

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY**Deadline for comment: **17 August 2022**Please quote reference: **PUB00424**Send feedback to [Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)**FACT SHEET**

# **GST – Directors’ fees and Board Members’ Fees**

Issued: Issue Date

**BR Pub ##/## FS #**

This fact sheet accompanies Public Rulings BR Pub 22/xx to 22/zz which consider the GST treatment of directors’ fees and board members’ fees. This fact sheet summarises the key conclusions in those three public rulings and the associated commentary. For greater detail please refer to the public rulings and commentary.

## **Introduction**

The three rulings cover directors of companies, board members not appointed by the Governor-General or the Governor-General in Council, and board members appointed by the Governor-General or the Governor-General in Council.

We use the term “board member” as shorthand for the statutory term in section 6(3)(c)(iii) of the Goods and Services Tax Act 1985 which refers to any engagement, occupation, or employment “as a Chairman or member of any local authority or any board, council, committee, or other body”.

## Summary

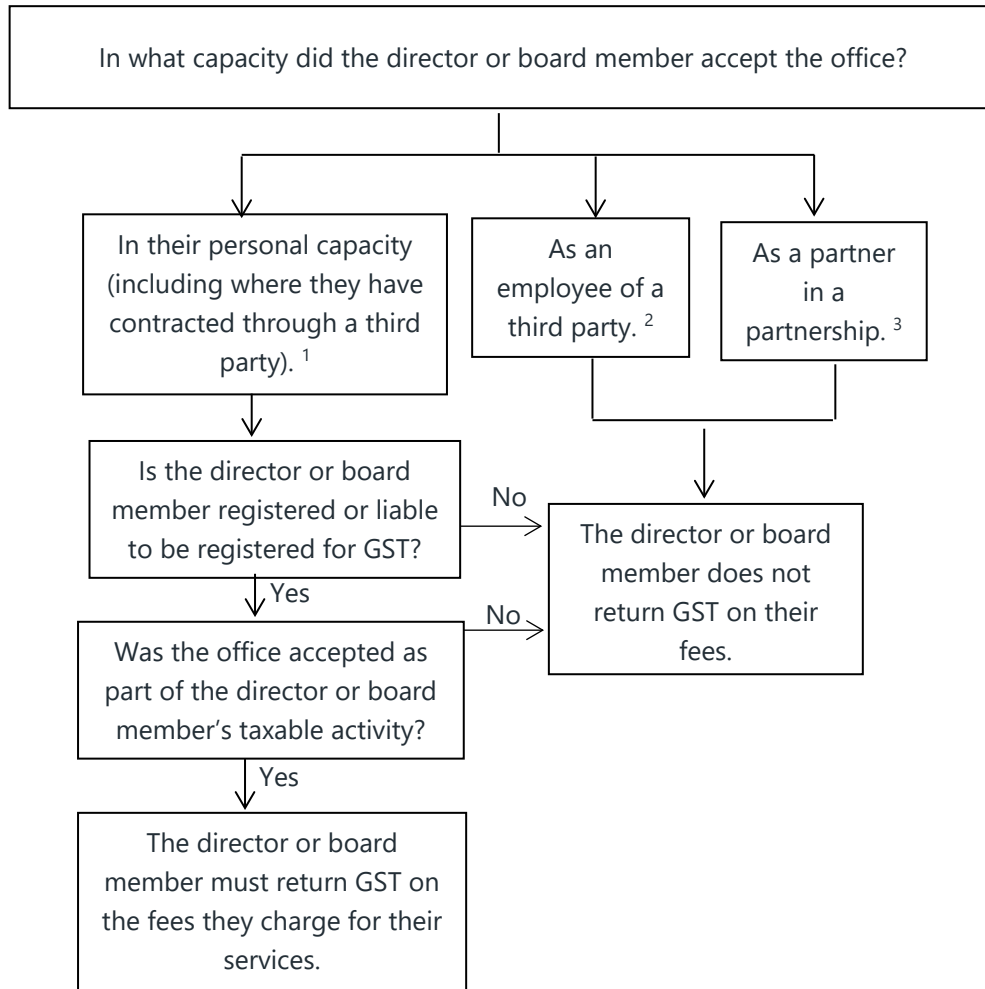
1. The Rulings and Commentary explain whether directors' fees and board members' fees are subject to GST. Generally directors' fees and board members' fees are not subject to GST. The Rulings and Commentary also consider whether a company engaging a director or an organisation engaging a board member is entitled to claim input tax deductions for fees paid to that director or board member. Where a company or organisation is charged GST on directors' fees and board members' fees they will usually be able to claim input tax deductions.
2. The Rulings and Commentary set out the GST treatment for fees paid to a director or board member in two broad categories. (The GST treatment of board members appointed by the Governor-General or the Governor-General in Council is different to the GST treatment for other board members (see paragraph 11 below).)
3. The first category is where the director or board member contracts to take up their office either directly with a company or organisation, or through a third party, for example their own company.
4. The second category is where a director or board member is either an employee or a partner in a partnership.
5. The GST treatment of directors' fees and board members' fees is set out below in very broad terms. The rulings and commentary provide more detail.
6. A director or board member must charge GST on their supply of services when the following is the case:
  - the director or board member is registered or liable to be registered for a taxable activity that they undertake; and
  - the director or board member accepts the directorship or membership in carrying on that taxable activity.
7. A director or board member cannot charge GST on their supply of services where:
  - they are engaged as a director or board member in their capacity as an employee of their employer; or
  - they are engaged in their capacity as a partner in a partnership; or
  - they do not accept the office in carrying on their taxable activity).
8. Essentially, if a registered person accepts an office as a director or board member in carrying on their taxable activity, the fees that person receives for providing their

services will be subject to GST. For example, a person with a taxable activity of an accounting practice who is asked to be on the board of directors of a client company will accept an office in carrying on their taxable activity. But if the same person was asked to serve on the board of a local museum because of their interest and expertise in local history they will most likely not accept the office in carrying on their (accounting practice) taxable activity.

9. Where the director or board member has been engaged in their capacity as an employee, they may be required to account for their fees to their employer. In this situation, the employer is treated as making the supply of services, rather than the director (because of section 6(4)). If the employer is registered, or liable to be registered, for GST, the employer will be required to account for GST on the supply of the director's services to the company.
10. Where the director or board member has been engaged in their capacity as a partner in a partnership, the partnership is treated as making the supply of services, rather than the director. If the partnership is registered, or liable to be registered, for GST, the partnership will be required to account for GST on the supply of the director's services.
11. If a board member is appointed by the Governor-General or the Governor-General in Council the services that board member provides will always be excluded from the definition of "taxable activity" so GST is never charged.
12. From the perspective of a company or organisation that engages a director or board member, the company or organisation may claim an input tax deduction for the fees it pays, if:
  - the company or organisation is registered; and
  - GST was charged on the directors' fees or board members' fees and the company or organisation holds a tax invoice for those fees.
13. To claim input tax the normal requirements must be satisfied..
14. A flowchart that illustrates the GST treatment of directors' fees or board members' fees from a director's or board member's perspective is set out below. Please note that this flow chart covers directors and only those board members not appointed by the Governor-General or the Governor-General in Council.

## Flow Chart

### Does a director or board member need to return GST on their fees?



- <sup>1</sup> Where the director or board member is contracted through a third party, the third party may need to return GST on the fees they receive for providing the services of the director or board member to the company or organisation.
- <sup>2</sup> The employer may be required to return GST on the director or board member's fees where the director or board member must account for their fees to their employer.
- <sup>3</sup> The partnership may be required to return GST on the director or board member's fees in this situation.

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## About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain the main points.