

i This is a reissue of BR Pub 10/09. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

GOODS AND SERVICES TAX – LEGAL SERVICES PROVIDED TO NON-RESIDENTS RELATING TO TRANSACTIONS INVOLVING LAND IN NEW ZEALAND

PUBLIC RULING – BR Pub 15/03

This is a Public Ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of s 11A(1)(k).

The Arrangement to which this Ruling applies

The Arrangement is the supply by a registered person of legal services to a non-resident (who is outside New Zealand at the time the services are performed) relating to:

- transactions involving the sale or purchase of land in New Zealand or the lease, licence, or mortgage of land in New Zealand, or
- easements, management agreements, construction agreements, trust deeds, guarantees and other agreements concerning land in New Zealand, or
- disputes arising in relation to land in New Zealand.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

Under s 11A(1)(k), the supply of the following types of legal services to a non-resident who is not in New Zealand at the time the legal services are performed is zero-rated:

- legal services relating to transactions involving the sale and purchase of land in New Zealand (including the drafting of agreements for the sale and purchase of land, the provision of legal advice in relation to the sale and purchase transaction and ancillary and related services leading up to the completion of the sale and purchase transaction);
- legal services relating to transactions involving the lease, licence or mortgage of land in New Zealand;
- legal services relating to easements, management agreements, construction agreements, trust deeds, guarantees and other agreements relating to land in New Zealand; and
- legal services relating to disputes arising in relation to land in New Zealand (including drafting court documents, court appearances, representation in

negotiations and settlements and general advice in relation to such disputes).

The period for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 24 May 2015.

This Ruling is signed by me on 4 March 2015.

Susan Price

Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 15/03

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 15/03 (the Ruling).

Legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this commentary.

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Summary

1. Services supplied to a person who is a non-resident, and who is outside New Zealand at the time the services are performed, will be zero-rated under s 11A(1)(k) provided that the services are not directly in connection with land situated in New Zealand or any improvement to the land.
2. **The following principles on the interpretation of the phrase “directly in connection with” can be drawn from case law:**
 - Whether there is sufficient relationship between two things, so as to be **“in connection with” each other**, is a matter of fact and degree and impression and the evaluation of whether there is a sufficient relationship between these two things requires a common sense assessment of the factual situation. Each case depends on its own facts and the particular statute under consideration.
 - **The inclusion of the word “directly” in section 11A(1)(k)(i) indicates that a close connection would be required between a service and land for the service to be regarded as a service that is supplied “directly in connection with” the land.**
 - Although there must be a direct relationship between the service and the property, for the service to be directly in connection with that property, the non-resident to whom the service is provided need not own or be entitled to the use or possession of the particular property.
 - **Services that are “directly in connection with” land clearly include services that have a physical effect on the land, such as gardening or repairs to improvements to land.**
 - Services that merely bring about or facilitate a transaction that has direct effect on land and which are one step removed from a transaction that has a direct effect on the land are not supplied **“directly in connection with” the land. This though is a matter of fact and degree as discussed above.**
 - **If the service could not have been performed but for the existence of the land, this may suggest that the service is supplied “directly in connection with” the land, but this factor is not conclusive.**

3. Sections 11A(2), 11A(3) and 11A(3B) are relevant when considering whether a person is outside New Zealand or whether the services are received in New Zealand.
4. Legal services of the type outlined in the Arrangement are not directly in connection with the land or improvements to the land. Rather they are either one step removed from the transaction that has a direct effect on the land, or ancillary to that transaction.

