INTERPRETATION STATEMENT

GST – Registration of non-residents under section 54B

Issued: 28 May 2021

IS 21/03

Section 54B of the Goods and Services Tax Act 1985 allows non-resident businesses that do not make supplies to end consumers in New Zealand to register for GST and recover GST input tax on goods and services acquired in New Zealand. Since s 54B was introduced, there have been legislative changes that treat certain supplies by non-residents as being made in New Zealand. These changes include the supply of remote services and low value goods. This means a greater number of non-residents must register under the standard registration provision and fewer non-residents are eligible to register under s 54B. This item provides guidance on whether a non-resident is eligible to register under s 54B.

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

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Introduction

1. Section 54B has been described as an “enhanced” registration system for non-residents. It allows non-resident businesses to recover GST input tax on goods and services acquired in New Zealand for the purpose of making supplies outside New Zealand. GST operates on what is known as the “destination principle” where goods and services are taxed in the country in which those services are consumed by end-users. GST should not generally be an economic burden on businesses that form part of a supply chain.

2. In 2011, a government discussion document about GST on cross-border supplies between businesses,[1] recognised that the existing legislation worked well for domestic supplies between GST-registered persons, and where goods and services were exported and zero-rated, but that it did not work as effectively for non-resident businesses receiving services in New Zealand. This was because, although non-resident businesses were able to register for GST under s 51, their ability to claim input tax credits for GST incurred was limited. This limitation was because the legislation allows a deduction for input tax for goods or services to the extent that those goods or services are used for or available for use in making taxable supplies. Taxable supplies are supplies made in New Zealand. Therefore, non-resident businesses that made no supplies in New Zealand or that predominantly made supplies outside New Zealand were unable to get a full deduction for the GST that they had incurred in New Zealand. This resulted in such businesses bearing the New Zealand GST as an economic cost despite the services being acquired for making supplies to final consumers outside New Zealand.

3. Since s 54B was introduced in 2013, there have been several remedial amendments to it and related provisions. In addition, legislation was introduced affecting non-resident suppliers of cross-border remote services and low value goods imported into New Zealand. This means more non-residents are treated as making supplies in New Zealand and have an obligation to register under the standard registration provisions. Commentators say that eligibility for registration under s 54B has not always been well understood.

4. The requirements for a person to be eligible to register under s 54B are cumulative. This statement steps though each requirement and provides examples as to how it applies.

[1] *GST: Business-to-Business Neutrality across Borders* (government discussion document, Policy Advice Division, August 2011).

Registration of non-residents – s 54B

5. The requirements for registration of certain non-resident suppliers are set out in s 54B(1):

> **54B Requirements for registration for certain non-resident suppliers**
>
> *Requirements for registration*
>
> (1) Despite section 51(3), the Commissioner may register a person who is a non-resident and has not become liable to be registered under section 51(1) if the Commissioner is satisfied that the person meets the following requirements:
>
> (a) the person—
>
> (i) is registered for a consumption tax in the country or territory in which they are resident; or
>
> (ii) if the country or territory in which the person is resident does not have a consumption tax, or has a consumption tax that does not apply to the person's activities, is carrying on a taxable activity, and has a level of taxable activity in a country or territory that would render them liable to be registered under section 51(1) if they were carrying out the taxable activity in New Zealand; and
>
> (b) for the first taxable period after the date of registration in New Zealand, the amount of the person's input tax is likely to be more than $500 or the person is likely to be liable for tax levied under section 12(1) in relation to the importation of goods that are received by another person or that the person delivers to another person; and
>
> (c) the person's taxable activity does not involve a performance of services in relation to which it is reasonably foreseeable that the performance of the services will be received in New Zealand by a person other than in the course of making taxable or exempt supplies; and
>
> (d) the person is not making, or intending to make,—
>
> (i) a taxable supply in New Zealand; or
>
> (ii) a supply in New Zealand that would be a taxable supply if the person were registered under section 51, to a person in New Zealand who is not a registered person; and
>
> (e) the person is not, and does not intend to become, a member of a group of companies that makes taxable supplies in New Zealand.

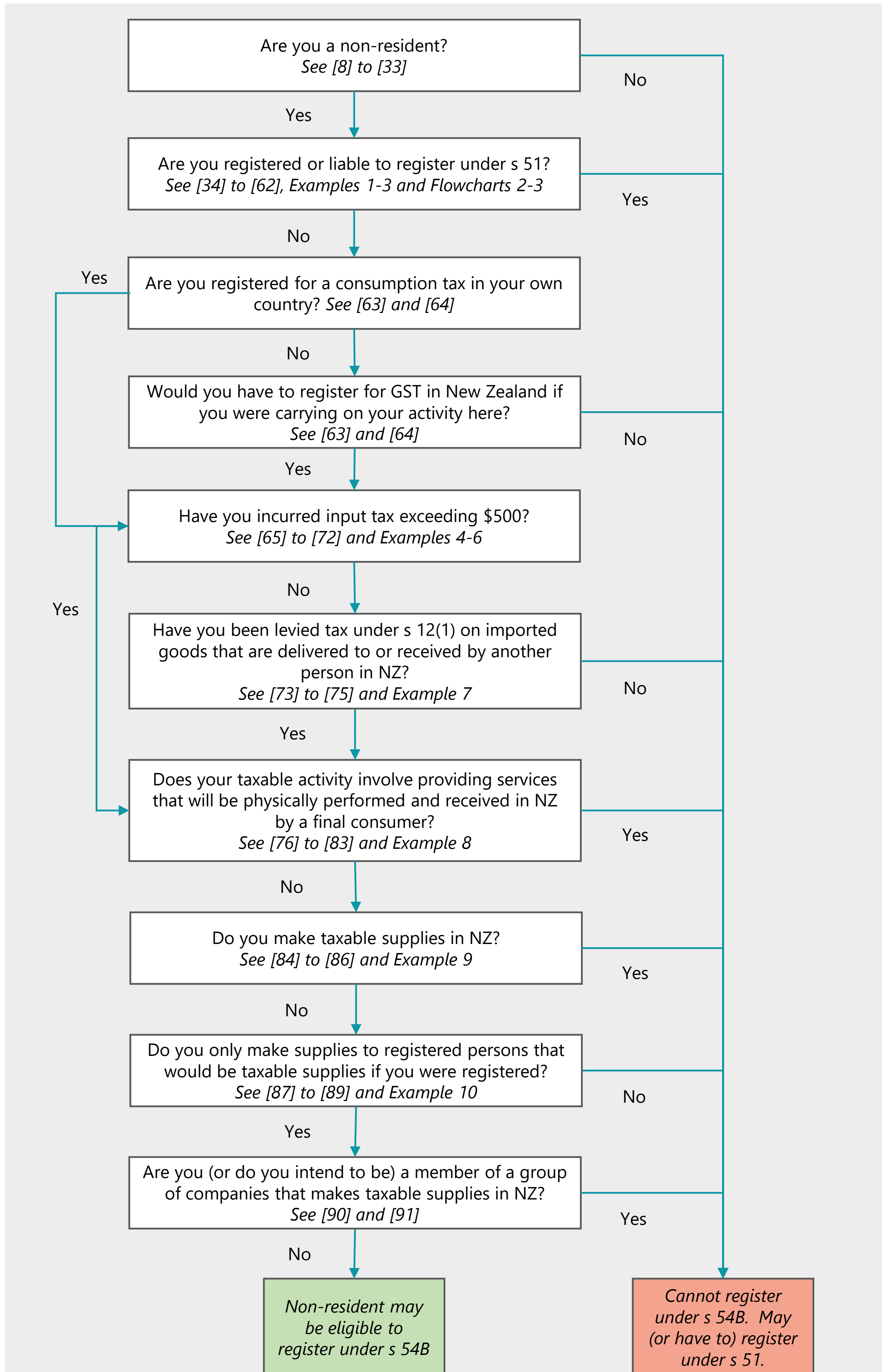
6. The seven requirements for registration of certain non-resident suppliers are that:

- the person must be a non-resident for GST purposes (discussed from [8]);
- the person is not liable to be registered under s 51 (discussed from [34]);

- the person is registered for a consumption tax in the country or territory in which they are resident or the level of their taxable activity would require them to register in New Zealand if they were carrying on that activity in New Zealand (discussed from [63]);
- the amount of the person's input tax exceeds $500 or the person is likely to be liable for tax levied under s 12(1) in relation to imported goods received by another person or that are to be delivered to another person (discussed from [65]);
- the person's taxable activity does not involve the performance of services where those services will be received by an end-user in New Zealand (discussed from [76]); and
- the person is not making or intending to make taxable supplies in New Zealand (discussed from [84]); or the person is not making supplies to an unregistered person that would be taxable supplies if the supplier was registered (discussed from [87]), and
- the person is not a member, or intending to become a member, of a group of companies that makes supplies in New Zealand (discussed from [90]).

