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**INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI**

# **GST financial services – Services supplied in relation to retirement schemes**

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**IS XX/XX**

This interpretation statement considers the GST treatment of services that the manager of a retirement scheme supplies to the scheme and that third-party outsourced providers supply to the manager of a retirement scheme. In both cases the key issue is whether the supplies are exempt supplies of financial services.

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

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## Summary | Whakarāpopoto

- Managed investment schemes,<sup>1</sup> and especially retirement schemes, are an important element of the savings of New Zealanders. A fund manager pools and manages money, and a fund supervisor scrutinises the manager’s performance. The fund supervisor or a custodian holds the funds invested. Investment decisions are made by the fund manager or outsourced to an investment manager. The administration of certain aspects of the fund may also be outsourced.
- From a GST perspective, the various relationships between the parties and the fund give rise to issues in interpreting the Act. In particular, these issues relate to whether or not the section 14(1)(a) exemption for supplies of financial services applies.

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<sup>1</sup> Defined in section 9 of the Financial Markets Conduct Act 2013.

3. In **IS 25/05: GST treatment of fees paid in relation to managed funds**,<sup>2</sup> the Commissioner expressed his views on the GST treatment of fees relating to managed funds (non-retirement schemes). This interpretation statement considers the GST treatment of fees relating to retirement schemes. For GST purposes, retirement schemes are treated differently to other managed funds as a specific paragraph of section 3(1) (paragraph (j)) covers the management of a retirement scheme (among other things).
4. The retirement scheme<sup>3</sup> exemption in section 3(1)(j) was introduced in 1985 to prevent the GST exemption for life insurance (section 3(1)(i)) from encouraging life insurance to become the preferred long-term savings product relative to retirement schemes.<sup>4</sup>
5. This interpretation statement addresses three questions concerning the GST treatment of retirement schemes:
  - What is the meaning of “management of a retirement scheme”?
  - Can a person providing outsourced services to the manager of a retirement scheme be providing the service of management of a retirement scheme?
  - Can a person providing outsourced services to the manager of a retirement scheme be making exempt supplies of financial services other than under section 3(1)(j)?
6. This interpretation statement concludes the following:

*Management of a retirement scheme*

- The term “management of a retirement scheme” refers to the control, direction, planning and decision-making related to a retirement scheme.

*Can a person providing outsourced services to the manager of a retirement scheme be providing the service of management of a retirement scheme?*

- In some circumstances, a third party providing outsourced services to the manager of a retirement scheme could be providing the service of management of a retirement scheme. This would depend on the particular arrangements that the manager of the retirement scheme and the third party entered into. For example, a third party that was contracted to provide only fund accounting and unit pricing services would be very unlikely to be managing a retirement scheme.

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<sup>2</sup> IS 25/05: GST treatment of fees paid in relation to managed funds *Tax Information Bulletin* Vol 37 No 4 (May 2025): 90.

<sup>3</sup> From enactment until 2014, section 3(1)(j) referred to a “superannuation scheme”, but this changed to “retirement scheme” from 1 December 2014.

<sup>4</sup> See GST & financial services – A Government discussion document (Policy Advice Division, Inland Revenue, October 2002) at [6.15] and GST policy issues – an officials’ issues paper (Policy and Strategy, Inland Revenue, February 2020) at [7.13].

But if the manager outsourced all of its functions to a third party, then the third party would be likely to be managing a retirement scheme even though the manager was still legally liable for the performance of the functions. The third party would be controlling, directing, planning and making decisions related to the scheme.

*Can a person providing outsourced services to the manager of a retirement scheme be making exempt supplies of financial services other than under section 3(1)(j)?*

- When the manager of a retirement scheme outsources services to one or more third parties, that may mean those third parties are making exempt supplies of financial services.<sup>5</sup> Whether they are doing so will depend on the range of services outsourced and whether the services are outsourced to one or multiple parties:
  - The outsourced supply of administrative services (including registry services, fund accounting and unit pricing) by a third party under a contract with the manager of the retirement scheme is a taxable supply. Administrative services are not exempt supplies of financial services because they are not one of the activities listed in section 3(1) and, generally, are not reasonably incidental and necessary to a supply of financial services.
  - The supply of investment management services by a third-party investment manager is either an exempt supply of financial services or a taxable supply of advice. Which one applies will depend on the terms of the investment manager's appointment and the manner in which this appointment is exercised and supervised.
  - Where outsourcing involves exempt investment management and/or other financial services (eg, issuing and redeeming units in the fund), together with administrative services, it will be a question of fact whether those administrative services are "reasonably incidental and necessary" to the various exempt supplies of financial services. In some cases, it may be clear that they are (eg, where the manager outsources all of its activities to the same third party such that the administrative services must support the financial services that the third-party supplies). In other cases, it may be less clear (eg, where investment management and administrative services are outsourced to the same third party, but not all the administrative services can be said to support the financial services involved with exempt investment management).

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<sup>5</sup> This is consistent with the approach taken in IS 25/05.

## Introduction | Whakataki

7. A “managed investment scheme” (defined in section 9 of the Financial Markets Conduct Act 2013 (FMCA)), which is generally established by a trust deed, pools money from multiple investors and then invests the pooled money according to the particular investment strategies of each fund under the scheme. In other words, a scheme may have multiple funds. Among other classifications, a fund can be a wholesale fund, catering to wholesale investors and retail funds, or a retail fund, catering to retail investors.
8. A “retirement scheme” (defined in section 6 of the FMCA) is a type of managed investment scheme. A retirement scheme is any of the following schemes:
  - a registered scheme that is a KiwiSaver<sup>6</sup> or superannuation scheme;<sup>7</sup>
  - a workplace savings scheme;<sup>8</sup> or
  - a Schedule 3 scheme.<sup>9</sup>
9. Broadly, a retirement scheme is a scheme that has a purpose of providing retirement benefits directly or indirectly to individuals.<sup>10</sup>
10. Restricted schemes<sup>11</sup> are a subset of KiwiSaver, superannuation or workplace savings schemes that are identified as restricted on the register of managed investment schemes. Restricted schemes have a different regulatory model from other retirement schemes in some respects. The trustees of a restricted scheme must also have at least

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<sup>6</sup> Section 6(1) of the FMCA defines “KiwiSaver scheme” as a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme.

<sup>7</sup> Section 6(1) of the FMCA defines “superannuation scheme” as a scheme that is registered on the register of managed investment schemes as a superannuation scheme (or, if the scheme is registered as a superannuation scheme for only a section of the scheme, as the scheme in respect of that section).

<sup>8</sup> Section 6(1) of the FMCA defines “workplace savings scheme” as a scheme that is registered on the register of managed investment schemes as a workplace savings scheme (or, if the scheme is registered as a workplace savings scheme in respect of only a section of the scheme, as the scheme in respect of that section).

<sup>9</sup> Section 6(1) of the FMCA defines “Schedule 3 scheme” as a scheme that, under schedule 3, is approved as a Schedule 3 scheme.

<sup>10</sup> See sections 128 to 130 and schedule 3, clause 3 of the FMCA.