Background

5. BR Pub 15/03 is a reissue of BR Pub 10/09, which expires on 23 May 2015. This Ruling is essentially the same as BR Pub 10/09 and the original ruling, BR Pub 07/03. However, minor amendments have been made to reflect the introduction of s 11A(3B).
6. Under s 11A(1)(k), goods and services tax (GST) is chargeable at the rate of 0% on services supplied to a non-resident who is outside New Zealand at the time the services are performed. However, s 11A(1)(k) does not **apply to services that are supplied "directly in connection with" land** situated in New Zealand: s 11A(1)(k)(i)(A).
7. New Zealand legal firms may provide legal services to clients who are non-residents and who are outside New Zealand at the time the services are performed. Such legal services could include:
 - legal services relating to transactions involving the sale and purchase of land in New Zealand (including the drafting of agreements for sale and purchase of land, the provision of general legal advice in relation to the sale and purchase transaction and ancillary or related services leading up to the completion of the sale and purchase transaction);
 - legal services relating to transactions involving the lease, licence or mortgage of land in New Zealand;
 - legal services relating to easements, management agreements, construction agreements, trust deeds, guarantees and other agreements in relation to land in New Zealand (including the drafting of documents and the provision of legal advice in relation to such transactions); and
 - legal services relating to disputes arising in relation to land in New Zealand (including drafting court documents, court appearances, representation in negotiations and settlements and the provision of general legal advice in relation to such disputes).
8. **This ruling concerns the meaning of the phrase "directly in connection with" in s 11A(1)(k)(i) and the degree of connection necessary between legal services and land in New Zealand before such services will be supplied "directly in connection with" land in New Zealand.**
9. **It is noted that the definition of "resident" in s 2** deems a person to be resident in New Zealand to the extent that the person carries on any taxable activity (or any other activity), while having any fixed or permanent place in New Zealand relating to that taxable activity (or other activity). Owning land in New Zealand can, in certain circumstances, therefore, affect the residence status of the purchaser. This Ruling does not consider the application of the residence provisions. Rather, it proceeds on the basis that the purchaser is non-resident.

Application of the Legislation

Meaning of "directly in connection with"

10. In *Case E84* (1982) 5 NZTC 59,441 at 59,446, Judge Bathgate discussed the meaning of the phrase "in connection with" in the context of the Income Tax Act 1976 in the following terms:

...It is a matter of degree whether, on the interpretation of a particular statute, there is a sufficient relationship between subject and object to come within the words "in connection with" or not. **It is clear that no hard and fast rule can be or should be applied to the interpretation of the words "in connection with". Each case depends on its own facts** and the particular statute under consideration.

...

Its proper interpretation depends on the context in which the phrase is used. It may mean "substantial relation in a practical business sense", or it may have a far more restricted meaning, depending on its context, ... [Emphasis added]

11. Judge Bathgate considered that it is a question of fact and degree and impression whether a sufficient relationship exists between two things for them to be "in connection with" each other. He held that the evaluation of whether two things are "in connection with" each other requires a common sense assessment of the factual situation.
12. However, in s 11A(1)(k)(i) the phrase "in connection with" is qualified by the word "directly".
13. The interpretation of the phrase "directly in connection with" in the GST context was considered in *Auckland Regional Authority v CIR* (1994) 16 NZTC 11,080 (HC), *Wilson & Horton Ltd v CIR* (1994) 16 NZTC 11,221 (HC) (appealed as (1995) 17 NZTC 12,325 (CA)), *Case S88* (1996) 17 NZTC 7,551 (appealed as *CIR v Suzuki New Zealand Ltd* (2000) 19 NZTC 15,819 (HC) and (2001) 20 NZTC 17,096 (CA)), *Malololailai Interval Holidays New Zealand Ltd v CIR* (1997) 18 NZTC 13,137 (HC) and *Case T54* (1998) 18 NZTC 8,410. These cases illustrate how the phrase is to be interpreted in the context of s 11A(1)(k)(i)(A).
14. The issue considered in the *Auckland Regional Authority* case was whether landing dues, terminal services charges and international garbage disposal charges levied by the ARA (the operator of Auckland International Airport) were paid for services that were supplied "directly in connection with" the service of international transportation. Barker J held that landing dues (which were paid for the use of runways, turnoffs, taxiways and holding bays) were supplied "directly in connection with" international transportation. This was because the service of international transportation could not be supplied without the provision of runways etc. However, he considered that the terminal services charge (which related to the use of terminals and equipment used for embarkation or disembarkation from international aircraft, maintenance and cleaning of luggage carousels, gate lounges, baggage makeup, distribution and storage areas) were "ancillary" to the supply of international transportation. This was in the sense of being secondary or subservient. Barker J also considered that the garbage disposal service was a separate service from the supply of international transportation services. That is, although an essential service, it was ancillary to the service of transportation.
15. The *Auckland Regional Authority* case is not directly on point. This is because it addresses the issue of whether two services are supplied "directly in connection with" each other, rather than whether a service is

supplied “directly in connection with” land or other goods in New Zealand. However, by analogy, the case suggests that a service would not necessarily be “in connection with” an item even if the service could not have been performed without the existence of that item.

