

## **INTERPRETATION STATEMENT: IS 17/08**

### **GOODS AND SERVICES TAX – COMPULSORY ZERO-RATING OF LAND RULES (GENERAL APPLICATION)**

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All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated. Relevant legislative provisions are reproduced in Appendix 2 to this Interpretation Statement.

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## Summary

1. The compulsory zero-rating of land (CZR) rules treat certain supplies involving land between registered persons as zero-rated supplies. The CZR rules were introduced to assist in combating so-called phoenix schemes and to help streamline GST cash flows. Most transactions between registered persons involving supplies of land or interests in land are captured by the CZR rules. Cash flows from residential tenancies and commercial leases are generally excluded, although some transactions involving assignments or surrenders of leases may be covered by the CZR rules.
2. Under the CZR rules, a vendor who is a registered person must charge GST at the rate of 0% when:
  - making a supply wholly or partly consisting of land to a purchaser who is a registered person;
  - **the supply is made in the course or furtherance of the vendor's taxable activity;**
  - the purchaser intends using the goods (including the land) for the purpose of making taxable supplies; and
  - the purchaser (or a relative of the purchaser) does not intend using the land (or any part of it) as their principal place of residence.
3. When a supply wholly or partly consists of land, the purchaser must notify the vendor of certain information at or before settlement. The vendor uses this information to determine the correct GST treatment of the supply. Special rules exist for resolving situations where a supply involving land is incorrectly zero-rated or standard-rated.
4. When a supply between two registered persons is zero-rated, the vendor does not pay output tax for the supply, and the purchaser cannot claim an input tax deduction for the purchase.

## Introduction

5. The CZR rules came into effect on 1 April 2011. The intention of these rules is to improve the efficiency of the GST system and remove the risk to the tax base from phoenix schemes. Phoenix schemes typically involve land being sold between associated entities. The purchaser receives a refund of GST, but the vendor deliberately winds up their entity before paying the GST output tax.
6. This interpretation statement addresses the operation of the CZR rules. The examples (from [84]) at the end of the statement illustrate how the CZR rules apply in common situations. The examples along with the flowchart in Appendix 1 are to help taxpayers understand their GST obligations when their supplies involve land.
7. In this interpretation statement, **the supplier is usually referred to as the “vendor” and the recipient of the supply is usually referred to as the “purchaser”**, even though in practice, the recipient of the supply may be the purchaser’s nominee. **A vendor who is a registered person is usually referred to as a “GST-registered vendor” and, similarly, a purchaser (or their nominee) who is a registered person is referred to as a “GST-registered purchaser”**. The CZR rules as they relate to nominees are discussed at [24] and [57].

## Analysis

### What are the CZR rules?

8. Put very simply, the CZR rules require a supply between two registered persons that wholly or partly consists of land to be zero-rated, if at the time of settlement certain requirements are met.
9. When the CZR rules apply, a vendor must include the zero-rated supply in their GST return, but they do not return any output tax for the supply. In turn, the GST-registered purchaser does not claim an input tax deduction for the purchase.

For example, a GST-registered vendor agrees to sell some land with a warehouse on it to a GST-registered purchaser. Before settlement, the purchaser informs the vendor in writing that they intend using the land and warehouse as their business premises. The notice also confirms the purchaser has no intention of living on the land or in the warehouse. Applying the CZR rules, the supply of the land and warehouse **must** be zero-rated, so the vendor must charge GST on the supply at 0% and include it as a zero-rated supply in their GST return. This means the vendor will not pay any output tax for the supply, and the purchaser cannot claim an input tax deduction for the purchase.

10. The CZR rules effectively streamline the GST cash flows for transactions involving land and, in so doing, are intended to protect the tax base from phoenix schemes.

### How do the CZR Rules work?

11. Usually, a registered person making a supply in the course or furtherance of their taxable activity charges GST at the prevailing standard rate on the supply (s 8(1)). In some situations, zero-rating rules apply, requiring the supplier to charge GST at the rate of 0% on the supply (s 11).