7. These seven requirements are summarised in *Flowchart 1 - Overview of registration requirements of s 54B* with reference to the relevant discussion and examples. As the third, fourth and sixth requirements contain alternative requirements this translates to nine questions that may be required to be satisfied to meet registration under s 54B.

Flowchart 1 - Overview of registration requirements of s 54B



First requirement – person must be "non-resident"

8. The first requirement for registration of certain non-resident suppliers is that the person must be non-resident. Most people are familiar with the income tax test for residency and know whether they are non-resident for income tax purposes. However, the GST definition of resident is wider, so some non-residents may be treated as a resident for GST purposes and may be unaware of the difference in the two definitions.

9. The law relating to determining whether a person is non-resident for GST purposes is set out in "IS 18/07: Goods and services tax – zero-rating of services related to land", *Tax Information Bulletin* Vol 31, No 1 (February 2019): 17. The Commissioner's view on when a person is resident for GST purposes is consolidated in interpretation statement "IS 21/07: GST – Definition of a resident", *Tax Information Bulletin* Vol 33, No 9 (October 2021). The following analysis reproduces parts of and is consistent with that analysis.

10. A non-resident is defined in s 2 to mean a person "to the extent that the person is not resident in New Zealand". The definition of "resident" in s 2 modifies the income tax definition of resident by providing for three exceptions in paras (a) to (c). Paragraphs (b) and (c) relate to unincorporated bodies and the effect of the day count tests in the income tax residency tests.

11. The exception in para (a) deems a person to be resident **to the extent** that the person carries on their taxable or other activity in New Zealand **from a fixed or permanent place** in New Zealand that is **related to** that activity. Non-residents may have a presence or connection to a place in New Zealand related to their taxable or other activities and may be unsure whether that is sufficient to for them to be treated as resident for GST purposes.

12. Therefore, the key considerations are what is meant by:
    - a "taxable activity or other activity";
    - a "fixed or permanent place";
    - "relating to that activity or other activity"; and
    - "to the extent that", and whether it means a person can be both resident and non-resident for GST purposes.

Taxable activity or other activity

Taxable activity

13. For the purposes of the resident definition, it is the taxable activity that needs to "relate to" the fixed or permanent place. The term "taxable activity" is also relevant to the second and third requirements for registration under s 54B set out in [6].

14. A broad definition for this term is given in s 6(1)(a) with certain activities being specifically excluded in s 6(3). The key requirements of a taxable activity are:

    - there must be an activity;
    - that is carried on continuously or regularly by a person; and
    - that involves the making of taxable supplies.

15. Notably, however, s 6(3) excludes certain activities from being taxable activities. Examples of excluded activities are:

    - the making of exempt supplies (such as the supply of financial services and the supply of accommodation in a dwelling); and
    - private recreational pursuits or hobbies.

16. Determining whether a taxable activity is being carried on is always a question of fact. It involves examining all the circumstances of the particular case. The concept of a taxable activity is not considered further in this statement as it is covered in other publications, see "IS 20/04: Goods and services tax – GST treatment of short-stay accommodation", *Tax Information Bulletin* Vol 32, No 6 (July 2020): 69.

Other activity

17. Paragraph (a) in the definition of "resident" also includes "other" activities in its scope. The terms "activity" and "other activity" are not defined in the Act.

18. The word "activity" has a broad meaning. It may refer to "a course of conduct or series of acts which a person has chosen to undertake or become engaged in": *Newman v CIR* (1994) 16 NZTC 11,229 (HC). Similarly, the Court of Appeal in *CIR v Bayly* (1998) 18 NZTC 14,073 said, at 14,078:

    > In its standard dictionary usage, "activity" is "the state of being active; the exertion of energy, action" *(Oxford English Dictionary)*. In the context of ss 6 and 8 [of the Goods and Services Tax Act 1985] it points to the combination of tasks undertaken, or course of conduct pursued by the registered person and whether or not it amounted to a business, trade or profession in the ordinary sense.

19. Both *Newman* and *Bayly* discuss the meaning of an "activity" in their discussion of a "taxable activity". The Commissioner's view is that "activity" in "other activity" bears the same meaning.

20. The reference to "other activities" expands the range of activities so that not only "taxable activities" can result in residency under the Act.

21. However, the Commissioner's view is that "other activity" is not limited to activities that involve the making of exempt supplies. The word "other" implies that Parliament intended a wide variety of activities to be covered by para (a).

Fixed or permanent place

22. For para (a) to apply, a person must also have a "fixed or permanent place" in New Zealand relating to the taxable activity. The term "fixed and permanent place" is not defined in the Act.

23. In the context of para (a), it is the place that must be "fixed" or "permanent". The word "place" indicates a physical location or a link to a particular geographical point.

24. The ordinary meanings of the words "fixed" and "permanent" indicate that the physical location must be lasting and unchanging and not temporary. An element of permanence is necessary, so a transient connection to a place will not meet the test. However, ownership of the physical location is not necessary. Having a fixed or permanent place merely requires the person to have that place permanently at their disposal or be able to use that place on a permanent basis.

25. The Commissioner notes that a similar concept of "fixed establishment" is used in the Income Tax Act 2007, and the phrase "permanent establishment" is used in New Zealand's double tax treaties. Case law discusses the meanings of these phrases, and the concepts likely overlap with the concept of a "fixed or permanent place".

26. However, the Commissioner's view is that the "fixed establishment" and "permanent establishment" concepts are not equivalent to "fixed or permanent place" under the Goods and Services Tax Act. The ordinary meaning of the word "establishment" is arguably a stronger term than "place", so "place" may be wider in its scope. Also, tax treaties often define a "permanent establishment" to include or exclude specific types of establishments. In contrast, the definition in the Goods and Services Tax Act is general in its terms.

"Relating" to that taxable activity or other activity

27. Paragraph (a) also requires the person to have a fixed or permanent place "relating" to the taxable activity or other activity.

28. The ordinary meaning of "relating" is a connection between things: *Concise Oxford English Dictionary* (12th ed, Oxford University Press, Oxford, 2011). This suggests a degree of connection is required between the fixed or permanent place and the relevant activity.

29. The context of the provision does not appear to require a departure from the ordinary meaning of "relating to". The provision is part of the definition of "resident" in the Act, which affects both the imposition of GST on supplies under s 8 and whether supplies can be zero-rated under the zero-rating provisions. In general, these provisions are intended to give effect to the destination principle, under which supplies of goods and services are taxed in the jurisdiction where the goods and services are consumed. Requiring a connection between a person's activity in New Zealand and a fixed or permanent place in New Zealand before the person is considered resident for GST purposes (and subject to GST at the standard rate) appears to be consistent with that purpose.

"To the extent that"

30. For GST purposes, a person is deemed to be resident in New Zealand "to the extent that" the person carries on, in New Zealand 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.

31. Similarly, the definition of "non-resident" in s 2 states that non-resident "means a person **to the extent that** the person is not resident in New Zealand" [emphasis added].

32. The use of the phrase "to the extent that" implies that a single legal person can, for the purposes of the Act, be both resident and non-resident.

33. Further discussion on when a person is resident for GST purposes (including examples) can be found in "IS 21/07: GST – Definition of a resident", *Tax Information Bulletin* Vol 33, No 9 (October 2021).

Second requirement – person is not liable to be registered under s 51

34. The second requirement for registration of certain non-resident suppliers is whether the person has become liable to be registered under s 51(1) for GST purposes. The opening words to s 54B(1) are:

> Despite section 51(3), the Commissioner may register a person who is a non-resident **and has not become liable to be registered under section 51(1)** if the Commissioner is satisfied that the person meets the following requirements: [Emphasis added]

35. Registration under s 54B is not available for non-residents who are liable to be registered under s 51. Special rules apply to a non-resident who is carrying on a taxable activity in branches or divisions. This is discussed at [62].

36. Key considerations as to whether a non-resident is liable to register under s 51 are the value of the supplies made and where the supplies are treated as being made. Where supplies are treated as being made depends on the type of supply and who is being supplied. The place of supply rules are covered in greater detail in [40] to [57] and Flowchart 2 and Flowchart 3.