16. In *Wilson & Horton* (HC), the issue was whether the supply of advertising space in a newspaper was “directly in connection with” the goods advertised. In the High Court, Hillyer J considered that the goods that were the subject of the advertising were “at least one step removed from the services supplied by the newspaper proprietor” (at 11,224). Therefore, the advertising services were not supplied “directly in connection with” land or any moveable personal property situated in New Zealand. Hillyer J saw a distinction between the painting of a vessel (which would be directly connected with the vessel) and services supplied to the passengers or crew of the vessel (which would not be directly connected with the vessel).
17. On appeal, it was accepted by both parties that the High Court’s conclusion on this was correct. Therefore, this aspect of the High Court’s judgment was not addressed by the Court of Appeal.
18. The legislation was amended to overturn the result in *Wilson & Horton*. The amendment was based on the Court of Appeal’s interpretation of the phrase “for and to”, which was previously contained in s 11(2)(e) (now s 11A(1)(k)). However, the phrase “directly in connection with” was retained in the provision. This arguably suggests that the “one step removed” test applied by the High Court in *Wilson & Horton* reflects the intention of the legislation.
19. In *Case S88*, Judge Barber considered the phrase “directly in connection with” for an arrangement involving warranties on imported vehicles. The non-resident manufacturer (MC), from whom the importer (SNZ) purchased vehicles, provided a service warranty to SNZ under which it agreed to reimburse SNZ for certain repairs. SNZ on-sold the vehicles to a dealer, who in turn sold the vehicles to the public. The warranty given by SNZ was wider than the warranty that SNZ received from MC. If SNZ was required to reimburse the dealer for the cost of repairs covered by SNZ’s warranty and the particular repairs were also within MC’s warranty, SNZ would claim reimbursement from MC. The issue was whether the payment received from MC was for services supplied “directly in connection with ... moveable personal property” (the vehicles) in New Zealand.
20. Judge Barber considered that the service provided by SNZ was the repair of the vehicles. This was carried out by the dealer on behalf of SNZ. He held that there was a direct relationship between the repair service and the vehicle. At 7,558, he noted that the repair service could not be performed but for the existence of the vehicle:

In my view, **the repair services effected by the dealer are directly in connection with the vehicles** originally manufactured by MC but which, at the time of repair, are owned by the customer as purchaser from the dealer. The latter has, shortly before, purchased the vehicle from the objector. The moveable personal property in question is the repaired vehicle. **There is a direct relationship or connection between the service of the repairs and the vehicle.** Accordingly, the said “proviso” to s 11(2)(e) must apply to the facts of this case and prevent the objectors from relying on the zero-rating provisions of the s 11(2)(e). **The repair service could not be performed but for the existence of the vehicle.** The repairs were carried out for the objector (and others) which was carrying them out for MC (and others). **The objector was not merely arranging for the repairs to be carried out, but was responsible under warranty to make the repairs** — as was MC. That activity, or supply, meets the statutory

nexus between goods and the service. **The service is the actual repair of vehicles even though that work was performed by a contractor – usually the dealer.**

I agree ... that s 11(2)(e) requires the existence of a linkage between the non-resident for whom the services are supplied and the moveable personal property, situated in New Zealand, in relation to which the services are performed. However, there is no requirement in s 11(2)(e) or anywhere else, that at the time the services are performed, the moveable property must be owned by the non-resident person, or that the non-resident person must be entitled to use or possession of the property. [Emphasis added]

21. The High Court upheld Judge Barber’s decision (*CIR v Suzuki New Zealand Ltd*). At 15,830, McGechan J considered that the repair services provided by the importer were analogous to the “painting the ship” example given in *Wilson & Horton*:

I have no doubt that **repair services were carried out directly in connection with moveable personal property situated in New Zealand at the time the services were performed.** Quite simply, they were repairs carried out on cars within New Zealand. **The situation equates [to] “painting the ship”. The nexus could not be closer.** ... The duality involved is not prohibitive. ... while there was one repair, it arose under and met two quite separate contracts with two different persons. So far as SMC is concerned, the repair was a service to SMC, quite irrespective of the other contract with an SNZ customer likewise discharged. I see no reason why a provision of services to SMC under one contract should be viewed differently because of provision of services to a customer under another. They are concurrent but different supplies. The facts that SMC is non-resident, and a non-owner, are of no present consequence given the way s 11(1)(e)(ii) is worded. [Emphasis added]