12. The core provision of the CZR rules is s 11(1)(mb). Section 11(1)(mb) provides:
- (1) A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:
    - ...
    - (mb) the supply wholly or partly consists of land, being a supply—
      - (i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and
      - (ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or
13. Under ss 8 and 11(1)(mb), a vendor must zero-rate a supply if:
- the supply wholly or partly consists of land;
  - the vendor is GST registered (or either will be GST registered or will be treated as GST registered) at the time of settlement;
  - the supply is being made by the vendor in the course or furtherance of their taxable activity;
  - the purchaser is a GST-registered purchaser (or will be GST registered or treated as GST registered) at the time of settlement;
  - the purchaser acquires the goods (including the land) with the intention of using them (in whole or part) for making taxable supplies; and
  - none of the land included in the supply is intended to be used as the **purchaser's principal place of residence or the principal place of residence of a relative of the purchaser** (see further at [41]).
14. If the supply is **not** made in the course or furtherance of a **GST-registered vendor's** taxable activity, for example when a GST-registered vendor sells their private home, the supply is generally outside the GST rules.
15. Where a supply made in the course or furtherance of **the vendor's** taxable activity wholly or partly consists of land, and the supply includes the provision of services, the supply of those services is treated as a supply of goods for the purposes of s 11(1)(mb) (see s 5(24)).

### **What information must a purchaser provide to a vendor?**

16. Under s 78F(2), whenever a supply wholly or partly consists of land, the purchaser must notify the vendor at or before settlement as to whether the purchaser:
- is, or expects to be, a GST-registered person at the time of settlement;
  - is acquiring the land and any other goods with the intention of using them (wholly or partly) for making taxable supplies; and
  - intends using the land as a principal place of residence for themselves or a person associated with them under s 2A(1)(c) (that is, a relative).
17. This notice is required whenever a supply wholly or partly consists of land **regardless of the vendor's GST-registration status**, because s 78F applies "**where a supply wholly or partly consists of land**". In this context notification can take the forms specified in s 14C of the Tax Administration Act 1994, which essentially means notice needs to be given in writing by electronic means or by delivery of a handwritten or printed document. The **vendor cannot waive the purchaser's**

statutory requirement to notify them under s 78F (*Y & P NZ Limited v Wang* [2017] NZCA 280).

18. If the purchaser does not notify the vendor or supplies incorrect information, this will not prevent the CZR rules from applying to zero-rate the supply where, at settlement, the conditions for zero-rating in s 11(1)(mb) were met. This means corrections to the GST treatment of the supply may need to be made (by both the vendor and the purchaser) if a supply is incorrectly standard-rated. (See further at [62].)
19. **The vendor is entitled to rely on the purchaser's most recent notice when deciding whether to standard-rate or zero-rate the supply, as appropriate. The vendor's obligations at settlement are discussed further at [57].**

### **How does a purchaser provide the required information to a vendor?**

20. In most cases, when a purchaser enters into a transaction with a vendor involving the supply of land, the notice requirements in s 78F are satisfied by the purchaser completing a schedule to the written sale and purchase agreement (for example, Schedule 2 to the standard form agreement for sale and purchase prepared by the Auckland District Law Society and Real Estate Institute of New Zealand).
21. The purchaser is required to notify the vendor at or before settlement (see s 78F(2)). Therefore, in practice, the information provided **in the purchaser's notice** to the vendor is usually provided on a prospective basis; that is, on the basis of the **purchaser's best prediction as to their GST status and intentions at settlement**. For example, if a purchaser is not registered for GST when they enter into the sale and purchase agreement but intends to register before settlement, they may indicate in their notice to the vendor that they expect to be registered for GST by the settlement date.
22. **If, before settlement, a purchaser's circumstances change so an earlier s 78F notice** (eg, the notice provided in Schedule 2 to the sale and purchase agreement) is no longer correct they should notify the vendor in writing of the relevant changes to their circumstances at or before settlement (see *Y & P NZ Limited v Wang* [2017] NZSC 126). This will ensure the purchaser has complied with the requirements of s 78F(2) and will enable the vendor to apply the correct GST treatment to the supply for the parties.
23. A vendor should consider standard-rating a supply involving land if the purchaser fails to notify them in writing about their GST-registration status and their intentions for the land, unless the vendor is confident at settlement the CZR rules will apply to the supply. This ensures the vendor accounts for GST on the appropriate due date rather than having to correct the GST position later. Of course, in so doing, there is a risk a vendor may wrongly decide to standard-rate a supply and corrections will be needed. Therefore, overall, the best approach is for:
  - **the vendor to insist on being notified in writing about the purchaser's GST-registration status and their intentions for the land at or before settlement;** and
  - the purchaser to provide the correct information in writing to the vendor, and update that information in writing before settlement if their circumstances change.
24. If the purchaser who contracts with the vendor does not intend to receive the goods (including land) themselves, but nominates or intends to nominate a third party to receive the supply, the purchaser may make representations on behalf of