<sup>11</sup> Section 6(1) of the FMCA defines “restricted scheme” as a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme, a superannuation scheme or a workplace savings scheme and that is identified as a restricted scheme on that register. Restricted schemes were schemes in existence before the FMCA came into effect and, as such, no new restricted schemes have been established since the commencement of the FMCA.

one licensed independent trustee (section 131(1)(d) FMCA). "Independent trustee" is defined in section 6(1) of the FMCA.

11. The investors in a retirement scheme rely on the expertise of the scheme's manager (or an outsourced third-party investment manager) and the economies of scale achieved by pooling funds to create a larger investment.
12. The manager can create the specific funds under the scheme with the consent of the scheme's supervisor to segregate investor money into separate investing strategies. A fund's assets and liabilities are legally and practically separated from those of other funds under the scheme. The specific method of separation depends on the terms of the relevant trust deed.
13. The following paragraphs discuss the roles and functions of the main participants in the retirement scheme area. It is worth briefly summarising the arrangements involved in a retirement scheme to establish the statutory and factual context for the analysis that follows.

## Key features of a retirement scheme

14. The main participants in a retirement scheme are as follows:
  - The **investors** invest their money into a scheme or fund.
  - The **supervisor or trustee** holds the scheme's assets, represents the investors' interests and monitors the manager's performance. The supervisor may contract out the holding of the scheme's property to a separate custodian. When a managed investment scheme is to be registered it must have a licensed supervisor before registration can take place (section 127 of the FMCA).
  - The **manager** manages the funds on the investors' behalf. This management includes administering both the scheme and the scheme's investment activities. The performance of either or both functions may be contracted out to a third party. The definition of "manager" for restricted schemes is different from that for other retirement schemes, see [17] below.
15. Retirement schemes are primarily regulated by the FMCA. The main documents relevant for a scheme are the governing document (a trust deed), product disclosure statement, and statement of investment policy and objectives (SIPO).

16. The functions of the supervisor (or trustee),<sup>12</sup> for a scheme and any fund under the scheme, include:<sup>13</sup>
- acting on investors' behalf in relation to the manager, the governing document, the terms of any offer, and any contravention of issuer obligations or applicable laws;
  - supervising the manager's performance in terms of its functions and compliance with its issuer obligations; and
  - holding the scheme property or ensuring the property is held by a custodian<sup>14</sup> by entering into an agreement for the supply of custodial services with a third-party custodian.
17. "Manager" is defined in section 6(1) of the FMCA. The section gives separate definitions for a "manager" of registered schemes other than restricted schemes, and for a "manager" of restricted schemes:

**manager** means,—

- (a) in relation to a registered scheme (other than a restricted scheme), the person designated or appointed as the manager of the scheme:
  - (b) in relation to a restricted scheme, the persons designated or appointed as trustees of the scheme or, if only 1 person is designated or appointed as a trustee of the scheme, that person:
- ...

18. The manager is responsible for the management and administration of the scheme, including any fund under the scheme.<sup>15</sup> The manager's functions include:<sup>16</sup>
- managing the scheme property and investments, including receiving and distributing income from investments, making investment decisions, and exercising any voting rights attached to securities the scheme holds (in accordance with the SIPO and/or investment mandate for the scheme);
  - offering, issuing and redeeming the units in the scheme; and

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<sup>12</sup> If the scheme is established under a trust deed, the supervisor is the trustee of the trust (section 153(4) of the FMCA). This statement does not cover the GST treatment of the supervisor or trustee.

<sup>13</sup> Section 152 of the FMCA.

<sup>14</sup> This statement does not cover the GST treatment of a custodian's supply of services.

<sup>15</sup> The scheme and the manager are separate persons for GST purposes.

<sup>16</sup> Section 142(1) of the FMCA.

- administering the scheme (eg, maintaining a register of unitholders, record-keeping and reporting, and tax and regulatory compliance).
19. The functions of the manager, considered in isolation, are not necessarily the same as “management”, although they do influence the meaning of “management” in the context of a retirement scheme. The broader meaning of “management” is considered from [39].
20. Section 142(2) of the FMCA explains how the manager’s functions work for a restricted scheme:
- (2) In the case of a restricted scheme, the trustees of the scheme acting together as the manager of the scheme have responsibility for those functions and the duties of the manager under this Act (and each trustee is jointly and severally liable with the other trustees for the performance of those functions and duties) unless this Act or the regulations otherwise provide.
21. Normally the trustees of a scheme fulfil the role of the supervisor. However, for a restricted scheme they are defined to be the manager of the scheme in the absence of a person appointed as the manager in the usual way.
22. The manager may contract with third parties to provide some or all of its functions as a manager.<sup>17</sup> For example, the manager may engage third parties to provide:<sup>18</sup>
- registry services, including records of unitholder details and details of their holdings in the scheme;
  - accounting services, including unit pricing and calculating the value of member interests;
  - the management of financial transactions between members and the scheme, and the management of portfolio investment entity (PIE) tax obligations; and
  - investment management or advisory services (ie, managing the scheme’s investments or advising on what those investments should be).
23. If the manager engages a third party to provide investment management or advisory services, the nature of the services provided could take several forms. For example, it could engage a third party to:

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<sup>17</sup> Section 146 of the FMCA. If the manager contracts out the performance of any of its functions, that does not affect the manager’s liability for the performance of those functions (section 146(2)(b)).

<sup>18</sup> Where custodial services are contracted out, it is the supervisor rather than the manager who contracts with the custodian. The supervisor can also engage an expert (eg, an auditor, investigating accountant, valuer or actuary) if required to determine the financial position or review the business, operation, management systems or governance of the manager or the scheme (section 155 of the FMCA).



- provide only investment advisory services, meaning the third party advises on what investment decisions it thinks should be made about the investment portfolio, and the manager is then free to determine whether and to what extent to act on the advice; or
  - manage some or all of the portfolio with autonomy to make investment decisions and to give instructions to brokers to give effect to those decisions (subject to the requirements of the SIPO or investment mandate for the scheme and/or funds).
24. A manager may decide to invest all or part of the scheme property in a wholesale scheme that has its own manager. This is not, in legal terms, engaging a third party to provide investment management services, and the units in the wholesale scheme are treated like any other securities the scheme holds. However, in commercial terms such an arrangement may have the same effect as engaging a third party to manage investments.
25. When the manager makes investment decisions to buy or sell securities for the scheme (including for any particular fund), the manager gives instructions to:<sup>19</sup>
- the supervisor or custodian to place the buy or sell orders with a broker and to settle the transaction; or
  - a broker to place the buy or sell orders, while the manager instructs the supervisor or custodian to settle the transaction.
26. To settle a sale transaction, the supervisor or custodian must arrange the transfer of the securities to the purchaser and receive the sale price. To settle a transaction that is a purchase, it must provide the funds to the vendor and take ownership of the securities.
27. The manager's investment decisions and/or execution of instructions must also comply with the requirements of the SIPO and investment mandates for the scheme and/or funds.
28. When the manager has engaged a third-party investment manager with authority to make and implement investment decisions, that third party:
- gives instructions to a broker to place the buy or sell orders; and
  - instructs the supervisor or custodian to settle the transaction.
29. For a third-party investment manager (as for the manager when it undertakes such activity), the investment decisions and/or execution of instructions must also comply

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<sup>19</sup> The manager's powers in this regard may be subject to the provisions of the trust deed or other governing document or to any separate agreement(s) between the supervisor and the manager.

with the requirements of the SIPO and investment mandates for the scheme and/or funds.

