



GST on remote services / land withholding tax introduced

Snapshot

A [Tax Bill](#) introduced yesterday applies GST to “remote services” and implements the Government’s Residential Land Withholding Tax (“RLWT”). Both of these changes were consulted on earlier this year. The Bill does not vary dramatically from those proposals.

Remote services covers digital services and content provided from offshore. It also covers other services provided to NZ resident consumers. An offshore supplier will have to charge GST if their sales to NZ consumers is greater than \$60,000. The new rule will apply from 1 October 2016.

The RLWT will apply to NZ residential land sold by an “offshore person”, where the land is bought and sold within 2 years, and settlement occurs on or after 1 July 2016. The RLWT amount will be the lower of 33% (or 28%) of any gain or 10% of the sale price. It will be primarily collected by the seller’s conveyancing agent.

The RLWT is the final part of the Government’s Budget 2015 land tax changes, which includes new tax information requirements and a bright-line test. These have already been enacted.

To borrow a sci-fi analogy, the GST changes in the Bill extend the tax base to a *brave new world* – remote services. A decision on the “final frontier”, GST on imported goods, looks likely to be reached next year

The residential land withholding tax, in contrast, is “ahead of its time”. Officials’ estimates suggest minimal revenue will be collected. The compliance costs are not justified, in our view

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What are the proposed changes in the Tax Bill?

GST on remote services

- From 1 October 2016, GST of 15 percent will apply to “remote services” by non-residents. Remote services include the online supply of software and digital content as well as other services, such as insurance and gambling, where the recipient is a NZ resident consumer.
- A non-resident supplier will have to charge GST if their sales to NZ resident consumers are \$60,000 or more in a year.
- A consumer’s NZ residence status will be based on two non-conflicting commercially available pieces of evidence, such as their billing or home address, bank details, or IP address.
- A GST registered NZ business will not be a NZ resident consumer so the new rules will not apply. NZ businesses will need to provide their GST or NZ Business number to confirm their status.
- Electronic marketplaces will also need to charge GST. (An electronic marketplace is a person who charges the NZ customer, arranges delivery of the content, or sets the terms and conditions of the transaction. It is not the actual supplier of the services or simply a paying or processing agent.)
- A simplified “pay only” registration system will be available to return only GST output tax and GST will be payable on a quarterly basis.
- If the supplier has paid consumption tax (GST/VAT) in another jurisdiction on the same supply, this can be deducted from the NZ GST due. This is intended to prevent double consumption taxation of the same supply.
- There are a number of changes proposed to the zero-rating rules to accommodate the remote services changes. There is also a specific valuation rule for gambling services and also for the deduction of input tax for an insurer.

Residential Land Withholding Tax

The RLWT will apply to sellers of New Zealand residential land who:

- are “offshore persons” (this is aligned to the tax information disclosure rules);
- meet the “bright-line” test requirements (i.e. the land was acquired after 1 October 2015 and sold within two years of acquisition); and
- settle a transaction on or after 1 July 2016.

The RLWT will be the lower of:

- 33% of the vendor’s gain (i.e. sale price less the vendor’s acquisition price), or 28% if the vendor is a company;
- 10% of the agreed sales price; and
- the sale price less the amount required to discharge a mortgage to a NZ registered bank or similar. (The RLWT liability will rank ahead of any other disbursements.)

RLWT must be deducted, at the time of settlement, by:

- the vendor’s conveyancer, as a general rule;
- the purchaser’s conveyancer, if the vendor does not have a conveyancer; or
- the purchaser, if neither party has a conveyancer, or if the purchaser is associated with the seller.

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A vendor will need to provide information to the withholding agent, including:

- their name, address and IRD number details;
- confirmation of whether they are an offshore person or not (and evidence to support this, such as a certified copy of their passport); and
- if an offshore person, whether they are associated with the purchaser and the sale is subject to the RLWT.

An offshore person will need to file a New Zealand tax return and will receive a credit for the RLWT deducted.

Withholding agents will be subject to interest and penalties for not complying. In addition, Inland Revenue will be able to report non-compliant agents to their relevant professional bodies (e.g. the NZ Law Society or NZ Society of Conveyancers).

Our view

The Bill legislates for two key policy issues announced during the year.

GST on remote services – a brave new world?