the nominated person (see s 78F(5)). A vendor cannot rely on a purchaser's statement where a nomination has occurred, unless the purchaser's statement is about the nominee's position. Ultimately, it is the GST-registration status and intentions of the recipient of the supply that must be communicated in writing to the vendor before or at settlement. This same rule applies when the vendor is making the supply to a person acting as agent for an undisclosed principal who is purchasing the land. The notification requirements in s 78F(2) are met in that case if the agent notifies the vendor that the principal as purchaser will meet the requirements of s 11(1)(mb) at settlement (see s 78F(6)). In nominee or undisclosed principal situations, it is important that the notification requirements in s 78F are about **the nominee or undisclosed principal's position**. It may be necessary for the s 78F notice to be updated to ensure the vendor has the correct information at settlement.

25. If a supply wholly or partly consisting of land is made by a lender under a power of sale in satisfaction of a debt (see s 5(2)), the purchaser must provide the information required under s 78F to the lender and not the borrower (owner). For example, the information should be provided to the bank under a mortgagee sale. This is because the sale is being undertaken by the lender. (However, for the purposes of determining whether the supply is zero-rated under the CZR rules, s 11(1)(mb) should be applied as if the supply were being made by the borrower (owner) and not by the lender (see s 5(22).)

### **When will a supply wholly or partly consist of land?**

26. Knowing whether a supply wholly or partly consists of land is important for determining whether the CZR rules apply to the supply. **The term "land" is defined broadly in s 2 for the purposes of the zero-rating of land rules (that is, including for the purposes of ss 11(1)(mb) and 78F). The definition of "land" includes:**
- an estate or interest in land (for example, a freehold estate in land);
  - a right that gives rise to an interest in land (for example, a profit à prendre);
  - an option to acquire land or an estate or interest in land; and
  - a share in the share capital of a flat-owning or office-owning company, as defined in the Land Transfer Act 1952.
27. **The definition of "land" excludes:**
- mortgages; and
  - leases of dwellings.
28. Most commercial leases are excluded from the CZR rules by s 11(8D)(b). As a result, most rental payments under commercial leases continue to be standard-rated. However, commercial leases with characteristics making them substitutable for land sales and transactions involving the assignment, surrender or procurement of commercial leases may be subject to the CZR rules if the conditions in s 11(1)(mb) are met (see s 11(8D)(a), (ab) and (c)).

### **What if the land is only part of the supply?**

29. A supply consisting **wholly** or **partly** of land must be zero-rated when the conditions in s 11(1)(mb) are met; even where the land forms only one part of the supply. This means all the components of a single composite supply must be zero-rated, not only the land component. For example, if land and other assets are sold

in a single supply, the whole of the supply must be zero-rated when the conditions in s 11(1)(mb) are met for the land component.

30. Where there are multiple supplies within the same contract (compared with one single composite supply), the GST treatment of each of those separate supplies is determined separately. If any of those separate supplies in whole or in part include land, the CZR rules will need to be considered. Therefore, as a first step, before determining whether the CZR rules apply to a land transaction, it is necessary for the vendor to establish what supplies they are making to the purchaser. (For help on establishing what supplies are being made see *Interpretation Statement 17/03: Goods and Services Tax - single supply or multiple supplies.*)

## Supplies including a residence

31. There is a special rule for supplies which include a residence. Before s 11(1)(mb) is applied, a supply including a residence might be deemed to be made up of two (or more) separate supplies (see s 5(15)). Section 5(15) provides:

### 5 Meaning of term supply

...

- (15) When either of the following supplies are included in a supply, they are deemed to be a separate supply from the supply of any other real property that is included in the supply:
- (a) a supply of a principal place of residence:
  - (b) a supply referred to in section 14(1)(d).

32. For the purposes of s 5(15)(b) "a supply referred to in section 14(1)(d)" is essentially a sale of a dwelling that has been used exclusively for making supplies of accommodation for five years or more before the date of supply.

### 14 Exempt supplies

- (1) The following supplies of goods and services shall be exempt from tax:

...