30. In certain circumstances, the manager or supervisor may refuse to allow a transaction initiated by a third-party investment manager to proceed, even after the third party has given instructions to a broker. In the case of the supervisor, that right of refusal is limited to the circumstances referred to in section 160(1) of the FMCA.<sup>20</sup> In the case of the manager, the circumstances may be broader and may depend on the nature of the arrangement with the third-party investment manager.
31. The governing document (generally the trust deed<sup>21</sup>) must provide for the fees and expenses that can be paid out of scheme property to any manager, third-party investment manager or administration manager, supervisor or custodian and the basis on which to determine those fees and expenses.<sup>22</sup> Nevertheless, in general (and noting that such fees and expenses may be paid out of particular funds to the extent applicable), the following apply to retirement schemes:
- The manager is generally entitled to charge a management fee for the services it performs, which is paid out of scheme property. This is typically calculated based on the value of the scheme, which the industry refers to as the funds under management. The manager's fee may also have a performance component. Some schemes provide for a transaction fee to be payable to the manager for issuing or redeeming units. In addition, schemes may allow for charging an administration or membership fee to investors.
  - The manager may be entitled to be reimbursed out of scheme property for expenses that it incurred in performing its functions. The supervisor may likewise be entitled to be reimbursed.
  - The supervisor is paid a fee for its role as supervisor of the scheme. Depending on the terms of the governing document, this fee could be paid directly out of scheme property or by the manager, who may or may not be entitled to reimbursement for these expenses.
  - Where the manager contracts with a third party to provide some or all of its management and administration functions, the manager agrees to pay a fee to the third party for those services. If the manager is entitled to be reimbursed out of scheme property for these fees, the manager may arrange for the third party

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<sup>20</sup> Namely, if the supervisor considers that the proposed acquisition or disposal would be in breach of the scheme's governing document, any rule of law or any enactment or would be manifestly not in the interests of scheme participants.

<sup>21</sup> A KiwiSaver scheme must be a trust established and governed by a trust deed (section 128(1), FMCA), as must a superannuation scheme (section 129(1), FMCA), a workplace savings scheme (section 130(1), FMCA) and a Schedule 3 scheme (clause 3(1)(a)(i) of schedule 3, FMCA).

<sup>22</sup> Section 135(f) of the FMCA.

to be paid directly from the scheme by way of payment direction rather than the manager paying the third party and then getting reimbursed from the scheme.

- Where the supervisor contracts with a third-party custodian to provide custodial services, the supervisor agrees to pay a fee for those services. If the supervisor is entitled to be reimbursed out of scheme property for these fees, the supervisor may arrange for the third party to be paid directly from the scheme by way of payment direction rather than the supervisor paying the third-party custodian and then getting reimbursed from the scheme.

## Analysis | Tātari

32. Bearing in mind the statutory and factual context discussed above, this interpretation statement now considers how the GST legislation applies in relation to the three questions described at [5].
33. For this purpose, it is useful to start by considering the Act's provisions on exempt supplies of financial services. After this the analysis addresses each of the three questions in turn.

## Supplies of financial services are exempt supplies

34. Section 14(1)(a) exempts the supply of financial services, stating:

### 14 Exempt supplies

- (1) The following supplies of goods and services shall be exempt from tax:
  - (a) the supply of any financial services (together with the supply of any other goods and services, supplied by the supplier of those financial services, which are reasonably incidental and necessary to that supply of financial services), not being a supply referred to in subsection (1B):

35. As section 14(1)(a) sets out, the supply of "other goods and services" is also an exempt supply if:
  - the supplier of financial services supplies those other goods and services together with the financial services; and
  - the supply of the other goods and services is "reasonably incidental and necessary" to the supply of those financial services.
36. A "financial service" is any one or more of the activities listed in the definition of "financial services" in section 3(1). The paragraphs of that definition relevant to this interpretation statement are as follows:

### 3 Meaning of term financial services

- (1) For the purposes of this Act, the term **financial services** means any 1 or more of the following activities:
- ...
- (c) the issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security:
  - (d) the issue, allotment, or transfer of ownership of an equity security or a participatory security:
  - ...
  - (j) the provision, or transfer of ownership, of an interest in a retirement scheme, or the management of a retirement scheme:
  - ...
  - (ka) the payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, retirement scheme, financial option, or futures contract:
  - (l) the agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (ka), other than advising thereon: ...

37. Section 3(2) provides that “retirement scheme” has the meaning given in section 6(1) of the FMCA. Section 6(1) of the FMCA provides the relevant definition of “retirement scheme”:

**retirement scheme** means any of the following schemes for the purposes of any enactment:

- (a) a registered scheme that is a KiwiSaver scheme or a superannuation scheme:
- (b) a workplace savings scheme (subject to the enactment and the regulations):
- (c) a Schedule 3 scheme (subject to the enactment and the regulations)

## What is the meaning of “management of a retirement scheme”?

38. The opening words of paragraph (j) in section 3(1) make it clear that providing an interest in a retirement scheme (issuing units in a scheme) or transferring ownership of an interest in a retirement scheme will be a financial service. This analysis focuses on the second part of paragraph (j) in addressing the question that has been raised with the Commissioner: what does “management of a retirement scheme” mean?

## Meaning of “management”

39. The Commissioner’s view is that the term “management of a retirement scheme” refers to the control, direction, planning and decision-making related to a retirement scheme.
40. The *Concise Oxford Dictionary*<sup>23</sup> defines “manage” and “management” as follows:

### **manage**

- 1 be in charge of; run
- 2 supervise (staff)
- 3 be the manager of (a sports team or a performer)
- 4 administer and regulate (resources under one’s control)
- 5 maintain control or influence over (a person or animal)
- 6 control the use or exploitation of (land)
- 7 succeed in achieving or producing (something difficult)

### **management**

- 1 the process of managing
- 2 the people managing an organization
- 3 the treatment or control of diseases or disorders, or the care of patients who suffer them

41. The dictionary definitions and ordinary meanings of “manage” or “management” have been important considerations in court decisions on the meanings of the words. For example, in *R v Joseph* [1985] BCJ No 651, Judge Catliff commented that the common thread running through dictionary definitions that the court referred to was “the concept of management as direction or control” (at paragraph [11]). In *Parkins v Lightning Ridge Miners’ Association Ltd* [2009] NSWSC 621, Hall J said that the ordinary meaning of “management” refers to “control of things or persons” (at [136]).
42. The courts have tried to find a balance between limiting “management” to only the most senior decision-makers (eg, the board of directors or the chief executive) and, at the other extreme, allowing “management” to encompass anyone who undertakes duties on behalf of an organisation. Some relevant cases are now discussed.
43. In *Canadian General Electric Company Ltd v Ontario Labour Relations Board* (1956) 4 DLR (2d) 243, Wells J considered that “manage” meant to control and direct, including not only administration but also direction and planning for any particular enterprise (at 250). His Honour said that direction and planning included collecting and collating information from which plans may be evolved. He further recognised “the very nice question” of where the line should be drawn between those persons exercising the planning function and those who are simply collecting information based on direction from the management for its purposes.

