



Changes to GST

There are two changes to GST that come into effect from 1 January 2005 which may affect you or your clients.

GST on imported services

From 1 January 2005 GST will apply to certain supplies of services that are imported to New Zealand, for example, management, legal and accounting services or products downloaded through the internet. This change may affect clients who are not registered for GST, clients' who make exempt supplies and clients who import services for their own personal use.

If your client receives imported services from an overseas supplier they may need to account for GST on the cost of the services under the new "reverse charge" mechanism. The reverse charge requires affected clients to add GST (12.5%) to the price of the services they have received.

GST will have to be returned and paid by the recipient of the service to Inland Revenue if:

- the imported services would be subject to GST if supplied in New Zealand (including services that are not able to be supplied in New Zealand but which are imported into New Zealand), and
- the client makes more than a minimal level of exempt or other non-taxable supplies, ie more than 5% of their total annual supplies are not subject to GST.

Clients who have not previously been registered for GST will be required to do so in the event that the value of imported services takes them over the \$40,000 per annum GST-registration threshold.

The reverse charge is also likely to apply to GST-registered clients who are currently required to apportion between exempt and taxable supplies. There are special provisions if you are receiving the imported services from a non-resident member of the same GST group.

The normal time of supply rules apply for the purposes of the reverse charge with the exception of some transitional provisions.

Recipients of services subject to the reverse charge may also be entitled to an input tax claim under the general input tax provisions

Zero-rating of business-to-business supplies of financial services

Also from 1 January 2005, if you are a financial service provider, you may elect, in writing, to **zero-rate** certain supplies of financial services (for example, dealings with money, certain dealings with securities or the provision of credit and loans) to:

- GST-registered customers making, in a given 12-month period, taxable supplies that are equal to or exceed 75% of their total supplies for the period, or
- customers who are GST-registered and do not meet the 75% threshold but are part of a group that does meet the threshold in a given 12-month period, for example, the treasury or finance function of a group of companies that receives financial services.

To make an election, write to:

Inland Revenue Corporates
Financial Sector
Private Bag 39984
Wellington
Fax 04 802 6192

If you supply financial services to a business customer (excluding banks and finance companies) that meet the criteria above and once your election takes effect, you may charge GST at the rate of 0% on the supply and claim input tax credits in respect of that supply.

For more information

See *Tax Information Bulletin* Vol 16, No 1 (February 2004).

Alternatively, phone us on the tax agents' freephone number.

Internet E-File the only option

The PACNET facility to use E-File will be turned off from 1 November 2004 after which you will only have the internet option to E-File your clients' returns. If you are not E-Filing your clients' returns through the internet already, contact your software provider to arrange to start using the internet option so you can continue to E-File from 1 November.

AGENTSanswers index

The interactive version of AGENTSanswers index on the website has been updated to August 2004.

This is available at
www.ird.govt.nz/library/newsletters/answers/



Tax on franchise fees paid offshore

Inland Revenue would like to raise awareness of non-resident withholding tax (NRWT) liability and help people comply with their NRWT obligations.

The Non-resident Centre of Inland Revenue has been investigating the deduction and payment of NRWT on franchise fees, which are royalties paid to a non-resident. Royalties paid to a New Zealand resident are not liable to NRWT.

Royalty payments are liable to NRWT at a rate of either 10% or 15%, depending on the country where the franchisor is resident.

While many people are aware they have to deduct NRWT on continuing franchise payments, few are aware that NRWT may also be deductible from "initial" franchise payments. This will depend however, on the elements making up that initial payment.

Inland Revenue is keen to ensure that franchisees and their tax advisors are aware of the NRWT liability on initial franchise payments.

The following information is based on the Income Tax Act 1994. For more complete information, please refer to the Act.

What is a royalty payment?

A royalty payment is defined in the income tax laws as any payment for using (or having the right to use) anything such as copyrights, patents, designs, films, audio or videotapes, specialist knowledge or information, and mining or cutting rights. It also covers payments to authors, editors or composers for each copy of a work sold, performed or broadcast.

When is a royalty payment liable for NRWT?

The NRWT rules apply to income including royalties that a non-resident derives and is deemed to have derived from New Zealand.

How much NRWT is paid?