We welcome the release of the draft legislation. At a minimum, this gives certainty about the future GST position of digital content and other services. It will allow New Zealand consumers and offshore suppliers to plan accordingly.

As noted in our previous [taxmail](#), collecting GST on remote services was inevitable. From a policy perspective, excluding imported (low value) goods and services from the GST base is an anomaly. The main impediment has been how to collect the GST. The size of the digital economy has made this both an unavoidable and global problem. The OECD has developed a consensus on how value added taxes should be applied cross-border. Its guidelines have recently received global endorsement. New Zealand is simply following that consensus for remote services. A number of countries already have, or are introducing, equivalent rules.

NZ GST will apply to remote services from 1 October 2016, ahead of similar plans by Australia to apply its GST from July 2017. Australia has also committed to removing its GST threshold for imported goods. In contrast, by focusing on services, the New Zealand Government has dealt with the easier of the two issues. Applying GST to low-value imported goods remains on the table with the Revenue Minister announcing consultation by NZ Customs in April next year.

It is more difficult to apply GST to goods because any system must ensure that consumer choice and efficient delivery are not affected, while the cost of collecting GST is minimised. Countries with lower goods thresholds have yet to find a simple solution. It is yet to be seen whether New Zealand can conquer this “final frontier”.

Overall, the Bill confirms a number of features previously consulted on. In particular:

- **The \$60,000 NZ sales threshold.** The threshold is a compromise between comprehensiveness and compliance costs. The threshold may, however, still be seen as too low by offshore suppliers, who will have to develop systems to comply. This may affect their willingness to supply to the NZ market. However, it does mean that NZ and foreign suppliers will be subject to the same rules.
- **The exclusion for supplies to NZ GST registered business.** There is little value in applying the rules to business-to-business supplies. However, this comes at a compliance cost as a NZ business will have to quote its GST or NZ Business number. This is important because any GST inadvertently charged to a NZ business must be claimed from the supplier. The normal rules apply if the value of the service is less than \$1,000 and a tax invoice is provided. This modification seems a reasonable approach to recovering GST on small supplies.

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- **Simplified registration rules for non-resident suppliers.** This is to minimise compliance costs. The Bill also removes the NZ bank account requirement for non-resident suppliers. This addresses the recent change to require all non-residents applying for an IRD number to have a fully functioning NZ bank account. That requirement was aimed at foreign buyers and sellers of NZ land. However, it applies too widely.

Disappointingly, the Bill does not address the transition to the new rules. It implies that a remote service is not physically performed in NZ so that the existing rules do not apply. This should be made clear so that there is no disincentive to register under the new rules. We also consider that the Bill could have usefully addressed a non-resident's required presence in NZ to require GST to be charged, as well as clarifying a non-resident's entitlement to claim input tax.

RLWT – ahead of its time?

The RLWT is the final part of the land tax changes introduced in Budget 2015. The other parts, new tax information disclosures (and IRD number requirements) and a bright-line tax rule for residential land have now been passed into law. (You can read more about those developments [here](#).)

Our concern is the additional compliance costs, for buyers, sellers and their agents, will be significant compared to the additional revenue and protection to the tax base. The Regulatory Impact Statement on the Bill confirms that minimal revenue (around \$5 million) will be collected each year under the bright-line test. The RLWT impact will be less than this, as it applies to non-residents only. We do not believe this justifies the RLWT. It is also unclear why the RLWT should apply to NZ companies, trusts and partnerships (owned/controlled by non-residents) as Inland Revenue's existing enforcement powers should be sufficient.

Also of concern is the apparent lack of coordination between the new information disclosures and the RLWT. Vendors will need to provide RLWT-related information to their conveyancer. This appears to duplicate some of the information in the land transfer tax statement. This, in our view, is symptomatic of each part of the policy being developed in isolation and being rushed through. Tellingly, the Bill contains (the first?) remedial amendments to the bright-line legislation.

On a positive note, the Bill allows NZ bank mortgages to be repaid before the RLWT is deducted. This was one of the concerns with Inland Revenue receiving priority as a creditor.

However, other issues remain. These include the status of GST and an exclusion for the cost of improvements in the gain on sale calculation. Both of these issues have the potential to increase the RLWT liability beyond an appropriate amount and are likely to affect New Zealand entities which are owned/controlled by offshore persons.

These will create issues for the effective operation of the RLWT regime and will need to be addressed at the Select Committee stage of the Bill.

For further information

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