37. Recent legislative changes have made certain non-resident suppliers liable to be registered under s 51 for goods and services supplied to New Zealand residents. This is because certain supplies are treated as being made in New Zealand:

    - Suppliers of "low-value imported goods" that are treated as supplied in New Zealand may be liable to be registered. These changes relate to "distantly taxable goods" that a non-resident supplies to a person who resides in New Zealand. For further information, see "Taxation (Annual Rates for 2019-2020, GST Offshore Supplier Registration, and Remedial Matters) Act, 2019", *Tax Information Bulletin*, Vol 31, No 8 (September 2019): 2.
    - Secondly, suppliers of cross-border "remote services" (such as e-books, music and video streaming, online games and other software services) may be liable to be registered. These services do not necessarily have a connection either to a place of supply or to the recipient of the supply. For further information, see "Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016", Tax Information Bulletin Vol 28, No 6 (July 2016): 12.
    - However, if the non-resident supplier only makes these supplies to registered persons for use in their taxable activity, the supplies will be treated as supplied outside New Zealand. In that case, the non-resident supplier would not be liable to register under s 51 and the non-resident may be able to register under s 54B.
    - Where a person is not liable to be registered under s 51 they may be able to register voluntarily under s 51(3), see [60] to [61].

General registration provision – s 51

38. A person becomes liable to be registered where that person carries on a taxable activity and, in the course of carrying on all taxable activities, makes supplies in New Zealand where the total annual value of those supplies exceeds $60,000: s 51(1). Section 51(1) states:

51 Persons making supplies in course of taxable activity to be registered

(1) Subject to this Act, every person who, on or after 1 October 1986, carries on any taxable activity and is not registered, becomes liable to be registered—

(a) at the end of any month where the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded $60,000 (or such larger amount as the Governor-General may, from time to time, by Order in Council declare):

provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

(b) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed the amount specified in paragraph (a):

provided that any such person shall not become liable where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of—

(c) any ending of, including a premature ending of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or

(d) the replacement of any plant or other capital asset used in any taxable activity carried on by that person; or

(e) the supply, to persons who are non-residents but are physically present in New Zealand, of telecommunications services that are treated as being supplied in New Zealand under sections 8(6) and 8A.

Taxable activity

39. The first requirement of s 51(1) is that the person is carrying on a taxable activity. This was discussed from [13] to [16] regarding whether a person is a non-resident.

Place of supply

40. To be liable to register under s 51(1), the person must be making supplies "in New Zealand" in the course or furtherance of a taxable activity. To determine the place of supply for goods, follow Flowchart 2 (after [53]) and for services, follow Flowchart 3 (after [60]).

41. Section 8(2) provides a general rule for where supplies are made. Under the general rule, supplies made by a New Zealand resident are deemed to be supplied in New Zealand and supplies by a non-resident are deemed to be supplied outside New Zealand. Section 8(2) states:

> **8 Imposition of goods and services tax on supply**
>
> …
>
> (2) For the purposes of this Act, goods and services shall be deemed to be supplied in New Zealand if the supplier is resident in New Zealand, and shall be deemed to be supplied outside New Zealand if the supplier is a non-resident.

42. The general rule is displaced by s 8(3) for certain supplies by non-residents:

> (3) Despite subsection (2), goods and services are treated as being supplied in New Zealand if the supplier is a non-resident and—
>
> (a) the goods are in New Zealand at the time of the supply and are not distantly taxable goods to which paragraph (ab) applies; or
>
> (ab) the goods are distantly taxable goods to which subsection (4E) does not apply; or
>
> (b) the services are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed; or
>
> (c) the services are remote services supplied to a person resident in New Zealand, other than services that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed.

43. The four circumstances in which the goods or services are treated as supplied in New Zealand are when the:

- goods are in New Zealand at the time of supply (s 8(3)(a));
- goods are “distantly taxable goods”, unless the supply is to a registered person for the purposes of carrying on that person’s taxable activity (s 8(3)(ab));
- services are physically performed in New Zealand by a person in New Zealand at the time the services are performed (s 8(3)(b)); and
- services are “remote services” supplied to a person resident in New Zealand (other than services physically performed in New Zealand) (s 8(3)(c)).

44. To understand these rules, it is helpful to consider:

- where the goods are at the time of supply; or
- where the services are performed; and

- whether the recipient of the supply is receiving the goods or services for the purpose of carrying on their taxable activity.

Goods in New Zealand at time of supply

45. Where goods are in New Zealand at the time of supply they are treated as supplied in New Zealand, even though they are supplied by a non-resident or the contract is made outside New Zealand. However, this rule can be overridden if the recipient is a registered person who is acquiring the goods for the purposes of that person's taxable activity. This is provided for in s 8(4), which treats the supply as being made outside New Zealand **unless** the supplier and recipient agree to treat the supply as made in New Zealand:

> (4) Despite subsection (3), if a supplier who is a non-resident supplies goods and services, to which subsection (3)(a) or (b) would apply but for this subsection, to a registered person for the purposes of carrying on the registered person's taxable activity, the goods and services are treated as being supplied outside New Zealand unless the supplier and the recipient of the supply agree that this subsection will not apply to the supply.

46. *Example 1: Supply in New Zealand* demonstrates that a non-resident may not be able to register under s 54B, and may in fact be required to register under s 51, where they are making supplies of goods that are in New Zealand at the time of supply.

Example 1: Supply in New Zealand

Non-resident company Merino has an agreement to supply merino cot blankets to another non-resident company Natural Baby Supplies, who is not registered for GST in New Zealand.

Merino arranges to have the cot blankets made in New Zealand by High Country Wool Co. Natural Baby Supplies intends to supply these to a retailer in New Zealand (NZ Wool Babies). Under the agreement between Merino and Natural Baby Supplies, the blankets will be delivered to NZ Wool Babies store.

Although the supply by Merino to Natural Baby Supplies is made between two non-resident companies, the goods are in New Zealand at the time of supply. This means that Merino could be liable to register under s 51, if the annual value of the supplies exceeds $60,000, or if less than $60,000 it could voluntarily register.

Merino could not register under s 54B to claim back GST charged to it by (High Country Wool) because it is making supplies in New Zealand to an unregistered person.

Services performed in New Zealand

47. If the services a non-resident supplies are performed in New Zealand, they will be treated as supplied in New Zealand by s 8(3)(b). However, provided the recipient is a registered person who is acquiring the services for the purposes of their taxable activity, the services will be treated as supplied outside New Zealand under s 8(4). Again, **unless** the supplier and recipient agree that s 8(4) does not apply and have the services treated as supplied in New Zealand.

48. The reason for allowing supplies of goods or services to a registered person (for the purposes of their taxable activity) to be treated as supplied outside New Zealand is because the transaction is GST neutral – the non-resident supplier would charge GST output tax and the resident recipient would deduct the GST as input tax, if the goods or services were acquired for the purposes of making taxable supplies.

49. Some non-residents wanting to register under s 54B are not aware that they will be treated as making supplies in New Zealand. This can arise where a subcontractor performs the services in New Zealand. Understanding the contractual arrangements entered into and identifying exactly what is being supplied, who is making the supply and who is receiving the supply is required to determine where a supply is treated as being made.

50. The following examples consider whether services are performed in New Zealand and are therefore treated as supplied in New Zealand. In *Example 2: Services performed by a sub-contractor*, the non-resident is treated as making supplies in New Zealand, as the services are performed in New Zealand by a subcontractor. In *Example 3: Professional services advice to a non-resident*, the non-resident is not treated as making supplies in New Zealand because the services performed in New Zealand are a separate supply to the services provided by the non-resident.

Example 2: Services performed by a sub-contractor

A non-resident electrical contractor (Sparky Inc) has an agreement with a non-resident retail clothing company to fit out all its retail outlets. A new retail outlet is to be opened in New Zealand. Sparky arranges for the New Zealand fit out to be carried out by a New Zealand firm, Zappadee Ltd. The contract with Zappadee Limited is for goods and services amounting to $65,000. Because the services are performed in New Zealand, Zappadee Ltd charges Sparky GST at the standard rate. Sparky wants to know if it can register under s 54B to claim back the GST charged.

Sparky cannot register under s 54B because Sparky is providing services to the non-resident clothing retailer which are performed in New Zealand through Zappadee Ltd and received in New Zealand. As the value of the supplies exceeds $60,000 Sparky is liable to register under s 51.

