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AUSTRALIA + NEW ZEALAND

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## WEEKLY COMMENT: FRIDAY 7 JUNE 2024

1. The *Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023* (“the Platform Economy Amendment Act 2023”), with a date of assent of 31 March 2023, introduced the GST marketplace rules on supplies of listed services. Over the next three weeks, I will be reviewing the marketplace rules for listed services. This week, I will look at what is meant by listed services and electronic marketplaces.

### When the new rules apply

2. Effective for taxable periods starting on or after 1 April 2024, new s 8C of the Goods and Services Tax Act 1985 (“the GST Act”) applies to determine the taxation of a supply of “listed services” made through and “electronic marketplace” and performed, provided, or received in New Zealand.
3. The earlier effective date of 31 March 2023 (the date of assent of the Platform Economy Amendment Act 2023) applies to amendments enabling underlying suppliers to opt-out of the marketplace rules (which will be covered in next week’s *Weekly Comment*), provided criteria are met. This includes amendments enabling the Commissioner to issue determinations setting out the criteria a person must meet before they can enter an opt-out agreement with a marketplace operator.
4. The rules only apply when there is an arrangement that involves an underlying supplier providing services through an electronic marketplace to a recipient. If the recipient of the services contracts directly with the supplier and there is no electronic marketplace involved, the marketplace rules for listed services will not apply.
5. The “underlying supplier” is the person who would be the supplier of taxable accommodation, ride-sharing/ride-hailing, or food or beverage delivery services for GST purposes and would therefore be responsible for returning GST on the services in the absence of a specific provision of the GST Act deeming another person (such as the operator of an electronic marketplace) to be the supplier of those services. Generally, this refers to an accommodation host, driver, or deliverer who makes the supply of services to the consumer, using an electronic marketplace to find buyers for their services.

### Listed services

6. The listed services set out in s 8C(2) are the following services where they are performed, provided or received in New Zealand:
  - (a) A supply of accommodation services in New Zealand, other than the supply of accommodation in a dwelling that is an exempt supply under s 14(1)(c);

- (b) A supply of transport services in New Zealand in the form of:
- (i) Ride-sharing or ride-hailing services;
  - (ii) Delivery services for beverages, food, or both.
7. Section 8C(8) states that “ride-sharing or ride-hailing services” means services provided through an electronic marketplace that involve the engagement of a personal driver to transport a person to their chosen destination.
8. Amendments to s 8(3)(c) and new s 8(3)(d) mean that a supply of listed services that is performed, provided, or received in New Zealand is treated as a supply made in New Zealand and will therefore be subject to GST. This applies even if the underlying supplier of a listed service is a non-resident (such could be the case for accommodation provided in New Zealand, as the underlying landowner could be a non-resident) or the marketplace operator is a non-resident.
9. Inland Revenue notes in *Tax Information Bulletin* Vol. 35, No. 6, July 2023 (“the Platform Economy TIB Item”) that:
- (a) There are no special rules enabling any different GST treatment, and listed services will always be subject to GST at the standard rate when they are performed, provided, or received in New Zealand;
  - (b) It also does not matter if the recipient of the services is a non-resident - for example, a non-resident tourist staying in accommodation in New Zealand would be required to pay GST on their accommodation;
  - (c) There are also no special rules that apply to determine whether listed services are “performed, provided, or received” in New Zealand: the ordinary meaning of these terms will apply to determine whether the services are listed services that would be subject to GST when provided through an electronic marketplace.
10. Section 8C(7) states the listed services include other services that:
- (a) Are closely connected to the listed service supplied by the underlying supplier, but not including services actually supplied by the operator itself to the recipient (ignoring services deemed to be supplied by the operator under s 60C – see paragraph 17 below); and
  - (b) Are advertised, listed, or otherwise made available through the electronic marketplace.
11. Inland Revenue makes the following additional points in the Platform Economy TIB Item:
- (a) All accommodation services provided through an electronic marketplace (other than exempt accommodation) will be subject to GST at the standard rate of 15%, because it would be impractical for marketplace operators to identify whether listed services would qualify for the special rate of 9% on supplies of domestic goods and services provided during a stay of more than 4 weeks in a ‘commercial dwelling’ (s. 10(6B) overrides the special rate for accommodation supplied through an electronic marketplace);
  - (b) If a property manager is engaged to manage the property, it is the owner of the property who remains the underlying supplier, and not the property manager;

- (c) In situations such as motels where a lessee purchase a business lease from the freehold property owner to run the accommodation business, it will be the lessee who is the underlying supplier, and not the lessor;
- (d) Ride-sharing and ride-hailing services do not include services where the travel route is pre-determined by the supplier, such as a bus route, ferry cruise, or flights and, in such cases the person normally contracts directly with the supplier, in any case, so there is no marketplace operator involved;
- (e) In the case of transportation of beverages and/or food, it is only the delivery services that are listed services, and not the supply of the beverages or food itself;
- (f) The marketplace rules will not apply where a business engages an independent contractor or employee to carry out the food and/or beverages delivery services – the rules only apply where a person uses an electronic marketplace operated by a third party to enter a contractual relationship with other persons for food and/or beverage delivery services;
- (g) The inclusion of “closely connected services” is intended to include services that are ancillary to the listed service, such as cleaning, where a fee is charged for such services as part of the overall supply of a listed service made through an electronic marketplace – services which are not ancillary to a listed service, such as rental vehicle hire or a tourist attraction are not within the scope of listed services and the marketplace operator would not account for GST on these supplies under the listed services rules;
- (h) Closely connected services that are supplied by the marketplace operator itself to the recipient of the listed service are not included, because they are separate to the services provided by the underlying supplier – for example, a foreign exchange reserve that a marketplace operator may provide its customers.