- (d) the supply, being a sale, by any registered person in the course or furtherance of any taxable activity of—
- (i) any dwelling; or
  - (ii) the reversionary interest in the fee simple estate of any leasehold land,—  
that has been used by the registered person for a period of 5 years or more before the date of the supply exclusively for the making of any supply or supplies referred to in paragraph (c) or paragraph (ca):

33. A supply that includes a principal place of residence or a dwelling that has been rented out by the vendor exclusively for accommodation for at least the preceding five years is deemed to be a separate supply from the supply of any other real property included in the (larger) supply (see s 5(15)).
34. **For example, when a farm (which includes the farmer's house and its surrounding curtilage) is sold, under s 5(15) the supply of the farm house and curtilage is deemed to be a separate supply from the supply of the remainder of the farm.** The GST treatment of each supply is then determined separately. Usually, the supply of a farm house and curtilage is not subject to GST on the basis the farm house is the **farmer's private asset (that is, outside the farmer's taxable activity)**. (Occasionally, the farmer may have claimed an input tax deduction when they acquired the farm house. In that case, an output tax liability may arise on sale (see s 5(16) and (18).) The GST treatment of the supply of the remainder of the farm must also be established. If the conditions of s 11(1)(mb) are satisfied the supply of the remaining portion of the farm must be zero-rated.



35. The **Commissioner's view** is as follows:

- The phrase “**principal place of residence**” in s 5(15)(a) refers to a place occupied as a person's main residence. The plain meaning of the phrase indicates a person may have more than one residence, but at any point in time they can have only one main residence.
- The application of s 5(15)(a) is not restricted to a place occupied as the **vendor's main residence**. It is possible for a vendor to supply a principal place of residence that is not their own residence (for example, a house that has been lived in by a farm manager).
- Section 5(15)(a) is concerned with the **supply** of a principal place of residence. Therefore, for the purposes of s 5(15) the **vendor's** use of the property is determinative rather than **the purchaser's** intended use of the property. This is in contrast to how the phrase is used in s 11(1)(mb), which focuses on the **purchaser's** (or their relative's) intended use of the land (see further at [44]).
- The inquiry in s 5(15)(a) is objective, based on the available information.

### **What conditions need to be satisfied for the CZR rules to apply?**

36. As stated earlier, certain conditions need to be satisfied for a supply made in the **course or furtherance of a vendor's taxable activity to be compulsorily zero-rated**. Section 11(1)(mb) provides that a supply that wholly or partly consists of land must be zero-rated, if, at settlement date, the following conditions are satisfied:

- ***GST registration***: The supply is being made by a GST registered vendor (or a vendor who will be or who will be treated as GST registered) at the time of settlement to a GST-registered purchaser (or a purchaser who will be or who will be treated as GST registered) at the time of settlement.
- ***Intention for using to make taxable supplies***: The purchaser acquires the goods (including the land) with the intention of using them (in whole or part) for making taxable supplies.
- ***No intention for using as a principal place of residence***: None of the land included in the supply is intended to be used as the purchaser's principal place of residence or the principal place of residence of a relative of the purchaser (see further at [44]).

37. These conditions for compulsory zero-rating are now considered in more detail.

### ***GST registration***

38. For a supply wholly or partly consisting of land to be compulsorily zero-rated both parties must be registered persons (that is, the supply must be made by a vendor who is a registered person to a purchaser (or their nominee) who is a registered person).

39. A “**registered person**” is defined in s 2 as a person who is registered or liable to be registered under the Act. Therefore, if the parties to the supply are liable to be GST registered at the time of settlement (and the other conditions for compulsory zero-rating are met), the CZR rules will apply regardless of whether one or both are actually registered for GST at that time.



### ***Purchaser's intention for using the goods acquired (including land)***

40. The CZR rules require a purchaser who is a registered person to acquire the goods supplied (including land) with the intention of using them for making taxable supplies. **For the purposes of applying the CZR rules a purchaser's registration status is determined as at the date of settlement. In the Commissioner's view,** the requirement for the purchaser to intend using the goods acquired (including land) for making taxable supplies will be satisfied even where the purchaser does not intend using **all** the goods acquired for making taxable supplies (that is, the goods acquired do not need to be **wholly applied to the purchaser's taxable activity**). This is consistent with the GST apportionment rules. Those rules require a purchaser to make an initial GST output tax adjustment where goods to which s 11(1)(mb) applies are acquired but not intended to be used wholly for making taxable supplies and then possible subsequent adjustments if actual use changes from what was intended (see s 20(3J)). This means that even if a purchaser intends using only some of the goods acquired (including land) for making taxable supplies, the CZR rules will still apply to zero-rate the whole supply if the other conditions of s 11(1)(mb) are met.