Example 3: Professional services advice to a non-resident

A professional services firm in Hong Kong is asked to provide advice to a non-resident group of companies looking to make a global acquisition. The firm is asked to provide a report on the merits of the global transaction. The Hong Kong firm seeks advice from a New Zealand professional services firm in relation to a property situated in New Zealand. The New Zealand firm carries out due diligence in relation to the land and, as requested, prepares transfer documents to a nominee company to enable the land to be transferred if the transaction proceeds. Because the transfer documents would result in a change to the land the law firm has charged GST at the standard rate. This is a very minor component of a large-scale transaction.

In this case the supply by the Hong Kong firm of its global impact assessment on a multinational contract is a separate supply to its client. The services performed in New Zealand are a separate supply to the Hong Kong firm. The Hong Kong professional services firm could register under s 54B.

"Distantly taxable goods" or low value imported goods

51. "Distantly taxable goods", defined in s 4B, are often referred to as "low value imported goods". These are generally defined as goods that:

- individually have a value of NZ$1,000 or less;
- are outside New Zealand at the time of supply;
- are supplied by a non-resident; and
- are delivered to New Zealand.

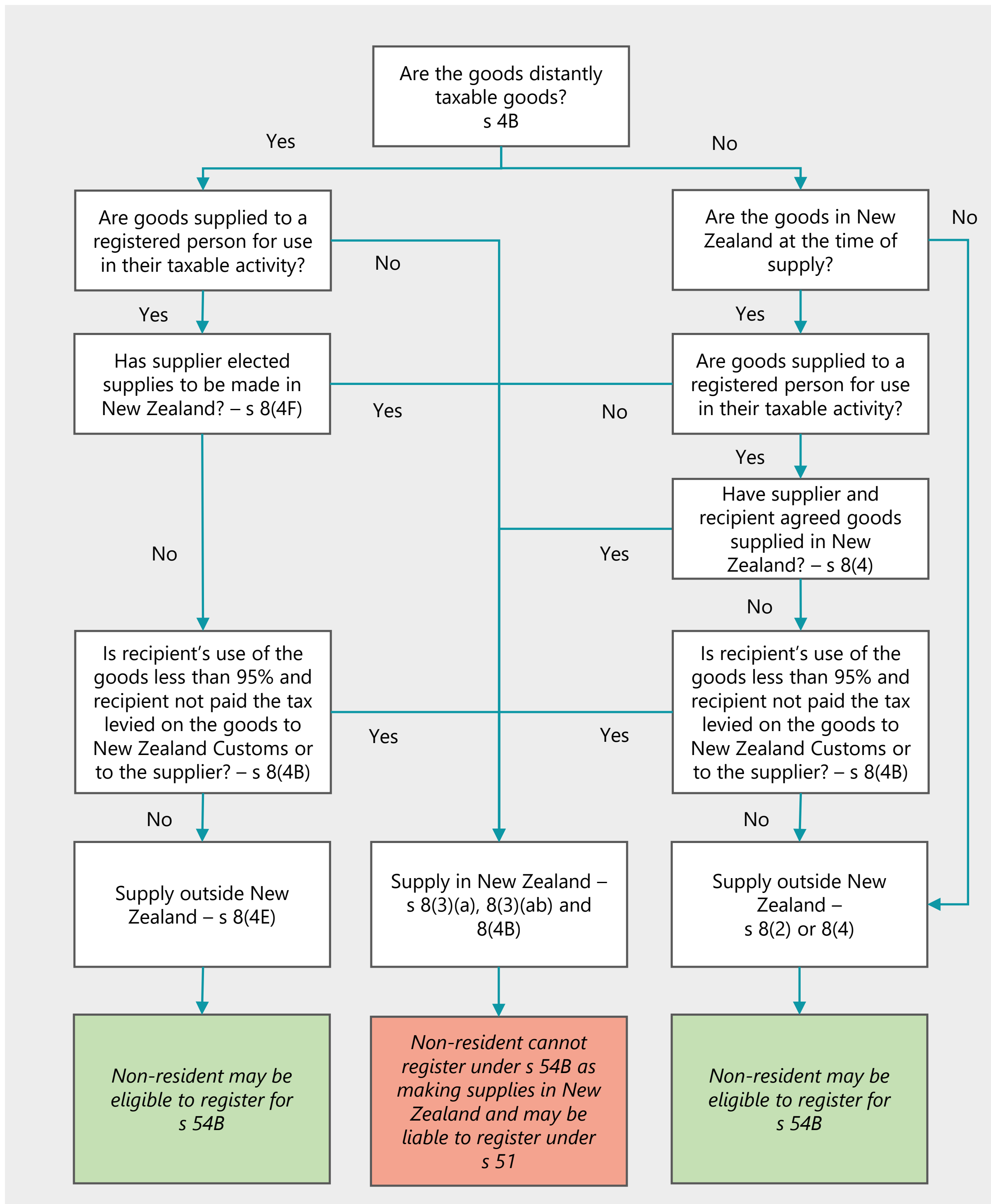
52. These distantly taxable goods are treated as supplied in New Zealand, unless the goods are supplied to a registered person for the purposes of carrying on the registered person's taxable activity: s 8(4E). This is consistent with the principle that GST should not be a cost to businesses in the supply chain and should be borne by the final consumer. However, the non-resident supplier can choose that s 8(4E) not apply, which means the goods would be treated as supplied in New Zealand. The circumstances when they may make this choice are set out in s 8(4F). This choice requires:

- value of the supply to be no more than $1,000; and
- non-resident supplier to reasonably expect that more than 50% of the value of supplies made to persons in New Zealand in the following 12 months will be made to non-registered persons.

53. Therefore, where a non-resident supplier of distantly taxable goods supplies goods that exceed the annual threshold of $60,000, that person is liable to register under s 51. Such non-resident suppliers will not be eligible to register under s 54B.

54. *Flowchart 2: Non-resident GST registration under s 54B – Place of supply – goods* illustrates how to determine the place of supply for goods supplied by a non-resident.

Flowchart 2: Non-resident GST registration under s 54B – Place of supply – goods



"Remote services" – not connected to a location

55. A "remote service" is defined as a service where, at the time of the performance of the service, no necessary connection exists between the recipient's physical location and the place of physical performance. These services include the supply of e-books, software, and digital services.

56. A non-resident supplier of remote services to a New Zealand resident will also be treated as making supplies in New Zealand under s 8(3)(c), so potentially liable to register under s 51. However, if the supply of remote services is to a registered person for the purposes of that registered person's taxable activity, the supply is treated as made outside New Zealand. The supplier may choose to treat the supply as made in New Zealand (s 8(4D)) and register under s 51. If the non-resident supplier does so, the supply is zero-rated under s 11A(1)(x), and the person may be able to claim back the amount of GST incurred in making the supplies in New Zealand. Section 11A(1)(x) states:

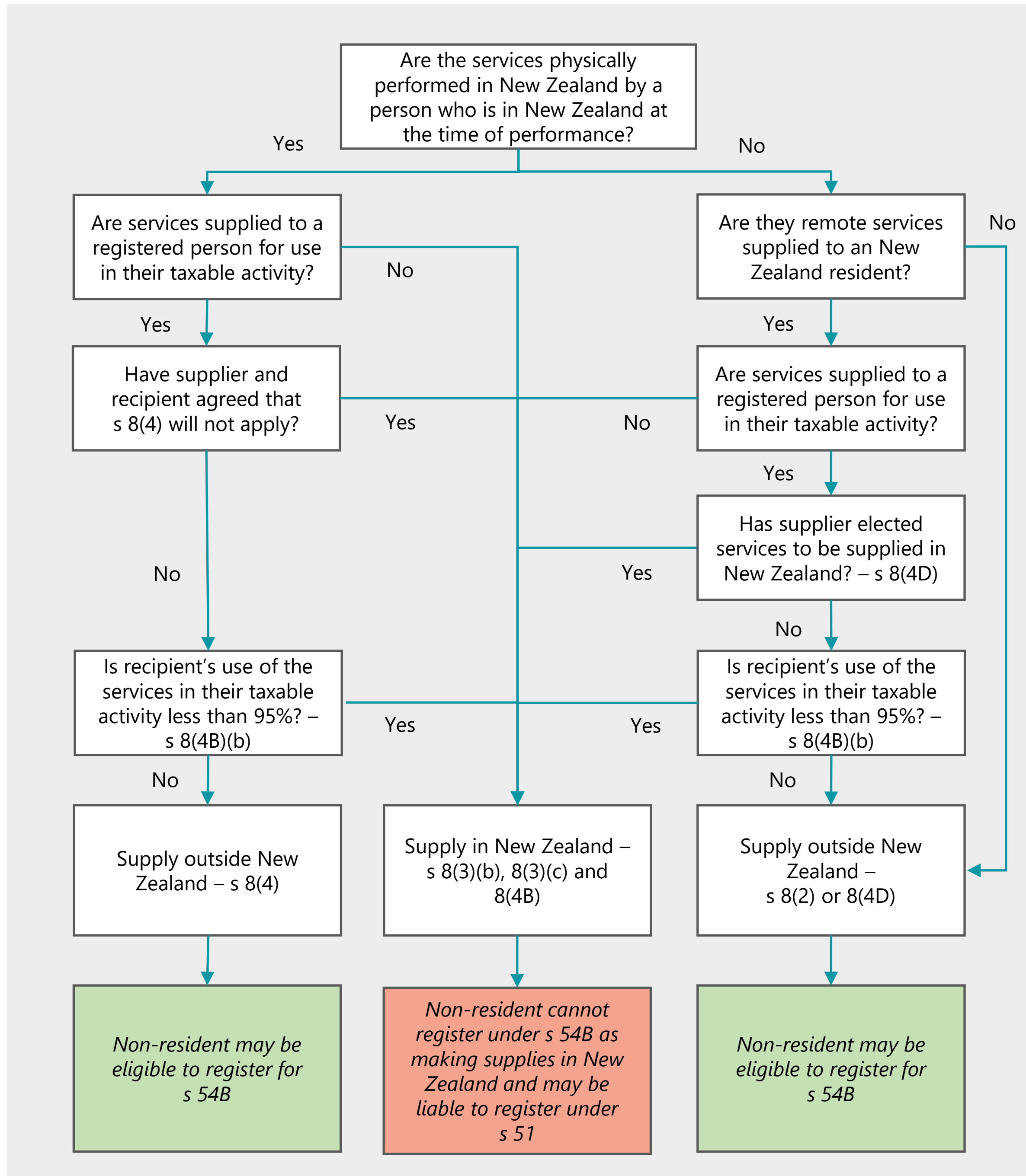
> **11A Zero-rating of services**
>
> (1) A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:
>
> …
>
> (x) the services are remote services to which section 8(3)(c) applies that are provided to a registered person and the supplier has chosen under section 8(4D) to treat the supply as made in New Zealand.

57. Several rules determine when supplies are received in New Zealand and when non-resident suppliers are required to register under s 51. For more information, see "Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016", *Tax Information Bulletin* Vol 28 No 6 (July 2016): 12.

58. If a person is liable to be registered under s 51, they cannot register under s 54B.

59. *Flowchart 3: Non-resident GST registration under s 54B – Place of supply – services* illustrates how to determine the place of supply of services supplied by a non-resident.

Flowchart 3: Non-resident GST registration under s 54B – Place of supply – services



Voluntary registration

60. A person who is not liable to register under s 51(1) but who carries on a taxable activity may register voluntarily under s 51(3). For example, a non-resident making supplies in New Zealand, where the value of the supplies is below the threshold to require registration, could voluntarily register. This would enable the non-resident to claim GST input tax on goods and services used to make those supplies in New Zealand.

However, they could not claim any GST input tax on goods and services used to make supplies overseas.

61. However, for a non-resident who is not making supplies in New Zealand (and this includes a non-resident who only supplies registered persons in New Zealand), then, unless they are registered under s 54B, they are not entitled to recover input tax incurred in New Zealand. The reason for this is that, for a person registered under s 51, input tax deductions are available only to the extent to which the goods and services are used for or are available for use in making taxable supplies in New Zealand.

Branches or divisions

62. A non-resident person, who has a branch or division making supplies in New Zealand, may register that branch or division under s 51. For the purposes of s 54B, the branch or division is treated as a separate person (s 54B(5)). This means that the non-resident may still apply to be registered under s 54B provided they meet the requirements of s 54B(1).

Third requirement – person is registered for a consumption tax – s 54B(1)(a)

63. The third requirement for registration of certain non-resident suppliers under s 54B is that the non-resident must be registered for a consumption tax in their home country or be carrying on a taxable activity and making a sufficient level of supplies that would render them liable to be registered under the New Zealand Act. Section 54B(1)(a) provides:

> (i) the person—is registered for a consumption tax in the country or territory in which they are resident; or
>
> (ii) if the country or territory in which the person is resident does not have a consumption tax, or has a consumption tax that does not apply to the person's activities, is carrying on a taxable activity, and has a level of taxable activity in a country or territory that would render them liable to be registered under section 51(1) if they were carrying out the taxable activity in New Zealand;

64. The requirement in s 54B(1)(a) is to ensure the non-resident is a genuine business with a level of activity equivalent to the level at which a New Zealand business would be required to be registered for GST.

Fourth requirement – input tax exceeds $500 or tax levied under s 12(1) – s 54B(1)(b)

65. The fourth requirement for registration of certain non-resident suppliers under s 54B is that, for the first taxable period after the date of registration in New Zealand:

- the amount of the person's input tax is likely to be more than $500; or
- the person is likely to be liable for tax levied under s 12(1) in relation to the importation of goods that are received by another person or that the person delivers to another person.

66. While the provision seems straightforward, some non-residents seeking registration under s 54B have not been able to meet this requirement because they have not been the recipient of the supply or treated as the person who has paid the GST. Section 54B(1)(b) states:

> (b) for the first taxable period after the date of registration in New Zealand, the amount of the person's input tax is likely to be more than $500 or the person is likely to be liable for tax levied under section 12(1) in relation to the importation of goods that are received by another person or that the person delivers to another person;

67. To meet the first part of the requirement in s 54B(1)(b), the non-resident must have incurred "input tax".

Input tax

68. "Input tax" is defined in s 3A:

> **3A Input tax defined**
>
> (1) **Input tax**, in relation to a registered person, means –
>
> (a) tax charged under section 8(1) on a supply of goods or services acquired by the person:
>
> (b) tax levied under s 12(1) on goods entered for home consumption under the Customs and Excise Act 2018 by the person:
>
> (c) an amount determined under subsection (3) after applying subsection (2).

69. For a person to have "input tax", the supply of goods or services must be "acquired" by the person.

70. For GST purposes, the focus is on the contractual arrangement between the supplier and the recipient of the supply (*Wilson & Horton Ltd v CIR* (1995) 17 NZTC 12,325 (CA)).

71. In determining whether the non-resident has the required level of input tax for s 54B(1)(b), it is necessary to look at the contractual arrangements entered into to determine who has incurred the input tax. In *Example 4: Business incurs expenditure on staff training* and *Example 5: Business incurs expenditure on management conference*, the contractual recipient of the supply is the non-resident company.

Example 4: Business incurs expenditure on staff training

Watchtower Limited sends three trainee air traffic controllers to train on simulators in New Zealand. Watchtower doesn't operate in New Zealand. It pays the trainees' course fees and accommodation and incurs GST. Watchtower also reimburses the trainees for incidentals such as meals and local travel costs. At the end of the training the trainees leave New Zealand. Provided the amount of input tax exceeds $500 and Watchtower meets all the other requirements of s 54B, it could register and claim back the input tax paid on its New Zealand business expenses.

Example 5: Business incurs expenditure on management conference

PRW is a US company that doesn't trade in New Zealand. PRW organises a conference in New Zealand for its management team. PRW makes all the bookings and pays all New Zealand costs associated with the conference (for example, venue hire, accommodation and meals) and incurs the GST.

Provided the amount of input tax exceeds $500 and PRW meets all the other requirements of s 54B, it can claim the GST paid on its New Zealand business expenses.

72. The non-resident companies incurred input tax on the supplies they received in New Zealand. The non-resident companies are placed in the same position as a New Zealand GST-registered business that would be able to claim input tax deductions on the services it acquired for the purpose of making taxable supplies[2]. However, sometimes the correct contractual position is that the non-resident company seeking to register has not incurred any input tax as shown in *Example 6: Contractual recipient of the supply*.

[2] See: Chapter 6 – *GST policy issues,* (Officials' issues paper, Policy and Strategy, Inland Revenue, February 2020) on the potential zero-rating of conference fees and training fees charged to non-resident businesses.