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<sup>23</sup> *Concise Oxford Dictionary* (12th ed, Oxford University Press, 2011).

44. In *Orrong Strategies Pty Ltd v Village Roadshow Limited* [2007] VSC 1, Habersberger J of the Supreme Court of Victoria was considering the term “board or managerial office” in section 200B of the Corporations Law 2000. His Honour had to address the difference between a person who is managing something and a person carrying out specific tasks under instruction from people who are managing. In doing so, he looked at cases that considered the meaning of the words “management” and “manager”. He considered that the term “manage” is “suggestive of control and means taking an active part in running the operations of a business and being responsible for decision making and the direction of a business” (at [669]).
45. The cases discussed in *Orrong Strategies* (from [667] to [669]) drew a distinction between two roles. The first role is a person with decision-making authority or supervisory control that affects the central administration of the company, the financial standing of the company or the conduct of its affairs, **in contrast to** the role of a person who either undertakes routine duties, or carries out orders from others who make management decisions, or who gives advice that may not be acted on. The authorities refer to a focus on whether the person has influence on the company as a whole or a substantial part of that company.
46. This focus is consistent with the approach of Quilliam J in *R v Newth* [1974] 2 NZLR 760 at 761. The court took a similar approach in *Gibson v Barton* (1875) LR 10 QB 329 where the question was whether a company secretary was a “manager” of the company and liable to a penalty for the company’s default in complying with a statutory provision (section 26 of the Companies Act 1862 (UK)). Lord Blackburn said (at 336):

We have to say who is to be considered a manager. A manager would be, in ordinary talk, a person who has the management of the whole affairs of the company; **not an agent who is to do a particular thing, or a servant who is to obey orders, but a person who is intrusted with power to transact the whole of the affairs of the company** ... [Emphasis added]

47. One case that is of particular relevance to this statement (given the context it arose in) is the Canadian decision of *Peter Cundill & Associates Ltd v R* [1991] 1 CTC 197. The plaintiff company entered into two portfolio management contracts with two funds. The plaintiff agreed to provide the following services:
- to generally administer the assets and affairs of the Fund and provide all administrative services in respect thereof, including office facilities, equipment, stationery and office supplies, telephone service, light and electrical power, business taxes and licences, postage and delivery, and all necessary personnel;
  - to sell, purchase or otherwise manage the investment and reinvestment from time to time of the assets of the Fund to the extent required by and subject to the supervision of the Directors of the Fund; and

- to act as Agent for the Fund in the qualification, sale allotment, issuance and delivery of Mutual Fund Shares of the Fund.
- 48. Mr Peter Cundill was clearly the prime mover in the two funds (the Cundill Value Fund and the Cundill Security Fund). When Mr Cundill moved to England, a Bermuda company (Peter Cundill and Associates (Bermuda) Ltd, PCAB) was set up by which Mr Cundill continued to supply his services to the plaintiff company for a fee paid to PCAB. Revenue Canada imposed 25% withholding tax on the fees the plaintiff paid to PCAB for those services. Section 212(1)(a) of the Income Tax Act 1952 (Canada) allowed withholding from a fee if it was "a management or administration fee or charge".
- 49. At 201, Cullen J addressed the meaning of a "management or administration fee or charge":
 

The crucial question in this case is whether the plaintiff paid a non-resident for management or administrative services. Unfortunately a "management or administration fee or charge" is not defined by the Act. **Generally speaking, a management or administration fee is an amount paid in respect of managerial services in connection with the direction or supervision of business activities** ... In this case, it is undisputed that Peter Cundill made all the investment decisions. **In the context of the stated business of the plaintiff of investment counselling, investment decisions are obviously relevant to the future direction and operation of the plaintiff. The profitability of the plaintiff depends directly upon the investment planning decisions of Peter Cundill. I would conclude that the investment decisions made by Peter Cundill are management tasks and that they fall within the purview of the statute.** [Emphasis added]
- 50. His Honour found that PCAB was performing management services for the plaintiff (in providing Mr Peter Cundill's services) and that withholding should have taken place. Important to this finding was that Mr Cundill's investment decisions were central to the profitability of the plaintiff.
- 51. In *Mynard v Dairy Adjustment Authority* [2004] AATA 90, Mr Mynard was seeking a discretionary payment right in respect of a property (dairy farm) that he owned, but that was leased to Mr and Mrs Barake, who operated the farm. Mr Mynard sought the payment under section 8 of the Supplementary Dairy Assistance Scheme 2001. An entity was potentially able to receive a payment in various circumstances, including under section 8(3)(b)(i) if the event or crisis was "an illness of a person that had a detrimental effect on the management of the dairy farm enterprise mentioned in paragraph (a)". Mr Mynard had had an illness and argued this had a detrimental effect on the management of the dairy farm he owned.
- 52. Deputy President S A Forgie had to consider the meaning of "management" in section 8(3)(b)(i). On this subject, he said (at [88] and [89]):



88. What is meant by “management” in **s. 8(3)(b)(i)**? The word is not defined in the SDA Scheme or elsewhere in the package. Its ordinary meanings include “... *the administration of ... an organization or commercial enterprise ...*” (Shorter Oxford English Dictionary, 5th edition, 2002 (“SOED”)) and “... *the act or manner of managing; handling, direction, or control ...*” (Macquarie Dictionary, 3rd edition, 1997 (“Macquarie”)). In view of my understanding of the word “business” above, **the management of a dairy farm enterprise must, therefore, be the handling, directing and controlling all of those matters that go up to make the business** including, but not limited to, maintaining the herd, milking the cows, organising the collection of the milk, maintaining the records, paying fees, charges and taxation, maintaining the pasture and mending the fences. **A person does not have to do all of those tasks him or herself to be said to manage a dairy farm enterprise. They may, for example, be undertaken by an employee or contractor.** In the case of a leased property, some, such as the maintenance of fixtures, may be the responsibility of the owner according to the lease. The enterprise must be viewed overall and these are factors to be considered.

89. In this case, I am satisfied that Mr and Mrs Barake managed the dairy farm enterprise that was conducted on the property. Mr Mynard had certain repairs carried out on the property but he undertook those as the lessor. He paid for seed for the pasture but again he did that as the lessor. He let Mr and Mrs Barake remain on the property but he did that out of kindness. **He played no part in controlling or directing the day to day activities that led to the delivery of market or manufacturing milk. As a consequence of this finding, I have also found that Mr Mynard’s illness did not have any detrimental effect on the management of the dairy farm enterprise.** Therefore, the case does not come within s. 8(3)(b)(i) of the SDA Scheme. [Bold emphasis added]

53. The key elements of management were said to be the handling, directing and controlling of the matters that went to make up the business, even if an employee or contractor did these. The Administrative Appeals Tribunal (AAT) found that Mr Mynard was not managing the business because he played no part in controlling or directing the day-to-day activities involved in the business. The lessees, Mr and Mrs Barake, were in charge of the management of the property. The AAT’s finding was that Mr Mynard had not just employed employees or contractors to perform tasks for him but had actually passed the ability to control or direct the business to another person.
54. The Commissioner does not consider the European Court of Justice (ECJ) decision in *Abbey National plc and anor v C&E Commissioners* [2006] STC 1136 (ECJ) to be helpful in resolving the meaning of “management” in the Act. While the case involved managers of unit trusts and included outsourcing of administrative and accounting services to third parties, the relevant legislative provisions were too different from the New Zealand provisions to assist here. In particular, the ECJ relied on a definition of collective portfolio management that explicitly included investment management, administration and marketing. As the Act does not contain a similar expansive legislative definition of “management”, this case is not useful in the New Zealand context.