22. The Court of Appeal agreed that the repair services were supplied “directly in connection with” moveable personal property in New Zealand. Blanchard J, giving the judgment of the court, said at 17,102–17,103:

There is a nexus in both cases between the performance and the consideration given by the other party. In the present case there is a more than sufficient financial and legal connection, as demonstrated by the evidence, between SMC’s payments and the carrying out of the repairs on behalf of SNZ by its dealers. **The repairs may have been done for the customers,** in practical terms, under SNZ’s standard warranty, **but they were also done for SMC under its warranty.**

...

It follows from what we have said that we also reject the argument, made in relation to s 11(2)(e), that the services were not supplied directly in connection with movable personal property situated in New Zealand. **The repair services were obviously supplied in relation to goods, namely motor vehicles, which were situated in New Zealand. The supply of repairs could hardly be more directly connected with the motor vehicles.** The fact that they may have no longer been owned by SMC or SNZ is irrelevant. Section 11(2)(e) therefore has no application. [Emphasis added]

23. In *Malololailai Interval Holidays*, a New Zealand company had supplied services relating to the marketing of timeshare interval holidays at a resort in Fiji to another New Zealand company. The issue was whether the marketing services were “supplied directly in connection with land, or any improvements thereto, situated outside New Zealand”. If so, the services would be zero-rated under s 11(2)(b) (now s 11A(1)(e)). As the phrase “directly in connection with” has the same meaning throughout s 11A (*Wilson & Horton* (HC) at 11,224), the *Malololailai* case is relevant to the interpretation of the phrase in the context of s 11A(1)(k)(i).

24. In *Malololailai* at 13,144, Neazor J referred to *Case E84*:

A good deal of the debate in that case about whether a narrow or wide interpretation of the statutory phrase was appropriate might have been seen as

unnecessary if the word "directly" had been used, as it is in s 11 of the *Goods and Services Tax Act* 1985.

25. These comments highlight the importance of the addition of the word "directly". The word "directly" narrows the scope of what might be considered to be "in connection with" the land and confirms that a direct relationship must exist between the relevant services and land.
26. The *Malololailai* case also confirms that the recipient of a service need not acquire a legal interest in land before the service can be "directly in connection with" the land. At 13,143 Neazor J commented:

It is not in my view necessary to consider the first point of Mr McLay's argument further than that, because the issue is not whether the purchaser acquires land or an interest in land, but whether the services provided by the marketer on behalf of the objector are "directly in connection with land", which may involve much less than acquiring an interest in the land. By way of example, the provision of gardening services would surely come within the statutory words.

27. Neazor J considered that a transaction between the New Zealand vendor and the purchaser of an interval holiday would be "directly in connection with" land outside New Zealand, but that the marketing services supplied by the marketing company (although essential to bring together the vendor and purchaser and although closely related to the sale and purchase transaction) were not "directly in connection with" the land. The marketing services merely facilitated a transaction that was directly connected to the land (the transaction between vendor and purchaser). At 13,146, Neazor J considered that (as with the advertising services in *Wilson & Horton*) the marketing services were one step removed from a transaction that directly related to the land:

I would regard the contractual transaction between [the New Zealand selling company] and the purchaser of an interval holiday as within the descriptive words "directly in connection with land or any improvement thereto", although that determination is not essential to this decision, but when attention is paid to the services supplied by [the marketing company] to [the NZ selling company] consider that those services are not within the statutory description. What [the marketing company] does is to advertise and promote interval holidays for [the NZ selling company] and negotiate the contract for individual holidays (including the consideration for that contract between the purchaser and [the NZ selling company]) up to the point where the contract is effected between those two parties.

The services provided by [the marketing company] are not *directly* in connection with the land or the improvements. The transaction of those considered which would be in that category is the transaction between [the NZ selling company] and the purchaser. **The transaction between [the marketing company] and [the NZ selling company] is one which brings about the transaction which has direct effect**, but in my view is of a kind to which *Hillyer J's* words may properly be applied — it is **one step removed from the direct transaction**.