Example 6: Contractual recipient of the supply

A non-resident company (Chefco) is registered for consumption tax in its home territory as a supplier of chef training services. It enters into an arrangement with a New Zealand cooking school, Gourmet Chefs Ltd, for it to provide an introductory 6-week training course on basic chef skills. Once the students have the basic skills, Chefco can then refer the best students through to more advanced training in the home territory.

Under the arrangement, Chefco refers prospective students to enrol with Gourmet. Gourmet will provide a certificate of achievement to those who successfully meet the requirements. Gourmet agrees to send the invoices directly to Chefco so that the course will be pre-paid before the students arrive.

Chefco wants to know if it can register under s 54B to claim back the GST incurred on the invoices from Gourmet.

Chefco has not incurred the GST as the contract for supply is a supply of training services provided by Gourmet to the students. As Chefco has not incurred the GST it cannot meet the requirements of s 54B(1)(b).

Tax levied under s 12(1)

73. The alternative requirement for s 54B(1)(b) is that the person has had tax levied under s 12(1) on imported goods that were received by or delivered to another person in New Zealand. There is no threshold requirement for the amount of tax levied under s 12(1). The reason for this alternative requirement is that under s 20(3LC), in situations where the imported goods are received by or delivered to another person in New Zealand, the recipient of the goods is treated as having paid the tax levied. Without this alternative requirement, a non-resident importer of goods would not have **incurred** the input tax to meet the $500 threshold.

74. Section 20(3LC) was introduced so non-residents could not recover GST input tax on high value goods imported by the non-resident that they then delivered to a New Zealand customer. Section 20(3LC) does not apply if the non-resident importer is the receiver of the goods and is not delivering them to another person in New Zealand. This is provided for in s 20(3LB). To establish that s 20(3LC) did not apply the non-resident importer would need to demonstrate that the imported goods were not intended to be delivered to another person.

75. In *Example 7: Allowing non-resident goods importers to register*, a non-resident company is placed in the same position as a New Zealand GST-registered business that can claim back the GST incurred on the goods and services acquired for the purposes of making taxable supplies.

Example 7: Allowing non-resident goods importers to register

Allowing non-resident goods importers to register

Prestige Classics is a non-resident company that sells a luxury motor vehicle to a motor vehicle dealership, Swanky Motors, in New Zealand. The contract is entered into in Australia and a deposit is paid at that time. The payment of the deposit triggers the time of supply. At the time of supply the vehicle is outside New Zealand. As the vehicle is outside New Zealand at the time of supply, the place of supply is outside New Zealand. A term of the contract is that Prestige will import the vehicle and personally deliver it to Swanky Motors (by one of Prestige's employees). Prestige incurs expenses in New Zealand relating to its employee's accommodation and incidental costs in the course of delivering the vehicle to Swanky Motors. The GST amount incurred in relation to the employee's expenses is $275.00. Prestige wants to recover the GST on these costs.

Prestige arranges to import the vehicle and is levied tax on the import under s 12(1). Although Prestige has not incurred input tax exceeding $500, it has been **levied tax under s 12(1)** on the import of the vehicle and is therefore able to meet the requirement of s 54B(1)(b).

Provided Prestige meets all the other requirements of s 54B, it could register under s 54B to claim back the GST costs for the expenditure incurred by its employee while delivering the vehicle. It cannot claim the tax levied on the vehicle as this is treated as paid by Swanky Motors under s 20(3LC).

Note:

If Prestige registers under s 54B, Swanky Motors may be able to claim an input tax deduction under ss 20(3) and 20(3LC) if:

- It is a registered person acquiring the vehicle for the purposes of its taxable activity, and
- It has appropriate supporting documents, such as Prestige's GST registration number and evidence of the tax levied under s 12(1) on the import of the vehicle.

Fifth requirement – performance of services received in New Zealand – s 54B(1)(c)

76. The fifth requirement for registration of certain non-resident suppliers focuses on where the services are performed and whether they are received by someone in New Zealand as a final consumer. A person cannot register under s 54B if the **non-resident's taxable activity** involves a performance of services that are likely to be received in New Zealand by a person who is not a registered person **or** is a registered person but is not receiving the services in the course of making taxable or exempt supplies: s 54B(1)(c).

77. Section 54B(1)(c) provides:

> (c) the person's taxable activity does not involve a performance of services in relation to which it is reasonably foreseeable that the performance of the services will be received in New Zealand by a person other than in the course of making taxable or exempt supplies; and ...

78. Under s 54B(1)(c), there are three main considerations:

- Does the non-resident's taxable activity involve providing services?
- Is it reasonably foreseeable that the services will be received in New Zealand?
- Is the recipient receiving the services "other than in the course of making taxable supplies"?

79. Section 54B(1)(c) applies to non-residents whose taxable activities involve providing services where it is reasonably foreseeable that those services will be performed in New Zealand.

80. The second and third considerations are sometimes misunderstood. The second consideration focuses on where the services are received, which is not the same as where the supply is deemed to be made for GST purposes. Once again, the focus needs to be on the nature of the contract entered into to determine who is supplying what to whom.

81. The third consideration looks at the recipient of the services and whether they are receiving the services as an end consumer. An end-consumer receives services "other than in the course of making taxable supplies" if:

- the recipient is not GST registered, or
- the recipient is a registered person but the services are not for the purposes of making taxable supplies, and are acquired for other purposes such as for private consumption.

82. If the services are received by a New Zealand–registered person for the purposes of making taxable supplies, then this will not prevent registration of the non-resident under s 54B.

83. *Example 8: Supply of services performed and received in New Zealand* builds on *Example 6: Contractual recipient of the supply* and illustrates how s 54B(1)(c) can prevent registration under s 54B even when the non-resident company incurs the GST input tax.

Example 8: Supply of services performed and received in New Zealand

Following the completion of the first introductory basic skills course (Example 6), non-resident company Chefco and New Zealand registered business Gourmet Chefs Ltd decide to vary their agreement. Chefco decides that it would like to incorporate the basic skills training as a component of its three-level Chef Training programme leading to a Diploma in Culinary Arts. Gourmet will be a contracted provider of services supplied to Chefco. Chefco outsources other components of its training and has similar arrangements with several other cooking schools and restaurants in its home territory.

The foreign students will be enrolled with Chefco who will award the achievement certificates if the training is completed successfully. Gourmet agrees to hold places for the students, and invoices Chefco in advance of each course. The fee includes GST, as the services will be performed in New Zealand. Chefco wants to know if it can register under s 54B to claim back the GST incurred on the invoice from Gourmet.

Chefco's taxable activity is providing and arranging chef training for individuals, like the students sent to New Zealand. However, Chefco's taxable activity involves the performance of services where it is foreseeable that the services will be received in New Zealand by the students. Part of the service provided by Chefco to the students is to provide the training at Gourmet, a service that is performed and received in New Zealand. The students will not be receiving the services for the purposes of making taxable supplies.

Therefore, Chefco cannot register under s 54B because s 54B(1)(c) is not met.

Sixth requirement – not making taxable supplies in New Zealand – s 54B(1)(d)

84. Under the sixth requirement for registration of certain non-resident suppliers, the non-resident seeking registration under s 54B must not be making taxable supplies in New Zealand or supplies that would be taxable if the non-resident were a registered person. Section 54B(1)(d) states:

> (d) the person is not making, or intending to make, —
>
> (i) a taxable supply in New Zealand; or
>
> (ii) a supply in New Zealand that would be a taxable supply if the person were registered under section 51, to a person in New Zealand who is not a registered person; and …

85. Section 54B(1)(d)(i) applies to prevent registration under s 54B where the person is making or intending to make taxable supplies in New Zealand. This will include persons who are treated as making such supplies in New Zealand under s 8(3) but will allow a person to register under s 54B if the only supplies they make are to registered persons. This is because these supplies are treated as made outside New Zealand under s 8(4), unless the supplier and recipient agree to treat them as supplied in New Zealand. If there is an agreement to treat the supplies as made in New Zealand, the non-resident may register under s 51.

86. The policy reason for not requiring the non-resident to register under s 51 and return GST output tax on business-to-business supplies is that the GST collected would be offset by input tax deductions claimed by the GST-registered recipients of the supplies (as explained in *Example 9: Non-resident supplies remote services to New Zealand GST-registered business*).

Example 9: Non-resident supplies remote services to New Zealand GST-registered business

Accounts4U Ltd is a non-resident company that produces accounting software packages for small businesses. It supplies a small number of New Zealand GST-registered businesses but does not make supplies to any unregistered customers in New Zealand.

