

# ***GST Direct:***

## Bringing you the latest GST developments

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**pwc**

## September 2012 Tax Bill reported back

*In the March 2013 issue of GST Direct, we discussed the Taxation (Livestock Valuation, Asset Expenditure, and Remedial Matters) Bill and the proposal to allow non-resident businesses to recover GST on costs incurred in New Zealand. The Bill also contained a proposal to deny non-resident businesses the ability to be included in a GST group with New Zealand resident businesses. The grouping proposal was described as a base protection measure so that the Commissioner could monitor the level of GST deductions claimed by non-residents.*

We questioned whether the inability for non-residents to become part of a GST group would detract from the positive features of the overall proposal as non-residents commonly group register in New Zealand for ease of compliance.

The Officials' report to the Finance and Expenditure Committee (FEC) on the Bill did not support preventing non-resident businesses from being included in a GST group with resident businesses. Instead the FEC recommended that a non-resident should only be prevented from joining a GST group with a resident business if either the non-resident or the GST group did not make taxable supplies in New Zealand. If the exception to joining the GST group does not apply the existing GST registration and refund rules would apply.

This amendment to the Bill means non-residents making taxable supplies in New Zealand will be able to join GST groups with resident businesses. This is a positive change.

The Officials' report also provided some practical guidance about the proposed non-resident GST registration rules.

***The Officials' report to the Finance and Expenditure Committee (FEC) on the Bill did not support preventing non-resident businesses from being included in a GST group with resident businesses.***



## New Zealand Customs snapshot

*How important is the New Zealand Customs Service to our economy? What is the future outlook? Here are some facts and figures relating to New Zealand Customs:*

**Customs facilitates trade valued at over \$90 billion per year.**

**Customs facilitates more than 10 million travellers annually.**

**The Government aims to double two-way goods trade with China to \$20b by 2015 and to grow merchandise exports to India by at least \$2b by 2015.**

**Currently up to 18 documents may be required to complete border processes – The introduction of a Joint Border Management System will reduce the number of documents required for imports and exports.**

**Customs collects approximately 15% of Crown Revenue (\$11 billion) from:**

- **import duty**
- **excise equivalent duty**
- **excise duty**
- **GST on imported goods.**

**New Zealand currently has Free Trade Agreements with a number of countries including Australia, China and Malaysia.**

**In 2009 New Zealand was ranked 46th of 181 countries in costs to import and 33rd of 181 countries in costs to export.**

*Source: New Zealand Customs Service Statement of Intent 2013-2016*

### **Adjustment to Customs valuations of goods**

The Customs value is used as a basis for calculating customs duty and GST payable on entry of goods into New Zealand. The 'transaction value' is the main basis used for valuing goods for Customs purposes.

In some circumstances there may be a need to revisit the Customs valuation after the goods have been cleared through Customs and are in free circulation in New Zealand. For example, a New Zealand distributor who has acquired goods from a related party overseas is likely to have used the transfer price as a basis for the original customs value of the goods.

If the transfer price is subsequently adjusted (for example to ensure a fixed profit margin is retained in New Zealand) this will have a knock-on effect to the Customs valuation. If the price is increased more GST (and potentially duty) will be payable to Customs. Conversely, a refund of duty can be obtained from Customs if the price is decreased.

## *Inland Revenue's interim view on the GST registration status of bodies corporate*

*In a welcome development, Inland Revenue has recently released an issues paper discussing the GST treatment of bodies corporate.*

There has been longstanding uncertainty in relation to whether a body corporate can register for GST. This has led to inconsistent treatment in practice with some bodies corporate registered for GST and others not.

The issues paper sets out Inland Revenue's interim view that a body corporate is able to register for GST. This is on the basis that a body corporate carries on a taxable activity in the form of supplying services (eg. maintenance of common property etc) to owners of a unit title development. A body corporate is not merely an agent or a conduit arranging services nor is it a collection body.

As a temporary measure until the position is finalised, Inland Revenue considers:

- A body corporate is not required to register for GST, irrespective of whether it exceeds the GST registration threshold.
- A body corporate may voluntarily choose to register for GST.

Inland Revenue has called for submissions on the matter following which the issues paper will be finalised. A body corporate considering registering for GST should ensure the GST consequences are fully understood before taking action.

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## Online shopping

*In recent issues of GST Direct, we have discussed GST and duty on private imports and their relevance in light of the rapid growth of online offshore shopping.*

The New Zealand retailing sector has continued its vocal support for the low value threshold, that applies before GST and duty applies, to be abolished. The retailing sector saw the Government's 2013 Budget as a missed opportunity to remove the concession and to impose GST on all forms of offshore online shopping (regardless of the value). This raises the classic tension between tax policy (of imposing GST on all supplies of goods) and the costs of collection.

This issue is not unique to New Zealand. In the past six months, other countries, including Australia and the United States have been grappling with this same issue.