NRWT on royalties is 15% of the gross royalty. However, in most cases the rate is reduced to 10% as New Zealand has double taxation agreements with most overseas countries selling franchises to New Zealand.

The 10% tax is on the gross royalty amount. If a franchisor needs a payment to be made net of any New Zealand withholding taxes, the royalty needs to be "grossed up" for calculating NRWT.

Is NRWT paid in relation to franchisee receipts?

If a royalty payment from a franchisee is paid to a master franchisee and is on-paid to the franchisor, the payment, irrespective of whether it is an initial or continuing payment, will be liable for NRWT at the point it is derived by the non-resident.

Paying NRWT

NRWT should be deducted from a royalty payment before the royalty is paid. The NRWT is then generally required to be paid to Inland Revenue by the 20th day of the month following the month the royalty was paid.

Failure to pay NRWT

If a taxpayer fails to deduct and pay NRWT, Inland Revenue can assess the debt to the New Zealand payer of the royalty. NRWT is assessed as at the date it was due which could result in interest and penalty charges. Shortfall penalties ranging from a lack of reasonable care penalty of 20% to a penalty of 150% for knowingly failing to deduct NRWT may apply.

What should you do if you think you are liable for NRWT?

Please contact Inland Revenue as soon as possible. Making a voluntary disclosure means any shortfall penalties may be substantially reduced. Further information about the benefits of making a voluntary disclosure is available on our website www.ird.govt.nz

For more information please refer to the *Non-resident withholding tax payer's guide (IR 291)* or call our Non-resident Centre on 03 467 7020.

Some timely reminders

Cancellation of GST registration over the phone

Just a quick reminder that you no longer have to write to us to request cancellation of a GST registration—you can now simply give us a call and in most situations we can action your request while you are on the phone. We'll follow up your phone call with written confirmation that the cancellation has been updated to our records. This applies where the registered person has ceased to carry out a taxable activity or where taxable supplies no longer exceed the registration threshold. All other requirements relating to the cancellation of a GST registration remain the same.

Income not liable for ACC earners' levy

We receive a number of requests to adjust IR 3 income tax returns for income not liable for ACC earners' levy. This is happening when New Zealand Superannuation or benefits are not shown in Box 11C.

Unless income not liable for earners' levy on a summary of earnings (such as New Zealand Superannuation and benefits) is entered into Box 11C on the return, earners' levy will be calculated on this income.

Following this tip will prevent double handling for you and us as a reassessment won't be necessary.



Tax agent strategy – definition of tax agent

In last month's issue of *AGENTSanswers* we mentioned that we would present principles for a new legislative definition of a tax agent and provide you with the opportunity to comment.

Tax agents around the country have told us that the current definition of tax agent is too broad because currently, any person can be a tax agent if they have ten or more clients. We have taken this into consideration and drafted a proposed definition which we would like your thoughts on. You can provide feedback directly to your agent account manager or by sending an email to tax.agent@ird.govt.nz. You may also provide comments through the Institute of Chartered Accountants of New Zealand, or the Tax Institute of New Zealand if you wish to remain anonymous. We would appreciate it if you provided your comments by the end of the October.

Proposed legislative definition of tax agent will be along the following lines:

Tax agents are those who prepare the annual returns required to be filed for ten or more taxpayers and who:

- a) carry on a professional public practice, or
- b) carry on any business in which returns of income are prepared, or
- c) is the Māori Trustee.

The tax agent, as a sole practitioner, as a partner of a firm or director of a professional public practice company cannot be:

- d) an undischarged bankrupt, and/or

- e) convicted of a criminal offence under the Tax Administration Act 1994 in the previous five years that carries a maximum penalty exceeding \$4,000, and was either fined or imprisoned, and/or
- f) convicted of a specific criminal offence in the previous five years that resulted in imprisonment or a fine exceeding \$2,000.

Note

Criminal penalties in (e) are those imposed by the courts if a person is convicted for not complying with the tax laws. Penalties range from \$4,000 to \$50,000 and up to five years' imprisonment.

Specific criminal offences in (f) are:

- bribery and corruption
- theft
- crimes resembling theft
- robbery and extortion
- burglary
- false pretences
- personating
- fraud
- receiving
- forgery
- criminal damage
- conspiring to prevent collection of rates or taxes.