Accounts4U wants to send two of its staff to demonstrate a new enhancement to the software package to its customers in New Zealand. The marketing and demonstration will take place on the clients' premises over the course of a week. The staff will incur accommodation, food and transport costs in New Zealand which will be inclusive of GST.

Accounts4U wants to register under s 54B to claim back the GST incurred on the employees' expenses.

As Accounts4U is a non-resident company, under the general place of supply rules (s 8(2)), supplies by the non-resident are treated as being made outside New Zealand. The supply of software products is the supply of remote services, which under s 8(3)(c) can be treated as made in New Zealand. However, because the supplies by Accounts4U are made to GST-registered customers, the supplies are treated as supplied outside New Zealand under s 8(4D), unless Accounts4U chooses otherwise.

Therefore, Accounts 4U is not prevented from registering under s 54B by s 54B(1)(d)(i).

Supply that would be a taxable supply if it were to an unregistered person

87. Section 54B(1)(d)(ii) focuses on the nature of the supply and the GST status of the recipient. For this provision to apply and prevent the non-resident from registering under s 54B:

- the supply must be of goods or services that "would be" a taxable supply if the person were registered; and
- the recipient must be an unregistered person.

88. As with s 54B(1)(d)(i), a business-to-business supply by a non-resident is treated as a supply outside New Zealand, but a supply to an unregistered person is treated as a supply in New Zealand, so may be a taxable supply.

89. Section 54B(1)(d)(ii) applies to prevent a non-resident from registering under s 54B where the supplies are to an unregistered person, even where the level of supplies to an unregistered person does not meet the threshold for registration in New Zealand. The only way for the non-resident to register and claim any GST input tax it incurs is to voluntarily register, which would make it liable to account for GST on supplies made in New Zealand. *Example 10: Non-resident company intending to make taxable supplies in New Zealand* demonstrates the application of s 54B(1)(d)(ii). It is drawn from Example 1 in "Taxation (Annual Rates for 2016–17, Closely held Companies, and Remedial Matters) Act 2017", *Tax Information Bulletin* Vol 29, No 5 (June 2017): 89 at 91.

Example 10: Non-resident company intending to make taxable supplies in New Zealand

Video Game Startup Co is a small non-resident video game production company that is developing its first video game. While the worldwide sales of the game for the first year of its release are expected to be in excess of $60,000, and Video Game Startup already has a few New Zealand-based customers, Video Game Startup does not expect that sales of the game to New Zealand-resident private consumers will be above the $60,000 GST registration threshold for at least the next two years. Therefore, even though the company is supplying a remote service to New Zealand consumers, it does not have a liability to register for GST in New Zealand under the remote services rules.

Therefore, if Video Game Startup does not register for GST (or does not become liable to register for GST under s 51(1)), the remote services rules will not apply to impose GST on its supplies to New Zealand consumers. In other words, as a non-registered person, Video Game Startup does not make taxable supplies because its supplies are not charged with GST under s 8.

Video Game Startup intends to send two of the animators it employs, Shane and Matt, to an animation conference in Auckland. The conference price includes GST at 15%.

Video Game Startup wishes to claim back the GST it incurs on the conference fees for Shane and Matt. However, Video Game Startup is not eligible to register under s 54B because of the exclusion in s 54B(1)(d)(ii): Video Game Startup makes supplies of remote services to New Zealand consumers that, if Video Game Startup were a GST-registered person, would be charged with GST.

Seventh requirement – not a member of a group of companies that makes supplies in New Zealand

90. The final requirement is s 54B(1)(e). The non-resident cannot be a member of a group of companies that makes supplies in New Zealand or intend to become a member of such a group. Cross-border grouping is permitted for GST, but a group with resident and non-resident members must register under s 51. Section 54B(1)(e) states:

> (e) the person is not, and does not intend to become, a member of a group of companies that makes taxable supplies in New Zealand.

91. If a non-resident registered under s 54B becomes part of a group of companies that makes taxable supplies, then the person is treated as being registered under s 51 from that date: s 54B(2).

Administrative issues

92. This section discusses six administrative issues in relation to registration:

- the application for registration (from [93]);
- returns and taxable periods (from [94]);
- accounting basis (from [97]);
- claiming input tax deductions (from [99]);
- refunds and timing (from [104]);
- cancellation of registration (from [106]); and
- supplies on cessation (from [110]).

Application for registration

93. A non-resident who applies to be registered under s 54B must complete an IR 564. The IR 564 outlines the information required to be provided with the application to ensure that the requirements for registration are met. From a practical perspective, applications for registration may be forwarded after the period for which the non-resident wishes to register, together with appropriate documentation to support the requirements.

Returns and taxable periods

94. A non-resident who applies to be registered under s 54B can request the frequency of return filing to be a one-month, two-month or six-month period. A three-month period is not available for non-residents registering under s 54B.

95. A three-month taxable period is available for registered persons whose only supplies are of distantly taxable goods or remote services that are treated as supplied in New Zealand under s 8(3)(c): s 15(6). This period is not available to a person registered under s 54B, since that person cannot be making taxable supplies in New Zealand.

96. Where the person registered under s 54B has a branch or division registered in New Zealand under s 51 there is no requirement for the person, the branch or divisions to have consistent taxable periods. This is provided for in s 54B(6).

> (6) In relation to the registration of the person, section 56(6) does not apply to require the person and the branch or division to have, between themselves, consistent practices for taxable periods and accounting bases.

Accounting basis

97. A person registered under s 54B must use the payments basis of accounting for GST. This means the person can claim an input tax deduction only once payment for the supply has been made. This requirement is provided for in s 19(1B):

> (1B) Despite subsection (1), if the Commissioner registers a non-resident person under section 54B, the person must account for tax payable on a payments basis for the purpose of section 20.

98. As already noted at [96] in relation to taxable periods, this accounting basis may differ from the accounting basis used by a separately registered branch or division of the person.

Claiming input tax deductions

99. For non-residents registered under s 54B, a full input tax deduction may not be available. This is because an apportionment may be required under s 20(3L). Section 20(3L) provides that the person may deduct input tax **to the extent to which** the goods or services are used for or available for use in making taxable supplies "treating all the supplies made by the person as if they were made and received in New Zealand".

100. This means that if all the supplies made by the non-resident would be taxable supplies in New Zealand, the full input tax deduction may be available. However, the input deduction may be adjusted if the person is also making what would be "exempt supplies" if made in New Zealand. The non-resident would be entitled to claim back GST based on the proportion of taxable supplies to total supplies. This means the non-resident is treated the same as a New Zealand resident who similarly makes both taxable and exempt supplies.

101. *Example 11: No apportionment required* and *Example 12: How apportionment applies to a non-resident – financial services*, demonstrate how apportionment will apply to a non-resident. *Example 12* was used in *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill: Commentary on the Bill* (Policy Advice Division of Inland Revenue, September 2012.

Example 11: No apportionment required

Redstock Wines is a winery operating in South Australia. It supplies local wholesalers and exports the balance of its wine stock to a leading supermarket in the United Kingdom. It sends some winemakers to New Zealand to train viticulture students under a contract with a University and incurs GST on the winemakers' travel and accommodation costs.

If Redstock Wines were a New Zealand–resident company, its supplies would all be taxable. The expenditure is incurred as part of carrying on its taxable activity of winemaking and supplying wine for sale. As a result, Redstock Wines is entitled to claim all the GST incurred as a deduction. Assuming Redstock Wines makes no taxable supplies in New Zealand, the GST incurred will be available as a refund.

102. A question arises as to whether a non-resident providing financial services can apply s 20F in determining the percentage of GST input tax they can claim. The very nature of the s 54B registration is that it applies to persons who are not making supplies in New Zealand or are making supplies to registered persons in New Zealand which are able to be treated as made outside New Zealand. However, for the purposes of the election under s 20F, and s 11A(1)(q) and (r), the supplies need to be made to New Zealand registered recipients. This means that non-resident financial services providers cannot use s 20F to determine the level of input tax claimable.

Example 12: How apportionment applies to a non-resident – financial services

Bank Co is a financial services and insurance provider that is registered for GST in Australia and looking to expand into New Zealand. It registers for GST in New Zealand and incurs GST on professional services fees it receives from a New Zealand provider. Bank Co's Australian business comprises 50% household mortgages, 25% life insurance and 25% health and contents insurance.