While the Australian Government is still considering its position on their current AU\$1,000 GST-free threshold, the United States has gone further with the US Senate voting in favour of passing the Federal Marketplace Fairness Act. If ultimately passed, the legislation will require any retailer selling goods or services, regardless of location, that makes more than US\$1 million of sales into the US to collect and remit sales tax to the US

revenue authorities. A physical presence by a retailer in the US will no longer be required. These changes will mean internet sellers will no longer be able to avoid charging sales tax on sales to US customers due to their lack of physical presence.

The proposed changes in the US demonstrate the ability of a Government to impose taxes, similar to GST, on sellers who do not have a physical presence in the country in which the buyer is situated. The overseas developments are no doubt being followed closely by the business community, consumers and policy makers in New Zealand. The impetus is growing to reach a workable solution for New Zealand.

***The issue of imposing GST on offshore online shopping is not unique to New Zealand. In the past six months, other countries, including Australia and the United States have been grappling with this same issue.***



## Issues paper on the GST treatment of immigration and other services

*An issues paper was released earlier this month considering the GST treatment of immigration and other services provided to non-residents. The issues paper proposes solutions to two potential problems that have been identified by Inland Revenue in terms of the zero-rating rules.*

Currently, services that are provided to a non-resident may be zero-rated provided the following requirements are satisfied:

- The recipient of the supply is a non-resident at the time the services are performed.
- The recipient is outside New Zealand at the time the services are performed.
- The services are not supplied directly in connection with any New Zealand land or moveable personal property situated in New Zealand.
- The services are not an acceptance of an obligation to refrain from carrying on a taxable activity, to the extent it would have occurred within New Zealand.

Failure to meet all of the requirements above result in the services being standard rated for GST purposes, unless it is possible to apportion the supply.

Inland Revenue has concerns with the practical application of the first two requirements. It may not always be practical for a supplier to have knowledge of the whereabouts of a non-resident consumer when the services are supplied, and therefore whether zero-rating applies or not.

Also, the retrospective application of the residency rules for income tax purposes could result in a previous zero-rated supply becoming subject to standard rating. This situation could arise when a person's residency is backdated to their first day of arrival in New Zealand. Note that the GST residence rules rely on the income tax concept.

### **Suggested Solution**

Inland Revenue is proposing to allow services to non-residents to remain zero-rated even where the non-resident visits New Zealand during the period of service, provided the visit is not in connection with the services performed.

It is also proposed that the retrospective application of the tax residency rules be 'switched off' in relation to the application of the zero-rating rule.

These proposals are aimed at providing certainty for suppliers when zero-rating services supplied to a non-resident. It is pleasing to see Inland Revenue recognising some of the potential difficulties in applying the zero-rating GST rules and their willingness to put forward practical solutions.



## ***Having trouble accessing or filing your GST return online using the new eGST system?***

*Inland Revenue has moved to a more user friendly 'eGST' online return filing system. If you have not already done so, you must first register for an Online Services account to access the online system. This requires obtaining a user name and password from Inland Revenue.*

From previous experience, Inland Revenue insists on a director of a company being the authorised person able to obtain a user name and password. It is not always practicable for directors to be involved in this level of detail and we are hopeful that Inland Revenue will relax this requirement and allow other company officers to set up the online access.

Provisional taxpayers may have also experienced difficulties in filing their GST return online. The GST return online form gives taxpayers the option to pay their provisional tax instalment together with their GST payment. The provisional tax estimate automatically calculated by Inland Revenue's system may not always correlate with the taxpayer's records. In some instances, taxpayers have been unable to change Inland Revenue's estimated figure to a lower amount. Inland Revenue has acknowledged that this is an issue with their online system and a 'fix' is expected to be in place from this month.

***The GST return online form gives taxpayers the option to pay their provisional tax instalment together with their GST payment.***



## Levies – subject to GST...or not?

*The statute books contain a myriad of charges and levies often used to fund the activities of bodies which are themselves created by statute.*

Our experience is that these levies are often incorrectly treated for GST purposes. The 2005 High Court decision in *Pacific Trawling Ltd v Chief Executive of Ministry of Fisheries* is an example of a situation where a levy (in this case a “deemed value” payment) was held to be correctly subject to GST when this had not previously been the case.

Fire Service Levies, used to fund the Fire Service, are the subject of a specific deeming rule in the GST Act, absent which they would not be subject to GST.

The correct approach when determining whether a levy is subject to GST is to ask whether the recipient of the levy is supplying something in consideration for the payment – this was the approach taken by the High Court in *Pacific Trawling*.

If the answer to the question is “nothing” is supplied, then there will be no GST liability. The levy in such a case is just a form of “tax” (or a statutory charge) and, unless there are specific deeming provisions, it is not subject to GST.

***The correct approach when determining whether a levy is subject to GST is to ask whether the recipient of the levy is supplying something in consideration for the payment.***





# Contact us

If you have any questions regarding the issues covered in this publication, please contact your normal PwC adviser or a member of our GST team. Our team can help you by delivering practical GST solutions and effectively managing your GST risk.

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