If one of the analogies referred to needs to be chosen I would take that of the publication of advertisements in the *Wilson & Horton* case. The newspaper proprietor's services facilitated or opened the way to the transactions between vendor and purchaser, and that in my view is what [the marketing company] did, although it was more closely involved in the transaction to which the statutory words apply than the publisher of an advertisement would be. Nevertheless the transaction having direct effect was not that of the publisher, or in this case of the sales agent. [Emphasis added]

28. The *Malololailai* case was decided before the High Court and the Court of Appeal judgments in *Suzuki*. Although *Malololailai* was referred to in submissions to the High Court in *Suzuki*, the High Court did not discuss it in detail and the Court of Appeal did not refer to it. The Commissioner considers that the approach in *Malololailai* is consistent with the approach

taken in *Wilson & Horton* and is not inconsistent with the *Suzuki* decisions. These cases support a narrow interpretation of the phrase “directly in connection with”.

29. **Case T54** concerned the service of producing a video of Japanese honeymoon couples holidaying in New Zealand supplied by a Japanese company. Judge Barber considered that the services were not supplied “directly in connection with” the video camera or the blank tape used to create images (which were later edited to create the final video). Judge Barber considered that the video camera and blank tape were merely tools used to carry out the services and were not the object or objective of the services. He considered that the service provided was the creation of the final video. The judge concluded that the taxpayer had not provided services “directly in connection with” moveable personal property situated in New Zealand at the time the services were performed. This was because the video did not come into existence until after the taxpayer’s services had been performed and at that time the video was outside New Zealand. At 8,414–8,415, Judge Barber said:

The resultant video cassette did not come into existence until after the relevant services had been performed. It was not “situated inside New Zealand at the time the services are performed”. Until then it was only a blank tape. There is no other relevant moveable personal property to which the objector’s service could be regarded as supplied “directly in connection with”. Insofar as there is a connection between the said videoing services and the said blank tape (which fills up during the day) and camera and equipment, that connection is not a “direct” connection. That particular tape is only part of the equipment involved in the process of creating another tape — the resultant videotape cassette. Tools and equipment are aids to the supply of such videoing services, and are not the objects of such services. Those services could be regarded as supplied directly in connection with the Japanese tourists who, of course, are not moveable personal property.

30. **Case T54** is distinguishable on its facts from the types of situations addressed in this item, because it is not possible to argue that land did not exist before legal services are provided (an argument that was accepted in *Case T54*).

Test of whether services are “directly in connection with” land in New Zealand

31. The *following* principles on the interpretation of the phrase “directly in connection with” can be drawn from the above cases:
- Whether there is sufficient relationship between two things, so as to be “in connection with” each other, is a matter of fact and degree and impression and the evaluation of whether there is a sufficient relationship between these two things requires a common sense assessment of the factual situation. Each case depends on its own facts and the particular statute under consideration (*Case E84*).
 - The inclusion of the word “directly” in section 11A(1)(k)(i) indicates that a close connection would be required between a service and land for the service to be regarded as a service that is supplied “directly in connection with” the land (*Malololailai*).
 - Although there must be a direct relationship between the service and the property, for the service to be directly in connection with that property, the non-resident to whom the service is provided need not own or be entitled to the use or possession of the particular property (*Suzuki*).

- Services that are “directly in connection with” land clearly include services that have a physical effect on the land, such as gardening or repairs to improvements to land (*Malololailai*).
 - Services that merely bring about or facilitate a transaction that has direct effect on land and which are one step removed from a transaction that has a direct effect on the land are not supplied “directly in connection with” the land (*Wilson & Horton, Malololailai*). This though is a matter of fact and degree as discussed above.
 - If the service could not have been performed but for the existence of the land, this may suggest that the service is supplied “directly in connection with” the land, but this factor is not conclusive (*ARA; Suzuki*).
32. As a close relationship is required between the relevant services and land in New Zealand, the services must be supplied directly in connection with specific land to fall within s 11A(1)(k)(i)(A).