Inland Revenue's bank account number

If you are an existing Westpac, ANZ, Kiwibank, National Bank or Bank of New Zealand customer you can pay your tax payments through their online "tax payment" service. This will ensure sufficient payment reference details are included with your payment.

If your bank does not offer this service you can pay using their standard online service. All electronic payments to Inland Revenue should be made to bank account number **03 0049 0001100 27**.

ASB customers only

As you are required by your bank to enter three digits in the account suffix number, the bank account number you use is **03 0049 0001100 027**. This is for all electronic payments you make to Inland Revenue.



Refund transfers requested on returns

Transfers of overpaid income tax and rebate claims can be requested on income tax returns and rebate claim forms.

Currently there is no provision on these forms to specify a transfer date. Where a transfer is requested on a return, we will use the following transfer dates:

- Transfer is within the taxpayer's own accounts or to an associated taxpayer, the transfer date will be the later of the day after balance date and the earliest due date of the destination period, irrespective of whether or not any tax is actually outstanding at this date.*
- Transfer is within the taxpayer's own account or to an associated taxpayer, and the taxpayer has an early balance date, the transfer date will be the later of 1 April (following the balance date) and the earliest due date of the destination period, irrespective of whether or not any tax is actually outstanding at this date.*
- Transfers to all other taxpayers will be done as at the day after the return was filed.

* Where the later of the two dates is a date in the future, the process date will be used for the transfer.

Where an overpayment is transferred to a previous year, (eg to offset arrears) the transfer date will be the day after the balance date (or 1 April for an early balance date) for the year of the return.

We have had instances where transfer requests to associated persons have been missed and refunds have been issued instead. Please ensure that the keypoint for associated persons is correctly completed to enable the transfer to be actioned correctly. Requests to a taxpayer's own student loan account also require the keypoint to be completed.

Note

If the transfer date used by Inland Revenue is not the date you want, you can subsequently request the transfer be redone at a different transfer date allowed within the transfer rules.

Where a credit arises from a rebate, the transfer date must be on or after the date of the request and that occurs after the date on which the rebate claim form is filed.

There are also specific rules relating to the transfer of credits resulting from provisional tax overpayments.

Effect of transfer on imputation credit account

When one company has an overpayment of tax in its income tax account, presumably from something like overpaid provisional tax, it can request us to transfer that overpayment to the credit of a second company. This will generally be done at the effective date of the payment. However, for imputation purposes the tax will be treated as having been paid no earlier than when the request to transfer is given to us. That is, at the very earliest, the relevant payment date is the date at which the first taxpayer directs us as to how to deal with its overpayment. This position is based on standard principles applying to the transfer of rights, which generally are effective until notified to any third party affected, in this case Inland Revenue.

Updated publications

New publication

INFOexpress – Business directory (IR 352) – August 2004
Information about services for business available through INFOexpress. Instructions on how to use INFOexpress are included.

Updated publications

The rule book – tax for sportspeople (IR 248) – July 2004
Sets out the tax rules for professional sportspeople.

Going overseas (IR 223) – May 2004

Information for student loan borrowers thinking of going overseas.

Making repayments (IR 224) – May 2004

Explains all about student loan repayments.

IRD number application – individual (IR 595) – July 2004

Complete this form to get an individual IRD number.

Making payments (IR 584) – June 2004

Explains the various ways to make payments to Inland Revenue.

Paid parental leave application (IR 880) – July 2004

Explains how to apply for paid parental leave and includes information on the paid parental leave entitlement.

Sale or disposal of financial arrangements (IR 3K) – June 2004

Complete this form if you have either sold a financial arrangement or had one mature.

Non-resident withholding tax (NRWT) rates and country codes (IR 290) – September 2004

An information sheet with NRWT rates for double tax agreement countries.

Note from the editor

If your mailing details are incorrect, we have missed someone off the distribution list or you have suggestions for future topics, please contact:

The Editor
AGENTSanswers
Inland Revenue
PO Box 2198
Wellington

Email: agents.answers@ird.govt.nz

AGENTSanswers is also on our website:

www.ird.govt.nz/library/newsletters/aanswers/