Both the mortgage provider and life insurance components of Bank Co's business would be exempt if they were made and received in New Zealand because they are financial services. Therefore, Bank Co can claim 25% of the GST incurred as a deduction in its New Zealand return.

103. In *Example 12*, if Bank Co registered under s 54B and subsequently started making supplies in New Zealand then, under ss 54B(2) and 51B(1)(d), it would be treated as being registered under the general registration provision of s 51. Sections 54B(2) and 51B(1)(d) state:

> **54B Requirements for registration for certain non-resident suppliers**
>
> …
>
> (2) If a non-resident person who is registered under this section starts making taxable supplies, or becomes a member of a group of companies that is making taxable supplies, they are treated as registered on the date specified by the Commissioner under subsection (1), and not being registered under this section from the date on which they start making taxable supplies or the date on which they join the group, as applicable.
>
> …
>
> **51B Persons treated as registered**
>
> (1) For the purposes of Parts 3 and 6, and of Part 9 of the Tax Administration Act 1994, the following are treated as registered persons making supplies in the course or furtherance of a taxable activity:
>
> …
>
> (d) a non-resident person referred to in section 54B(2).
>
> …

Refunds and timing

104. For non-residents registered under s 54B, the Commissioner has 90 working days from the day after the return is filed, to either make the refund or notify the registered person of any further information required or of any investigation into the claim: s 46(1B).

105. The period of 90 days is intentionally longer that the standard period for a registered person to give the Commissioner enough time to make appropriate enquiries before releasing the refunds.

Cancellation of registration

106. If the person is not carrying on a taxable activity anywhere in the world, the Commissioner can cancel the person's registration: s 52(5). Cancellation takes effect from the last day of the taxable period in which the Commissioner makes that decision or another date if the Commissioner determines it appropriate.

107. For non-residents registered under s 54B, the Commissioner also has the power to cancel the registration, if the person:

- no longer meets the requirements of s 54B(1)(a); or
- has either not filed a return or filed a late return for three consecutive periods.

108. Section 54C provides:

> **54C Cancellation of registration of certain non-residents**
>
> (1) Section 52 applies to the cancellation of registration of a non-resident person registered under section 54B as modified by this section.
>
> (2) The Commissioner may, in addition to the powers provided under section 52(5) and (5A), cancel the person's registration if—
>
> (a) the Commissioner is satisfied that the person no longer meets the requirements of section 54B(1)(a):
>
> (b) for 3 consecutive taxable periods, the person has either not filed a return or has filed a late return.

109. The power of cancellation given in s 54C(2) is described in "Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013", *Tax Information Bulletin* Vol 25, No 9 (October 2013): 33 as being for two reasons:

- Cancellation for failure to comply with s 54B(1)(a) is to ensure only genuine businesses are eligible to register. This provision means that if a non-resident's overseas registration lapses or the value of their supplies drops below the $60,000 threshold, the Commissioner can de-register them.
- Cancellation for non-filing or consistent late-filing is a measure to encourage compliance. Where a non-resident's involvement with New Zealand is limited or non-existent for periods, the filing of nil returns demonstrates an intention to maintain registration.

Supplies on cessation

110. When the registration of a person ceases, s 5(3) deems a supply to be made of any goods and services forming part of the taxable activity. This means the person needs to account for GST output tax on their business assets. The supply is deemed to be made in the course of that activity and to be made immediately before the person ceases to be registered. However, s 5(3B) was inserted to ensure that on cessation of registration of a non-resident, two adjustments are made. The first is to limit the deemed supply of goods to **only** goods present in New Zealand at the time the person ceases to be registered. Secondly, an adjustment must be made for services that would be performed in New Zealand.

111. Section 5(3B)(c) and (d) states:

> **5 Meaning of term supply**
>
> …
>
> (3B) For the purposes of this Act, when a person who is a non-resident ceases to be a registered person,—
>
> …
>
> (c) any goods that are part of the assets of the taxable activity carried on by the person that are present in New Zealand at the time the person ceases to be registered are treated as supplied by the person in the course of the taxable activity at a time immediately before the person ceases to be registered:
>
> (d) any services that would be performed in New Zealand as part of the taxable activity carried on by the person at the time the person ceases to be registered are treated as performed by the person in the course of the taxable activity at a time immediately before the person ceases to be registered.

Examples

112. The following additional examples show how s 54B applies to more detailed scenarios.

Example 13: Satisfying all s 54B requirements

Kingland is a manufacturing company in a manufacturing group in the United Kingdom. It is registered for VAT in the UK. Kingland has a contract to supply machines to Wallaby Co in Australia. The machines require an additional electronic component for them to meet Australian standards. Kingland decides to send the machines to New Zealand and have a New Zealand Company, Black Engineering, make the necessary adjustments. This involves fitting a

component, adjusting, testing and certifying each of the machines. The engines are shipped to the NZ warehouse owned by Black Engineering.

Once the work has been completed the machines are exported to Australia. None of the machines are supplied to customers in New Zealand.

Black Engineering charges GST on the goods and services provided, as the goods (the components) and the services (the fitting, testing and certifying) are in New Zealand at the time of supply.

As this is a significant contract incurring more than $500 GST, Kingland wants to know if it can register under s 54B to claim back the GST charged on supplies it receives in New Zealand.

Each of the s 54B requirements needs to be considered to determine whether Kingland can register on this basis:

- *Non-resident:* Kingland is a non-resident for income tax purposes. The warehouse in New Zealand is the premises of Black Engineering and is not a fixed or permanent place of Kingland. It is not a place available to Kingland and will not make Kingland a resident for GST purposes.
- *Not liable to register under s 51(1):* As Kingland is a non-resident, under s 8(2) the supplies it makes are treated as made outside New Zealand. It is not making any supplies in New Zealand and therefore does not have a liability to register under s 51(1).
- *Registered for a consumption tax (s 54B(1)(a)):* Kingland is registered for VAT in the UK so satisfies s 54B(1)(a).
- *Input tax of $500 or tax levied under s 12(1) - (s 54B(1)(b)):* Kingland is the recipient of goods and services in New Zealand and incurs input tax exceeding $500 so satisfies s 54B(1)(b).
- *Non-resident's taxable activity involves a performance of services received by someone other than for making taxable supplies - (s 54B(1)(c)):* Kingland's taxable activity involves the manufacture and supply of engines. It has customers in the UK, Europe, Canada and Australia. Its customers are manufacturers who incorporate the engines into their products. No person receives the performance of services in New Zealand as a result of Kingland's taxable activity. Therefore, Kingland is not precluded from registering under s 54B(1)(c).
- *Not making, or intending to make a supply in NZ, that would be taxable if the person was registered under s 51(1)-(s 54B(1)(d)):* Kingland does not make supplies in New Zealand, nor does it intend to. Therefore, Kingland is not precluded from registering under s 54B(1)(d).
- *Not part of a group of companies, making taxable supplies in New Zealand, or intending to become part of a group making taxable supplies – (s 54B(1)(e)):* While Kingland is part of a group in the UK, no member of the group makes taxable supplies in New Zealand.

Therefore, Kingland can register for GST under s 54B and claim back the GST charged by Black Engineering.

Example 14: Effect of supplying into New Zealand

Kingland is approached by a New Zealand company TuiCo, who is registered for GST. TuiCo wants to trial using one of the engines in their small boutique manufacturing business. The value of the supply is $45,000. Kingland wants to know whether supplying an engine to TuiCo will affect its GST registration under s 54B.

As noted above, one of the key requirements is that Kingland is not liable to register under s 51. Kingland could become liable to register under s 51 if it makes supplies in New Zealand and is required to register.

- The supply by Kingland to TuiCo is below the threshold for being liable to register under s 51. This means that Kingland is not liable to register under s 51.
- Provided Kingland remains a non-resident for GST purposes (and does not have a fixed or permanent place) it will be treated as making supplies outside NZ (s 8(2)). However, because the engines are being improved and certified by Black Engineering, the goods (being the engine) are in NZ at the time of supply so are treated as supplied in NZ by s 8(3)(a). But, because the supply to TuiCo is to a registered person, under s 8(4), the supply can be treated as supplied outside New Zealand.

Therefore, the supply is not a "taxable supply in New Zealand" and Kingland would not be prevented from registering under s 54B(1)(d)(i). It would also not be prevented from registering by s 54B(1)(d)(ii) because the supply is to a person for making taxable supplies. Therefore, even if TuiCo orders a second engine, Kingland can remain registered under s 54B and does not have to revert to registering under s 51.

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About this document

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further Status of Commissioner's advice (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.