Legal services

33. Legal services that may be supplied to non-residents include:

- ***Legal services relating to transactions involving the sale and purchase of land in New Zealand***

An analogy can be drawn between the marketing services considered in the *Malololailai* case and legal services for the sale and purchase of land in New Zealand. In *Malololailai*, the court held that the marketing services did not have a direct effect on the land and that they merely facilitated a transaction that had a direct effect on the land (that is, the sale and purchase between the vendor and purchaser). Legal services relating to the sale and purchase of land facilitate or give effect to a transaction between the vendor and purchaser. These have a direct effect on the land but are one step removed from that transaction. Accordingly, legal services relating to the sale and purchase of land in New Zealand (including the drafting of an agreement for the sale and purchase of land in New Zealand, legal advice in relation to a sale and purchase transaction and ancillary or related services leading up to the completion of a sale and purchase transaction) are not services that are supplied “directly in connection with” the land that is the subject of the transaction. Therefore, such services are zero-rated under s 11A(1)(k).

- ***Legal services relating to transactions involving the lease, licence or mortgage of land in New Zealand or legal services relating to easements, management agreements, construction agreements, trust deeds, guarantees and other agreements concerning land in New Zealand***

The same reasoning as above applies to legal services relating to transactions involving the lease, licence or mortgage of land in New Zealand or legal services relating to easements, management agreements, construction agreements, trust deeds, guarantees and other agreements concerning land in New Zealand. These services are provided to a person who enters into a transaction that would have direct effect on the land. However, such legal services are at least one step removed from the land that is the subject matter of the transactions. These services merely assist in bringing about or

facilitating a transaction that has direct effect on the land. Accordingly, legal services relating to transactions involving the lease, licence or mortgage of land in New Zealand or legal services relating to easements, management agreements, construction agreements, trust deeds, guarantees and other agreements concerning land in New Zealand (including the drafting of agreements relating to these transactions and the provision of legal advice for such transactions) are **not supplied "directly in connection with" the land that is the subject of these transactions.** Such services are zero-rated under s 11A(1)(k).

- **Legal representation in disputes in relation to land in New Zealand**

Legal services involving representation in disputes relating to land in New Zealand (including drafting court documents, court appearances, representation in negotiations and settlements, and general advice) are also one step removed from the land to which the dispute relates. These services may be supplied as a consequence of a transaction that has direct effect on the land. However, consistent with the approach taken in *Malololailai*, the services are **not supplied "directly in connection with" the land to which the dispute relates.** Therefore, these services are also zero-rated under s 11A(1)(k).

Subsections (2), (3) and (3B)

34. The Arrangement to which this Ruling applies states that the non-resident recipient of the supply is outside New Zealand at the time the services are performed. Sections 11A(2), 11A(3) and 11A(3B) are relevant when considering whether a person is outside New Zealand or whether the services are received in New Zealand.
35. Section 11A(2) ensures that GST is charged on the supply of services that are consumed in New Zealand but are contracted for by a non-resident who is outside New Zealand. It provides that s 11A(1)(k) does not zero-rate services supplied to a non-resident if another person (including an employee or company director of the non-resident) receives the performance of those services in New Zealand.
36. **Section 11A(3) defines the phrase "outside New Zealand"** for s 11A(1)(k). It relates to non-resident companies and unincorporated bodies and provides that a non-resident company or unincorporated body that has a minor presence in New Zealand, or whose presence is not effectively connected with the supply of services, will remain outside New Zealand.
37. Section 11A(3B) also defines the **phrase "outside New Zealand"** for s 11A(1)(k). This provision relates to natural persons and provides that a natural person who has a minor presence in New Zealand that is not directly in connection with the supply of services will remain outside New Zealand.
38. **The phrase "directly in connection with" has been considered** for s 11A(1)(k). It will have the same meaning in the context of s 11A(3B).
39. What constitutes a minor presence will be determined very much by the facts of the particular case. **"Minor" is a relative expression.** What is minor is therefore a question of degree and should be regarded as relative to the size or volume of the supplies. **A "minor presence" is a presence that is relatively small or unimportant or incidental to the services being supplied.** In determining whether a presence is minor, the relative size or importance of the presence of the entity or person when compared with

the presence of the New Zealand supplier must be considered. This will involve a consideration of, inter alia, the relative numbers of people connected with the supply, the amount of time spent in connection with the supply by those people and the relative importance of the people to the services being supplied.