## Summary of the meaning of “management”

55. The following conclusions are drawn from the discussion above:
- The “management” of a thing means:
    - the control of things or persons (*Parkins*);
    - taking an active part in running the operations of a business and being responsible for the decision-making, planning and direction of a business (*Canadian General Electric; Orrong Strategies; Peter Cundill; Mynard*); and
    - taking a hand in the real business affairs of a company as opposed to routine duties or following instructions (*Newth; Gibson v Barton*).
  - It is not necessary for the “manager” to perform all the tasks of managing. An employee or contractor can also be involved (*Mynard*).
  - In a company context, someone other than the board of directors or managing director can exercise “management”, although it must involve more than routine functions that follow predetermined policies (*Orrong Strategies*).
56. In the context of a retirement scheme, there is no doubt that the appointed manager of the scheme, fulfilling its obligations under the FMCA and the trust deed and other governing documents, is undertaking the management of a retirement scheme. As such, the manager in these circumstances is covered by sections 3(1)(j) and 14(1). Example | Tauira 1 illustrates this situation.

### Example | Tauira 1 – Management of a retirement scheme

Take Me To The Moon Limited (TMTTML) has been appointed as the manager of the Stratospheric Returns KiwiSaver (SRKS) scheme. TMTTML decides to fulfil all of the required functions of the scheme itself rather than outsourcing anything to third parties.

The fee it is paid for its supplies of services to the SRKS scheme is consideration for exempt supplies of financial services under sections 3(1)(j) and 14(1)(a), as its supplies satisfy the test of being the management of a retirement scheme.

57. It is less clear whether a person providing outsourced services to the manager of a retirement scheme can be providing the service of management of a retirement scheme. This is the next question that this statement considers.

## **Can a third-party provider of outsourced services to the manager of a retirement scheme be providing the service of management of a retirement scheme?**

### **FMCA approach to “manager”**

58. This discussion focuses on registered schemes that are not restricted schemes, as these are the most common arrangements to consider. For these schemes, the definition of “manager” (see [17]) indicates there will be a “person” (which is also defined in section 6(1) of the FMCA and includes “any entity”) designated or appointed as the manager of the scheme. This indicates one person will be the manager of a registered scheme for FMCA purposes. It is not possible to have more than one manager appointed under the FMCA.<sup>24</sup>
59. However, the section 3(1)(j) definition of “financial services” that includes the “management of a retirement scheme” does not adopt the FMCA definition of “manager”. Instead, it uses the term “management of a retirement scheme”. The case law discussed in relation to the first question above indicates that “management” has a wider meaning than the formal functions of a manager under the FMCA. For example, in a company context the term “management” can extend beyond the board of directors or managing director. In the same way, the “management of a retirement scheme” can extend beyond the formal legal role of “manager” under the FMCA. Further, the Act has referred to the FMCA in some contexts (eg, in defining “retirement scheme”) but not in the context of establishing the meaning of “management”.

### **If the manager of a retirement scheme outsources its functions under the FMCA, is it still undertaking the activity of the management of a retirement scheme?**

60. Section 142 of the FMCA sets out the functions of a manager<sup>25</sup> of a registered scheme (including a retirement scheme):

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<sup>24</sup> In contrast, if the managed investment scheme is a restricted scheme, then the FMCA definition of “manager” (in paragraph (b)) means that multiple persons (the trustees) are the manager of the scheme, unless there is only one trustee.

<sup>25</sup> Discussed at [17].

*Role of manager***142 Management and administration functions of manager**

- (1) The manager of a registered scheme is responsible for performing the following functions:
  - (a) offering the managed investment products; and
  - (b) issuing the managed investment products; and
  - (c) managing the scheme property and investments; and
  - (d) administering the scheme.
- (2) In the case of a restricted scheme, the trustees of the scheme acting together as the manager of the scheme have responsibility for those functions and the duties of the manager under this Act (and each trustee is jointly and severally liable with the other trustees for the performance of those functions and duties) unless this Act or the regulations otherwise provide.

61. The starting point for outsourcing a manager's functions in a retirement scheme is section 146 of the FMCA, which provides for the contracting out of management functions:

**146 Contracting out of management functions**

- (1) A manager may, unless prohibited by the governing document, contract out to 1 or more persons (whether or not the person or persons hold a market services licence under this Act covering management of the scheme) some or all of its functions as a manager.
- (2) However,—
  - (a) the manager must take all reasonable steps to—
    - (i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the manager were performing them directly; and
    - (ii) monitor the performance of those functions; and
  - (b) the contracting out does not affect the liability of the manager for the performance of those functions.

62. The key points from this section are:

- a manager can contract out some or all of its functions as a manager;
- the contracting out may be to one or more persons; and
- the contracting out does not affect the manager's liability for the performance of those functions.

63. The following are two significant effects of the above key points:

- The manager will always be responsible for the management functions of the retirement scheme and any fees it receives will be in relation to providing the service of management of a retirement scheme. (That is, even with outsourcing the FMCA-appointed manager is still providing the service of management of a retirement scheme.)
  - Outsourcing can occur in a range of circumstances depending on how many third parties it involves, **and** the range of services outsourced to the third party or parties.
64. In *CIR v Suzuki NZ Ltd* (2001) 20 NZTC 17,096 (CA), an importer (SNZ) purchased vehicles from a non-resident manufacturer (SMC). SMC provided a service warranty to SNZ under which SMC agreed to reimburse SNZ for certain repairs. SNZ on-sold the vehicles to a dealer, which in turn sold the vehicles to the public. The warranty that SNZ gave to customers (via dealers) was wider than the warranty SNZ received from SMC. 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 SMC's warranty, SNZ would claim reimbursement from SMC.
65. In *Suzuki*, the Commissioner argued, and the court agreed, that SNZ supplied vehicle repair services to SMC in return for the reimbursement payment. This was the case even though the dealer for SNZ actually undertook the repairs, which SNZ reimbursed.
66. Based on the combination of the *Suzuki* case and section 146 of the FMCA (which means the FMCA-appointed manager always remains responsible for the manager's functions under the FMCA), the FMCA-appointed manager is always providing the service of the management of a retirement scheme for GST purposes. This conclusion applies even where the FMCA-appointed manager outsources its functions. Example | Taura 2 and Example | Taura 3 outline two different circumstances of outsourcing that illustrate this conclusion.

### Example | Taura 2 – Management of a retirement scheme

Continuing on from the facts in Example | Taura 1, TMTTML has realised that its strengths lie in its team of investment analysts, and that there are other industry participants who can more efficiently fulfil some of the other requirements of running a KiwiSaver fund. As a result, TMTTML decides to outsource fund accounting, unit pricing, registry functions and other general administration to Feet On The Ground Limited (FOTGL).

