REGISTRATION OF NON-RESIDENTS FOR GST

Sections 5(3B), 10(7A), 19(1B), 19A(1)(a)(iv), 20(3L), 20(3M), 46(1B), 51(4)(a), 51B(1)(d), 54B, 54C and 55(1B) of the Goods and Services Tax Act 1985; section 120C(1)(c) of the Tax Administration Act 1994

GST is a tax on final consumption and is intended to be neutral for businesses. Under the GST rules, a non-resident business may need to bear New Zealand GST as an economic cost of doing business. The new rules allow non-resident businesses to claim input tax deductions (and therefore refunds) in broadly the same way as a comparable New Zealand business. Allowing these deductions to be claimed has, in turn, necessitated appropriate base-maintenance measures to be introduced.

Key features

Certain non-resident businesses will be eligible to register for GST and claim input tax deductions even though they are making no taxable supplies in New Zealand. Non-resident businesses will need to satisfy certain criteria in order to be able to register under these new rules. Registration will result in the resident businesses being able to claim input tax deductions in New Zealand in a broadly comparable way to a New Zealand resident that operates a similar business. This will allow the non-resident business to access refunds of GST incurred, meaning that New Zealand GST should not generally be an economic burden on non-resident businesses.

If the non-resident business is making taxable supplies, or is part of a GST group that makes taxable supplies, it will not be able to register under the new provisions. Instead, it will register under the "regular" registration rules and be able to claim input tax deductions in accordance with those rules.

The Commissioner has special deregistration powers applicable only to non-residents registered under the new provisions. These deregistration powers, along with the other conditions of registration, are designed to encourage compliance from this non-resident group and to protect the tax base from fraudulent refund claims.

Background

As GST is intended to be neutral for businesses, it should only be an economic cost to business in carefully defined circumstances. Under the previous registration rules, non-resident businesses found it difficult to access refunds for GST incurred—particularly on services received in New Zealand.

The new rules are designed to ensure that qualifying non-resident businesses are able to reduce the economic burden of GST by registering and claiming refunds in appropriate instances.

Detailed analysis

Registration

Section 54B sets out the registration criteria for non-residents. The Commissioner may register a non-resident if satisfied that:

- The person is registered for a consumption tax in the territory in which they are resident. Or, if that territory does not have a consumption tax (or one that applies to the activities of the person), it must have a taxable activity that would make them liable to be registered in New Zealand if they were operating here. At present, this means that the person must be making supplies (on an annual worldwide basis) greater than $60,000.

  This criterion is largely directed at ensuring that the non-resident is a genuine business. The rules accept registration for a comparable tax in another jurisdiction as a proxy for the legitimacy of a business. In doing so, the rules recognise that some countries do not have consumption taxes, or have taxes with a narrower base than New Zealand's GST. In order to accommodate those businesses, while still requiring some evidence of the "genuineness" of an operation, the $60,000 a year supply test applies.
- The person's input claim for their first registration period is likely to be greater than $500. Registering and administering non-resident businesses involves administration costs for Inland Revenue. Having a minimum claim amount ensures that only businesses that incur a reasonable degree of expenditure in New Zealand can register. This prevents processing GST returns when the administration costs involved would outweigh any refund provided.
- The person's business does not involve the on-selling of services when it is reasonably foreseeable that those services will be received in New Zealand by a non-registered person. This criterion is intended to prevent any fraud risk, which would involve people in New Zealand receiving "pooled" services through a non-resident entity. For example, a group of New Zealand students could establish and register for GST an "education services" company in another country. That company agrees to pay the fees and living costs of the students in return for the students paying it for its services. The non-resident company could not register in New Zealand and claim New Zealand input tax on fees because it is reasonably foreseeable that it will be supplying education services that are received in New Zealand by non-resident students.

- The person is not carrying on, or intending to carry on a taxable activity in New Zealand and is not, or intending to become a member of a group of companies carrying on a taxable activity in New Zealand. It is important to note that a non-resident that plans on carrying out a taxable activity in New Zealand (or being part of a group that does) is not precluded from registering from GST. Instead, they should register under the "regular" rules and claim input deductions accordingly. The effect of this rule is that only a non-resident that makes no taxable supplies in New Zealand (or, in other words, is not obliged to return any output tax) is able to register under section 54B of the GST Act.

If, sometime after registration, a person starts making taxable supplies, or joins a group that makes taxable supplies, their registration status changes from someone being registered under section 54B to someone registered under the "regular" rules from the date they start making taxable supplies or join the group, as applicable (see section 54B(2)).

A specific timing rule has been included in section 54B(3). Under this rule, the date at which a person either ceases to be eligible to be registered under section 54B, or becomes registered under that section, is the end of a taxable period. This ensures that there are no taxable periods when a person has to complete a return that incorporates two sets of rules.

Effect of registration

Input tax deductions

A non-resident business that is registered under section 54B will generally claim input tax deductions under section 20(3L). This section allows input tax to be deducted to the extent to which goods or services are used for, or available for use in making taxable supplies, treating all supplies made by the person as if they were made and received in New Zealand.

The requirement that the supplies must be treated as being made and received in New Zealand is to avoid a person claiming input deductions on what would be exempt supplies on the basis that it may export (and therefore zero-rate) those supplies. This would provide a mechanism for turning exempt supplies into taxable supplies and artificially inflate the input tax deductions the non-resident could claim.

This test effectively asks the registered person to work out what would be their input tax deductions if they were a solely New Zealand business. It is accepted that this will require some knowledge of New Zealand GST. However, given the broad GST base, it is expected that most businesses that operate outside of the financial services and residential housing sectors will be eligible to deduct nearly all of their input tax.

