this latter exception ensures the underlying supplier is liable for GST where the marketplace operator has used a s 60G method to determine that it is not the supplier of the goods for GST purposes.
15. Section 60C(3) states that if, in relation to a single supply of distantly taxable goods, more than 1 operator of an electronic marketplace is liable for tax on the supply:
- (a) The first operator that authorises a charge or receives consideration for the supply is treated as making the supply; and
  - (b) If no operator exists that meets this requirement, the first operator that authorises delivery of the supply is treated as making the supply.
16. Amounts collected by a marketplace operator to fund its GST output tax liability are not treated as consideration for a supply under s 60C(3B) and s 60C(3C) if the operator is treated as the supplier of the distantly taxable goods and:
- (a) The operator collects an amount from the underlying supplier or deducts an amount from the payment made by the recipient of the goods or services; and
  - (b) The amount is used to meet the operator's output tax liability for the supply.
17. Section 60D allows the Commissioner to approve an application by an operator, of a marketplace other than an electronic marketplace, to be treated as making, in the course or furtherance of a taxable activity, a supply of distantly taxable goods, if:
- (a) A supply of distantly taxable goods is made through the marketplace; and
  - (b) If the marketplace is operated by a NZ resident, the underlying supplier is a non-resident; and
  - (c) The supply is of distantly taxable goods made to a person involving delivery at a place in New Zealand; and

- (d) The underlying supplier of the distantly taxable goods is a non-resident; and
- (e) The operator or the underlying supplier makes or arranges or assists the delivery of the supply to the recipient at a place in New Zealand; and
- (f) Each item has an estimated customs value under s 10B equal to or less than the entry value threshold (covered week-before-last in *Weekly Comment* 17 October 2025), if the operator has not made an election under s 10C that is effective at the time of the supply (covered last week in *Weekly Comment* 24 October 2025).

18. In approving such an application, the Commissioner must have regard to:

- (a) Whether the marketplace is best placed to determine the NZ residence of the recipient and whether the recipient is a registered person; and
- (b) Whether the number of underlying suppliers to the marketplace means the return requirements are better satisfied by the marketplace than the individual underlying suppliers.

19. Similarly to the rule applying to suppliers of listed services, s 60(1C) applies so as to allow an underlying supplier that is GST registered in their own right to claim input tax deductions for expenses in making supplies through electronic marketplaces by treating the supply to the marketplace operator as a separate supply from the supply by the marketplace operator to the recipient of the supply. Section 11A(1)(jb) applies to treat the separate supply of distantly taxable goods by the underlying supplier to the marketplace operator as a zero-rated supply.

20. Also similarly to the rule applying to suppliers of listed services, s 10(7D) applies to treat the discounted price as the price of the supply when a recipient accepts a discount offered by a marketplace operator.

#### **Bad debt deductions by a marketplace operator**

21. Section 26AA provides for a bad debt deduction by a marketplace operator who is the supplier of distantly taxable goods where the underlying supplier is not an associated person and the marketplace operator:

- (a) Charges the underlying supplier a fee for making the taxable supply; and
- (b) Files a GST return including the output tax on the supply; and
- (c) Accounts for the output tax on the supply; and
- (d) Has an agreement with the underlying supplier under which the underlying supplier is required to pay to the marketplace operator, from consideration received by the underlying supplier from the supply, an amount that includes the amount of output tax on the supply for which the marketplace operator accounts; and
- (e) Writes off as a bad debt the total amount consisting of the fee and debt referred to in paragraphs (a) and (d).

22. The bad debt deduction:

- (a) Is made available by s 26AA(2) by allowing the marketplace operator an input tax deduction equal to the output tax returned on the supply;
- (b) Only applies where the customer pays the underlying supplier directly and the marketplace operator collects the GST along with its fee or commission from the underlying supplier (and not where the payment from the customer is directly split between the marketplace operator and the underlying supplier so that the GST and the fee or commission on sale is paid directly to the marketplace operator by the customer, because, in this case, there would be no bad debt).

23. Where some or all of the bad debt is recovered, s 26AA(3) requires the marketplace operator to return the tax fraction of the amount recovered as output tax.



Arun David, Director,  
DavidCo Limited