TMTTML continues to receive its full manager fee from the SRKS scheme but has to pay FOTGL for the services it receives from FOTGL. TMTTML's supplies of services to the SRKS scheme are still exempt supplies of financial services under sections 3(1)(j) and 14(1)(a). While it has outsourced some of the functions that it is obliged to

perform for the SRKS scheme, it remains liable (under section 146(1) of the FMCA) for the performance of those functions, and FOTGL's supplies to TMTTML satisfy TMTTML's obligations to the SRKS scheme (*Suzuki NZ*). TMTTML's supplies to the SRKS scheme continue to satisfy the test of being the management of a retirement scheme.

### Example | Tauira 3 – Management of a retirement scheme

Continuing on from the facts in Example | Tauira 2, TMTTML has realised that its investment management prowess was not actually as good as it had thought, and there are other investment managers generating much better returns. For this reason, TMTTML decides to outsource the investment management responsibility for the SRKS scheme to Ad Astra Per Aspera Limited (AAPAL). TMTTML retains a power of veto over AAPAL's investment management decisions and AAPAL must consult TMTTML before actioning any of AAPAL's recommendations. TMTTML continues to outsource the other functions to FOTGL.

TMTTML still continues to receive its full manager fee from the SRKS scheme but has to pay both FOTGL and AAPAL for the services they respectively provide to TMTTML. TMTTML's supplies of services to the SRKS scheme are still exempt supplies of financial services under sections 3(1)(j) and 14(1)(a) even though it has essentially outsourced all of its functions to third-party suppliers. It continues to be legally liable for the performance of those functions, and FOTGL's and AAPAL's supplies to TMTTML satisfy TMTTML's obligations to the SRKS scheme. TMTTML's supplies to the SRKS scheme continue to satisfy the test of being the management of a retirement scheme.

### Is an outsourced third-party supplier providing the service of the management of a retirement scheme?

67. To come within section 3(1)(j), an outsourced provider of services will need to establish that it satisfies the test of providing the service of managing a retirement scheme.
68. The question is whether the outsourced supplies that a third party makes to the manager of a retirement scheme are sufficient to amount to the management of a retirement scheme. As discussed above, the term "management of a retirement scheme" refers to the control, direction, planning and decision-making related to a retirement scheme. There is no clear answer as to whether outsourcing to third parties means that those third parties satisfy this test, and no bright-line test can be applied. The answer will depend on the specific facts of each arrangement. However, it is possible to describe with some confidence examples at either end of the spectrum.

69. For example, if the manager of a retirement scheme outsourced only limited administrative services such as maintaining the register of unitholders in a retirement scheme, that would not mean that the third party supplied the management of a retirement scheme to the manager of the scheme. The third party would simply maintain records of transactions that the manager entered into. The third party is not controlling, directing, planning or supervising the scheme or making decisions about the scheme or part of the scheme.
70. On the other hand, if the manager of a retirement scheme outsourced all its functions to one third party, that would mean that the third party was supplying the management of a retirement scheme (consistent with the approach taken in IS 25/05). The third party would be offering and issuing units, managing scheme property including making investment decisions, and administering the scheme. The third party would be controlling, directing and supervising the scheme or making decisions about the scheme or part of the scheme.
71. It is circumstances in between these ends of the spectrum that are more difficult to definitively categorise. Complicating factors include where outsourcing involves:
- a different mix of services;
  - different third parties providing the services; or
  - a mix of the above circumstances.
72. The more that the outsourced services involve administration, the less likely it is that the third party's supply of those services will amount to providing the service of management of a retirement scheme. The more the outsourced services relate to offering, issuing and redeeming units, and managing property and investments, the more likely it is that the third party's supply of those services will amount to providing the service of management of a retirement scheme because those services are the core of what a retirement scheme is and what a manager of a retirement scheme needs to do. Being responsible for such matters could be described as controlling, planning, directing or supervising the scheme or making decisions about the scheme or part of the scheme.
73. Where services are outsourced to just one third-party provider, it is more likely that the third party's supply of services will amount to providing the service of management of a retirement scheme. Where services are outsourced to multiple third-party providers, it is more likely that each third party's supplies of services will not amount to providing the service of management of a retirement scheme. That is because each individual supply by a third party will not be controlling, planning, directing or supervising the scheme or making decisions about the scheme or part of the scheme.
74. However, it is not possible to be definitive on this point. Outsourcing administrative services to one third-party provider is unlikely to mean the third party is providing the

service of management of a retirement scheme. In contrast, outsourcing all of the manager's functions to multiple third-party providers may mean that at least one of those suppliers (depending on what functions have been outsourced to it) will be providing the service of management of a retirement scheme.

75. As a result, this analysis concludes that it is possible that outsourcing a retirement scheme manager's services to a third party could mean that the third party is making an exempt supply of financial services that involve the management of a retirement scheme. If that is the case, then more than one person will be providing the service of the management of a retirement scheme – namely, the FMCA-appointed manager and the third party. The following examples illustrate a range of situations in which outsourced services either amount to the management of a retirement scheme (**Example | Tauira 5**) or do not (**Example | Tauira 4** and **Example | Tauira 6**).

#### **Example | Tauira 4 – Outsourced services do not amount to the management of a retirement scheme**

Continuing on from the facts in Example | Tauira 3, FOTGL asks whether it can treat its supplies to TMTTML of unit pricing, fund accounting, registry services and administrative services as exempt on the basis of sections 3(1)(j) and 14(1)(a).

FOTGL cannot exempt such supplies under section 3(1)(j) as it is not providing the service of the management of a retirement scheme. It is not controlling, planning, directing or making decisions about the SRKS scheme. Instead, it is making supplies that enable TMTTML to fulfil its responsibilities of managing the SRKS scheme.

#### **Example | Tauira 5 – Outsourced services that amount to the management of a retirement scheme**

Continuing on from the facts in Example | Tauira 3, TMTTML has become disillusioned with the investment management performance of AAPAL, having found the "young bucks" were "all sizzle, no sausage". In contrast, FOTGL has been an excellent provider of services. TMTTML knows that FOTGL has been keen to demonstrate its prowess in investment management. For this reason, TMTTML cancels AAPAL's investment management contract and enters into an investment management contract with FOTGL. As a sign of its confidence, TMTTML gives FOTGL full authority to manage the investments of the SRKS scheme, provided that FOTGL complies with the investment mandate and the SIPO, and subject to any powers under the FMCA (eg, section 160(1)).

FOTGL asks whether it can treat its supplies of services to TMTTML as exempt on the basis of sections 3(1)(j) and 14(1)(a).

On these facts, FOTGL would be able to treat supplies of services to TMTTML as exempt under section 3(1)(j) as FOTGL is providing the service of the management of a retirement scheme. Because it is undertaking all the key functions of the manager of the SRKS scheme (including investment management, issuing and redeeming units, unit pricing, fund accounting, collecting and paying interest and dividends, and administrative functions), it is effectively controlling, planning, directing and making decisions about the SRKS scheme. The broad nature of the services outsourced, and the discretion granted around investment management, mean that FOTGL is **not** just making supplies to TMTTML that enable TMTTML to manage the SRKS scheme.