Section 20(3M) provides a further option for claiming input deductions for non-resident businesses that principally make supplies of financial services. If they choose, they can agree with the Commissioner a fair and reasonable method of apportioning input tax claims. This provision effectively mirrors section 20(3E), which allows New Zealand financial services providers to reach similar agreements with the Commissioner.

Accounting basis

Section 19(1B) provides that when the Commissioner registers a non-resident under section 54B, that person must account for GST on a payments basis. This is a base-protection measure to ensure that refunds are not provided when the GST has not been incurred. It will require the non-resident to actually pay an amount in order to claim input tax in relation to that amount. A consequential amendment has also made to section 19A(1)(a) to effect this.

Taxable periods

No special rules are being introduced in relation to filing periods for non-residents. The normal rules will apply to determine whether they should file GST returns on a monthly, two-monthly or six-monthly basis.

Right to withhold refunds

Generally, the Commissioner has 15 working days to refund an amount of input tax in accordance with a return. This can be extended if the Commissioner, within those 15 working days, notifies the person that she intends to investigate the return. For registered non-residents, section 46(1B) has been added to extend this refund and investigation period to 90 days. This extended period reflects the fact that returns from non-residents may involve some communication before they can be finally processed. To allow for this communication (including matters such as unfamiliarity with the non-resident business or potential language barriers), an extended period is desirable.

A separate amendment to section 120C(1) of the Tax Administration Act 1994 switches off use-of-money interest accruing in the event that the Commissioner extends the refund period beyond the original 90 days.

Groups of companies

New section 55(1B) clarifies that a non-resident registered under section 54B cannot join a group if it would result in the group having both resident and non-resident members. This ties in with section 54B(2), discussed above. In the event that a person registered under section 54B does join such a group, their registration status will revert to "normal" at that time.

It is anticipated that a non-resident company registered under section 54B should be able to group with other companies also registered under that section.

Cancellation of registration

Under section 54C, there are instances when the Commissioner can, in addition to powers that already existed under sections 52(5) and (5A), cancel the registration of a non-resident registered under section 54B. These situations are:

- When the Commissioner is satisfied that the person is no longer eligible to be registered under section 54B(1)(a). This means that if the person's registration for consumption tax in their home jurisdiction lapses, or if their supplies drop below $60,000 a year (and their home jurisdiction does not have a consumption tax that applies to them), they can be deregistered in New Zealand. The rule is intended to ensure that if a person, for example, artificially inflates their turnover to register for GST in New Zealand but is or becomes effectively a shell company, they can be deregistered. This is consistent with the idea that only genuine non-resident businesses should be eligible to register for GST.
- When the person, for three consecutive taxable periods, has either not filed a return or has filed a late return. This rule is intended to encourage compliance in non-residents. It is expected that a non-resident may have periods when their involvement with New Zealand is limited or non-existent. Rather than letting registration continue indefinitely, this rule should encourage them either to file nil-returns for those periods or make the conscious decision to deregister.

A failure to file, or filing late, for three consecutive periods will result in deregistration and a prohibition on re-registering for five years. That prohibition also applies to non-resident associates of the person. This will prevent a non-resident group registering one company and, if that company is deregistered, then registering another member of the group in its place. If a person's registration is cancelled under this section, the effective date of the cancellation is the first day of the third period.

A consequential amendment to the deregistration provision in section 52(7) has been made so that it only applies to non-residents that are not registered under section 54B. This change is necessary because, without it, any person registered under section 54B would arguably be at risk of being deregistered under section 52(7).

Section 5(3B) has also been included to clarify the effect of deregistration of non-residents. Under section 5(3), there is a risk that a non-resident that deregistered for any reason may be liable for output tax on the market value of all of their business assets—even if those assets were offshore. This would result in over-taxation of assets that had no connection with New Zealand. Under section 5(3B) the only deemed supplies that would occur on deregistration would be:

- goods present in New Zealand at a time immediately before the person ceases to be registered; and
- services that would be performed in New Zealand at that time the person ceases to be registered.

A consequential amendment has been made to section 10(7A) to ensure that the value of these deemed supplies is their open market value.

Application date

The amendments all apply from 1 April 2014.

TOOLING COSTS

Section 11(1)(p) of the Goods and Services Tax Act 1985

Under the previous rules, manufacturing tools that were separately charged to a non-resident, usually could not be zero-rated (because they never left New Zealand). This was so even if they were only used to manufacture exported goods, with no actual consumption occurring in New Zealand. This result was contrary to the general "destination principle" in the GST rules which states that only domestic consumption should be subject to GST.

Background

A new section 11(1)(p) introduces a zero-rating rule that applies to what are known as "tooling costs". These are costs for specialised tools that a New Zealand resident manufacturer charges to a non-resident purchaser. International practice dictates that these tooling costs are charged separately to ensure that the purchaser retains title to the tools necessary to fulfil their order. This practice is designed to stop a manufacturer using tools to create counterfeit goods once an initial contract has been fulfilled. It is not usually intended that the purchaser will take delivery of the tools, so they generally remain in New Zealand.

The tools are only used to make exported products that are themselves zero-rated. However, because the tools are not exported, manufacturers are required to charge GST on any tooling component of an order.

Key features

Under section 11(1)(p), goods are zero-rated if they are tools used solely to manufacture goods that will be for export from New Zealand and are supplied to a non-resident that is not a registered person. This means that, if the goods being manufactured are in part for the domestic market, they will not qualify for zero-rating. Equally, if the non-resident is registered, the goods will be standard-rated, in the expectation that the registered recipient will be able to claim any GST charged as an input tax deduction.

The wording of this provision is consistent with corresponding provisions in Australia and Europe, and is designed to align New Zealand with international standards.

Application date

The amendment applies from 1 April 2014.