### **The time of supply for listed services**

- 12. There are no special rules that determine the time of supply for listed services.
- 13. Inland Revenue notes in the Platform Economy TIB Item that the time of supply for listed services will therefore generally be the earlier of the time the marketplace operator issues an invoice, or the time any payment is received for the supply.

### **Electronic marketplace**

- 14. An “electronic marketplace” is defined in s 2 as meaning a marketplace that is operated by electronic means by which a person (the underlying supplier) makes 1 or more of the following supplies through another person (the operator of the marketplace) to a third person (the recipient):
  - (a) A supply of goods;
  - (b) A supply of remote services by electronic means; and
  - (c) A supply of listed services.
- 15. For the purposes of this present discussion, only the supply of listed services through an electronic marketplace is relevant.

16. An electronic marketplace is essentially an electronic medium that matches buyers and sellers, or allows them to interact, to facilitate the sale and purchase of goods and service, and:
- (a) Includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace; but
  - (b) Does not include a marketplace that solely processes payments.
17. When a supply of listed services is made through an electronic marketplace and the listed services are performed, provided or received in New Zealand, s 60C provides that the operator of the electronic marketplace is treated as making, in the course or furtherance of a taxable activity, a supply to the recipient of the listed services.
18. Section 60C provides that the operator of an electronic marketplace is treated as the supplier of listed services if the marketplace operator:
- (a) Authorises a charge for the supply of listed services to the recipient;
  - (b) Authorises the delivery of the supply of listed services to the recipient; and/or
  - (c) Sets a term or condition under which the supply of listed services is made, whether directly or indirectly.
19. These are the same tests that apply to determine whether a marketplace operator is treated as the supplier of remote services supplied in New Zealand. If neither of these tests are met, marketplace operators will not be treated as the supplier of listed services – for example, a person who runs a website that contains a messaging board enabling a person to list properties available for rent may not be a marketplace operator.
20. When multiple marketplace operators are involved in a single supply of listed services, s 60C(3) provides that it is the first marketplace operator that authorises the charge for the listed service or receives the consideration for the supply of the listed service, which is treated as the supplier.
21. Inland Revenue notes in the Platform Economy TIB Item that whether a person is considered an operator of an electronic marketplace through which an underlying supplier makes a supply of listed services will depend on the specific facts. For instance, automated inventory tracking systems such as those used in the accommodation industry (for example, a Central Reservation System or Computerised Reservation System (CRS), or a Global Distribution System (GDS)) would not be considered electronic marketplaces in and of themselves.
22. As the marketplace operator is treated as the supplier, it is the marketplace operator that must provide the taxable supply information to the recipient, and when adjustments for inaccuracies need to be made, it is the marketplace operators (instead of the underlying suppliers) that must provide the supply correction information to the recipient and make the adjustments. Inland Revenue notes in the Platform Economy TIB Item that:
- (a) Despite the general rules for taxable supply information, s 19K(3) provides that for listed services, taxable supply information must be provided to the recipient of the listed services in all circumstances without the need for a request, the purposes of this being:

- (i) To ensure that the recipient of listed services will receive sufficient information enabling them to deduct input tax, if applicable, for listed services they receive; and
  - (ii) To reduce compliance costs for marketplace operators by removing the need for them to have bespoke systems for responding to requests for taxable supply information;
- (b) If a GST-registered supplier returns incorrect GST due to a mistake or subsequent alteration to, or cancellation of, a supply, s 25 will apply to the supplier;
- (c) If a marketplace operator has returned incorrect GST due to an inaccuracy, such as incorrect consideration, the marketplace operator must make an adjustment in its GST return when the mistake becomes apparent.
23. The operator of a marketplace will be responsible for collecting and paying GST on the listed services. Inland Revenue notes in the Platform Economy TIB Item that:
- (a) Where a marketplace operator has an agreement that entitles the underlying supplier to the consideration paid by the recipient of the listed services, it will need to consider whether its contracts need to be altered to allow it to retain, and own, enough of the funds paid by the customer so it can fund its GST liability in respect of the listed services;
  - (b) For GST purposes, this would mean that the consideration paid for the supply that is treated as being made by the marketplace operator to the recipient of the listed services is more than the consideration paid by the marketplace operator for the deemed supply of listed services made by the underlying supplier to the marketplace operator under s 60C(1)(a);
  - (c) In such a situation, paying GST to Inland Revenue does not give rise to additional consideration for “facilitation services” (which will be covered in week-after-next’s *Weekly Comment*) the underlying supplier receives from the marketplace.
24. GST-registered underlying suppliers will continue to provide their own GST returns and:
- (a) Include zero-rated supplies of listed services made through an electronic marketplace in the zero-rated sales box in their GST returns; and
  - (b) Return GST on other supplies made directly to their customers in the usual way; and
  - (c) Deduct GST input tax on expenses incurred in making supplies of listed services in the usual way.



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