### ***Variation***

Assume the SRKS scheme is a restricted scheme, the manager of which is a corporate trustee, SRKS Limited. SRKS Limited has five directors including a licensed independent trustee director (as required by section 131(1)(d)(ii) of the FMCA). The only director to receive remuneration is the licensed independent trustee director. SRKS Limited outsources all its functions to FOTGL, pursuant to the “full turnkey” outsourcing model common amongst restricted schemes. Does it make any difference to the GST treatment set out above that the scheme is a restricted scheme?

No, the GST treatment does not change just because the SRKS scheme is a restricted scheme. For the same reasons as above, FOTGL’s supplies of services to SRKS Limited would be exempt on the basis of sections 3(1)(j) and 14(1)(a). Furthermore, it would not make any difference if the manager of the SRKS scheme was a natural person board of trustees (including a licensed independent trustee) rather than a corporate trustee.

### **Example | Taura 6 – Outsourced investment management does not amount to the management of a retirement scheme**

The facts are the same as in Example | Taura 3: the young bucks at AAPAL still have the investment management contract, subject to TMTTML’s right to be consulted and right to veto AAPAL’s decisions. AAPAL asks whether it can treat its supplies of investment management services to TMTTML as exempt on the basis of sections 3(1)(j) and 14(1)(a).

AAPAL is not able to exempt such supplies under section 3(1)(j) as it is not providing the service of the management of a retirement scheme. While investment management is arguably the most influential part of any managed investment scheme, on the facts here AAPAL is essentially providing investment management advice to TMTTML, as TMTTML makes the final decision on any investment. AAPAL is not controlling, planning, directing or making decisions about the SRKS scheme by giving



such investment advice. Instead, it is making supplies that enable TMTTML to fulfil its responsibilities in managing the scheme.

#### **Variation – investment manager with authority to make investment decisions**

Consider a variation on these circumstances. Assume the investment management contract for AAPAL is in the same terms as the investment management contract FOTGL had in **Example | Taura 5** (where it had full authority to make decisions). Would that change the answer to AAPAL's question as to whether it is providing the service of the management of a retirement scheme?

No, the supply is still not providing the service of the management of a retirement scheme. Although the investment management in the variation gives a lot more power to AAPAL in relation to the SRKS scheme, it is not sufficient to conclude that AAPAL is controlling, directing, planning and making decisions related to the SRKS scheme. AAPAL does have a role of control and decision-making in the investment management side of the SRKS scheme to some degree, but other parties control all other functions of the scheme. AAPAL's role is limited to the investment management of the scheme, and is subject to the investment mandate, the terms of its contract with TMTTML, and any powers in other parties under the FMCA. However, AAPAL's investment management activities may be exempt supplies under another provision in section 3(1).

### **Can a third-party provider of outsourced services to the manager of a retirement scheme be providing financial services other than under section 3(1)(j)?**

76. This part of the interpretation statement (question three) applies to retirement schemes that invest in debt, equity and participatory securities. It does not apply to investment funds where the supervisor or custodian of the fund directly holds real property such as commercial property or infrastructure assets<sup>26</sup>.
77. The Privy Council decision in *CIR v Databank Systems Limited* (1990) 12 NZTC 7,227 is an important authority in the outsourcing context. That case provides good support for the view that, where a third party supplies outsourced services to assist a supplier of financial services to make their supplies of financial services, those outsourced services are not in themselves a supply of financial services. However, in its discussion of the issue of outsourcing, IS 25/05 concluded that in some circumstances a third party's supplies of outsourced services could be exempt supplies of financial services.

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<sup>26</sup> This limitation is consistent with the approach in IS 25/05 at [23].

78. IS 25/05 covered outsourcing from [74] to [92] and in Examples | Tauira 2 to 6. The starting point in IS 25/05 was that outsourced services were not necessarily exempt supplies of financial services and in many cases would not be. However, that statement accepted that in some arrangements the terms of the outsourcing meant that the third-party provider of outsourced services would be making exempt supplies of financial services to the manager of the managed fund.
79. The following discussion is consistent with the analysis in IS 25/05.
80. The manager of a retirement scheme may enter into a contract with a third party under which the third party agrees to carry out some of the functions the manager is required to perform for the scheme and investors.
81. The supplier of services is the person who is contractually obliged to supply the services, and the recipient is the person who can enforce the performance of the services (*Wilson & Horton Ltd v CIR* (1995) 17 NZTC 12,325 (CA); *CIR v Capital Enterprises Ltd* (2002) 20 NZTC 17,511 (HC)). The manager of a retirement scheme supplies services to the fund on behalf of the investors. Contracting out the services does not relieve the manager of its contractual obligations or statutory obligations to provide the services to the fund (section 146(2)(b) of the FMCA; *Tolhurst v Associated Portland Cement Manufacturers (1900) Ltd* [1902] 2 KB 660 (CA); *Savvy Vineyards 3552 Ltd v Kakara Estate Ltd* [2015] 1 NZLR 281 (SC)).
82. Where the manager enters into a contract with a third party for the supply of any services that the manager is required to supply under its contract with the fund, there will be a:
- supply of the services by the manager to the fund; and
  - separate supply of equivalent services by the third party to the manager.
83. This third question considers services provided for a retirement scheme that a third party supplies under a contract with the manager. The manager may contract out its administrative functions (eg, registry services, fund accounting, the management of financial transactions between a member and the scheme, and the management of PIE tax obligations). The manager may also contract out investment management by appointing an investment manager to manage all or some of the assets of a retirement scheme.
84. Outsourced services are not exempt supplies merely because the manager acquires and uses them to make exempt supplies to investors (*Databank Systems*).
85. To be a financial service, an outsourced service must be one of the activities listed in section 3(1) in relation to the supplier (the third party) and the recipient (the manager). This includes, in section 3(1)(l), "agreeing to do, or arranging", any of the activities specified in paragraphs (a) to (ka), other than advising thereon".

86. "Arrange" means "cause to occur", "plan or provide for" or "give instructions for" (*Databank Systems Ltd v CIR* (1987) 9 NZTC 6,213 (HC), *Royal Bank of Canada v R* (2005) TCC 802, and *Canadian Medical Protective Assn v R* [2009] FCA 115). More than one person could be involved in arranging a financial service (*Canadian Medical Protective Assn*).
87. To advise means to recommend or inform, counsel or give an opinion (*Concise Oxford Dictionary*), and *J R Moodie Co Ltd v MNR* [1950] 2 DLR 145 at 148 (SCC).
88. (For more on the meaning of "arranging" and "advising" see [41] to [57] of IS 25/05.)
89. As noted at [35], for the supply of goods and services other than the supply of a financial service to be an exempt supply:
  - a supplier of financial services must supply those goods and services together with the supply of financial services; and
  - the supply of the goods and services must be "reasonably incidental and necessary" to the supply of those financial services (section 14(1)(a)).
90. A supply of non-financial services by the manager is reasonably incidental to the supply of the financial services by the manager if the supply occurs in conjunction with the supply of those financial services and is subordinate to the supply of the financial services. To be "reasonably necessary" to the supply of financial services by the manager, it is not enough that the administration services are merely desirable to the supply of the financial services. However, the other goods and services need not be essential or absolutely necessary to the supply of financial services (in the sense that the financial services could not be supplied without the other goods and services).<sup>27</sup>
91. If an outsourced service is not a financial service, the supply of the service is not an exempt supply. This is because the service is not supplied by a person who supplies financial services.
92. If any service that a third-party supplies to the manager of a retirement scheme is a taxable supply, the manager is unlikely to be entitled to an input tax deduction for those supplies. This is because the manager generally acquires these services for the purpose of making its exempt supplies.
93. The various administrative obligations of a manager that could be outsourced to a third party under a contract with the manager (eg, where a third party maintains a register of unitholders and performs accounting functions) are not financial services because they are not one of the activities listed in section 3(1). The recording of the effect of agreements or arrangements the manager makes is not an arranging service and is not a financial service under section 3(1)(l) (*Databank Systems* (PC) at 7,231).