40. **The test of “effectively connected” is also a question of fact.** The relationship of the supply with the presence in New Zealand must be more than remotely connected, but can be more than one step removed from the presence. **The phrase is therefore broader than the phrase “directly in connection with”.** If the presence is attributable to the supply in question, then it is very likely that the presence will be effectively connected with that supply.
41. Discussion of these provisions and some relevant examples are set out in:
- **“GST — Treatment of Exported Services” *Taxation Information Bulletin* Vol 11, No 9 (October 1999): 12, and**
 - **“Zero-rated Services Supplied to Non-Residents” *Taxation Information Bulletin* Vol 26, No 7 (August 2014): 98.**

Example

42. Steve, who is a US resident, comes to New Zealand with a view to purchasing land for investment purposes. He returns to the US and continues to carry on negotiations for the purchase of land from a distance. Tracey, a New Zealand solicitor, arranges for searches of the **land in Land Information New Zealand’s records to be** carried out and obtains a LIM report from the local authority. She provides advice on tax issues relating to the purchase, whether Overseas Investment Commission consent to the purchase is required and general legal advice regarding the transaction. Tracey then drafts an agreement for sale and purchase, which is signed by both parties. She also advises Steve regarding a mortgage to be secured over the land, drafts a transfer to be signed by the vendor and attends to settlement of the transaction.
43. After settlement, Steve telephones a real estate agent and arranges for the property to be leased. Tracey drafts the lease and negotiates with the **lessee’s solicitor regarding the form of the lease.** The lease is signed and the lessee takes occupation of the property.
44. The legal services provided by Tracey either facilitate transactions between Steve and the vendor, the mortgagee or the lessee that have a direct effect on the land (by creating or changing legal interests in the land) or arise as a consequence of these transactions. **However, Tracey’s legal services are one step removed from transactions that directly affect the land.** The legal services are not supplied directly in connection with land in New Zealand. Therefore, the services will be zero-rated under s 11A(1)(k), provided Steve:
- remains a non-resident; and
 - is outside New Zealand at all times when these services are performed, or
 - has only a minor presence in New Zealand that is not directly in connection with the supply of the services.

References

Expired Rulings

BR Pub 07/03 "Legal services provided to non-residents relating to transactions involving land in New Zealand" *Tax Information Bulletin* Vol 19, No 6 (July 2007): 4

BR Pub 10/09 "Legal services provided to non-residents relating to transactions involving land in New Zealand" *Tax Information Bulletin* Vol 22, No 9 (October 2010): 2

Subject references

Legal services
Zero-rating provisions

Legislative references

Goods and Services Tax Act 1985,
ss 11A(1)(k), 11A(2), 11A(3), 11A(3B)

Case references

Auckland Regional Authority v CIR (1994) 16 NZTC 11,080 (HC)

Wilson & Horton Ltd v CIR (1994) 16 NZTC 11,221 (HC); (1995) 17 NZTC 12,325 (CA)

Case S88 (1996) 17 NZTC 7,551

Case T54 (1998) 18 NZTC 8,410

CIR v Suzuki New Zealand Ltd (2000) 19 NZTC 15,819 (HC); (2001) 20 NZTC 17,096 (CA)

Malololailai Interval Holidays New Zealand Ltd v CIR (1997) 18 NZTC 13,137 (HC)

Appendix – Legislation

1. Section 11A(1)(k)(i) provides:

11A Zero-rating of services

- (1) A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:
- ...
- (k) subject to subsection (2), the services are supplied to a person who is a non-resident and who is outside New Zealand at the time the services are performed, not being services which are—
- (i) supplied directly in connection with—
 - (A) land situated in New Zealand or any improvement to the land; or
 - (B) moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed; or

2. Sections 11A(2), 11A(3) and 11A(3B) provide:

- (2) Subsection (1)(k) and (1)(l) do not apply to a supply of services under an agreement that is entered into, whether directly or indirectly, with a person (person A) who is a non-resident if—
- (a) the performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be, received in New Zealand by another person (person B), including—
 - (i) an employee of person A; or
 - (ii) if person A is a company, a director of the company; and
 - (b) it is reasonably foreseeable, at the time the agreement is entered into, that person B will not receive the performance of the services in the course of making taxable or exempt supplies.
- (3) For the purpose of subsection (1)(k), (1)(l) and (1)(ma), and subsection (1)(n) as modified by subsection (4)(b), **outside New Zealand**, for a company or an unincorporated body that is not resident, includes a minor presence in New Zealand, or a presence that is not effectively connected with the supply.
- (3B) For the purpose of subsection (1)(k), **outside New Zealand**, for a natural person, includes a minor presence in New Zealand that is not directly in connection with the supply.