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<sup>27</sup> For more on the meaning of "reasonably incidental and necessary" see [59] to [64] of IS 25/05.

94. Notwithstanding the above, the Commissioner accepts<sup>28</sup> that outsourced services (eg investment management) can themselves be exempt supplies of financial services in certain circumstances.
95. The investment management services that a third-party investment manager supplies could be either an exempt supply of financial services or a taxable supply of advice. Which one applies depends on the terms of the investment manager's appointment and the manner in which this appointment is exercised and supervised.<sup>29</sup>
96. Another issue to consider is the situation where exempt investment management and/or other financial services and administration were outsourced to the same person.<sup>30</sup>
97. Where exempt investment management and/or other financial services (eg, issuing and redeeming units in the fund) are outsourced together with administrative services, it will be a question of fact whether those administrative services are "reasonably incidental and necessary" to the various exempt supplies of financial services. In some cases, it may be clear that they are (eg, where the fund manager outsources all of its activities to the same third party such that the administrative services must support the financial services that the third-party supplies). In other cases, it may be less clear (eg, where investment management and administrative services are outsourced to the same third party, but not all the administrative services can be said to support the financial services involved with exempt investment management).
98. In summary, outsourced services that a third-party supplies could be exempt supplies of financial services where the services are:
- outsourced investment management and exempt as "arranging" the supply of financial services;
  - the making of exempt financial services such as by issuing and redeeming units or collecting and paying amounts for securities; or
  - outsourced administrative services that are "reasonably incidental and necessary" to outsourced supplies of financial services.
99. This means that outsourced supplies of services in relation to retirement schemes can be exempt supplies of financial services subject to the facts of the particular arrangement in question. The exemption will likely be under sections 3(1)(c) or (d) for issuing, transferring or redeeming units, section 3(1)(ka) for paying or collecting amounts for securities, section 3(1)(l) for arranging the transfer of ownership of

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<sup>28</sup> Consistent with the approach in IS 25/05.

<sup>29</sup> For more on the treatment of outsourced investment management in different circumstances, see IS 25/05, [84] to [89] and Examples | Tauira 2 to 5.

<sup>30</sup> Covered also in [90] to [92] and Example | Tauira 6 of IS 25/05.

securities and other matters, or under the “reasonably incidental and necessary” test in section 14(1)(a). Example | Tauira 7 to Example | Tauira 9 explore whether any of these provisions apply in a range of situations involving outsourced services.

**Example | Tauira 7 – Is outsourced investment management a financial service under a paragraph of section 3(1) other than para (j)?**

Continuing on from the original facts in **Example | Tauira 6** (**not** the variation in the same example), AAPAL asks whether it can treat its supplies of investment management services to TMTTML as exempt on the basis of a provision in section 3(1) **other than** section 3(1)(j).

The most likely candidate is section 3(1)(l), which involves “agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (ka), other than advising thereon”.

Arranging the transfer of debt securities, equity securities or participatory securities is a financial service (section 3(1)(c), (d) and (l)). For a person to be arranging the transfer of securities, a sufficient relationship must exist between the investment manager’s services and a transfer of securities. As the supervisor will only buy or sell securities if TMTTML instructs it to do so, AAPAL’s activities do not amount to arranging the transfer of securities. The service that AAPAL supplies is advising on the transfer of securities, which is specifically excluded from the definition of financial services. Therefore, AAPAL’s services are a taxable supply.

**Variation**

Consider the variation to the facts presented in **Example | Tauira 6**: AAPAL has authority to make the investment decisions subject to the investment mandate and certain rights under the FMCA. Would this situation change the answer to AAPAL’s question?

Yes. As discussed above, arranging the transfer of debt securities, equity securities or participatory securities is a financial service (section 3(1)(c), (d) and (l)). For AAPAL to be arranging the transfer of securities, a sufficient relationship must exist between its services and a transfer of securities. As securities will be bought or sold if AAPAL instructs the supervisor to do so, subject to very limited “veto” powers of TMTTML and the supervisor (under the FMCA), AAPAL’s activities amount to arranging the transfer of securities. Therefore, it is an exempt supply of financial services.

**Example | Tauira 8 – Are other outsourced services a financial service under a paragraph of section 3(1) other than paragraph (j)?**

Here the facts of Example | Tauira 2 apply: FOTGL is providing services of unit pricing, fund accounting, registry functions, and other administrative functions. Now FOTGL asks whether it can treat its supplies to TMTTML as exempt on the basis of a provision in section 3(1) **other than** section 3(1)(j).

As maintaining records and providing information are not any of the activities listed in the definition of financial services, the services FOTGL supplies to the manager are not financial services. They also do not come within section 14(1)(a) as being the supply of other goods and services, by the supplier of financial services, that are reasonably incidental and necessary to that supply of financial services. FOTGL's supply of the services enables TMTTML to supply financial services to the investors and the SRKS scheme. However, the services are not part of TMTTML's supply of financial services as a different person, FOTGL, supplies them. Therefore, the supply of the services is not an exempt supply under section 14(1)(a) and is a taxable supply.

**Example | Tauira 9 – Are all relevant services outsourced to a third-party supplier a financial service under a paragraph of section 3(1) other than paragraph (j)?**

Here the facts of **Example | Tauira 5** apply: FOTGL performs all the functions of TMTTML related to the SRKS scheme. FOTGL asks whether it can treat its supplies to TMTTML as exempt on the basis of a provision in section 3(1) **other than** section 3(1)(j). (Remember that in Example | Tauira 5, FOTGL had full authority, subject to some limited powers in others, to make investment management decisions.)

FOTGL's services of investment management (section 3(1)(l)), issuing and redeeming units (sections 3(1)(c) and (d)) and collecting or paying amounts for securities (section 3(1)(ka)) are all financial services and therefore exempt supplies. The administrative services FOTGL provides are reasonably incidental and necessary to the supplies of financial services and therefore also exempt under section 14(1)(a). The administrative services are provided together with the financial services and are subordinate to them. FOTGL also undertakes the administrative services because they are necessary to make those supplies of financial services.

*Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.*

*In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

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## About this document | Mō tēnei tuhinga

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Revenue, December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an interpretation statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.