### ***Land not intended to be used as purchaser's (or their relative's) principal place of residence***

41. A supply consisting of land between parties who are registered persons will not be compulsorily zero-rated if the purchaser intends using the land or any part of it as their principal place of residence or the principal place of residence of a person associated with them under s 2A(1)(c).
42. For the purposes of the CZR rules a person associated with a purchaser under s 2A(1)(c) is a relative of the purchaser. A relative is a person who is connected to the purchaser by:
- blood relationship;
  - marriage, civil union or de facto relationship; or
  - adoption.
43. Effectively, this means the "principal place of residence" exclusion from the CZR rules is limited to purchasers who are natural persons, because only a natural person can have a principal place of residence or a relative.
44. **The phrase "principal place of residence" is used differently in ss 11(1)(mb)(ii) and 5(15) (see [35]). In s 11(1)(mb)(ii), it is the purchaser's intention for the land at the time of settlement that is relevant, rather than the land's existing use in the hands of the vendor as it is under s 5(15).**
45. While a person can have only one principal place of residence for their own occupation at any one time (that is, their main residence), s 11(1)(mb)(ii) also includes the situation where a purchaser acquires land intended to be used as a principal place of residence of a relative.

### ***When is a purchaser's intention determined?***

46. To know whether a supply involving land must be compulsorily zero-rated, the vendor needs to know how the purchaser intends to use any goods supplied **(including the land)**. **The purchaser's intention at settlement** for the goods (including the land) is relevant for the purposes of s 11(1)(mb)(i) and (ii) (see s 11(8B)). It also forms the basis of the statements made by the purchaser when

they notify the vendor about their intentions at settlement for the goods (including the land) for the purpose of s 78F(2).

47. Usually **the purchaser's immediate intention** for the use of the goods (including the land) once they have acquired them (ie, at settlement) will provide the best indication of how the goods (including the land) will be used for the purposes of s 11(1)(mb). However sometimes, at settlement, a purchaser may have a well-developed overall plan for the use of the goods (including the land) that clearly evidences how they intend to use them. Where that plan provides a fair and reasonable result for **the purchaser's** intended use of the goods (including the land), it may be an appropriate indicator of how the goods (including the land) will be used for the purposes of s 11(1)(mb). This interpretation is consistent with the scheme of the Act, in particular with the apportionment rules and the requirement to make an initial adjustment under s 20(3J) based on intended use and possible subsequent adjustments if actual use changes from what was intended (see ss 20(3J) and 21 to 21H).
48. Where s 11(1)(mb) applies to zero rate the supply, s 20(3J) directs the purchaser to make an apportionment adjustment when acquiring a supply of goods and services for making mixed supplies (that is, for making some taxable supplies and some non-taxable supplies). Section 20(3J)(a)(ii) requires the purchaser to apply s 20(3G) to estimate how they intend to use the goods or services at acquisition.
49. Section 20(3G) requires the purchaser to use an approach that leads to a fair and reasonable result: :

(3G) In determining the extent to which goods or services are used for making taxable supplies, **a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result.** The determination is expressed **as a percentage of the total use.**

[Emphasis added]

### **When should a purchaser make output tax adjustments for non-taxable use?**

50. Purchasers who acquire goods (including land) that have been compulsorily zero-rated under s 11(1)(mb) may need to make output tax adjustments to account for any non-taxable use of the acquired goods. Adjustments may need to be made:
- when the goods (including land) are acquired (s 20(3J)(a)); and
  - in later adjustment periods under the apportionment rules in ss 21 to 21H (s 20(3J)(b)).
51. At the time the compulsorily zero-rated goods are acquired, under s 20(3J)(a) the purchaser must **identify the "nominal GST component" that would have been chargeable** if the supply of goods had been standard-rated. This is done by adding GST at the standard rate to the agreed consideration for the supply. The purchaser is then required to determine the extent to which they intend to use the goods acquired for making taxable supplies and calculate the proportion of the nominal GST component for any non-taxable use of the goods. The non-taxable use proportion of the nominal GST component is an amount of output tax and must be accounted for by the purchaser in their GST return for the period the supply is attributed to (see s 20(4)).
52. To determine the intended non-taxable use of the goods acquired (including land) the purchaser needs to estimate at the time of acquisition how they intend to use the goods, choosing a determination method that produces a fair and reasonable result (see s 20(3G)).

53. Further output or input tax adjustments may be needed under the apportionment rules in subsequent adjustment periods (see ss 21 to 21H). This is done by comparing the intended use of the goods (including land) as determined at the time of acquisition against the actual use of the goods at the end of an adjustment period. Adjustments may not be required where the amounts involved are small (see s 21(2)).
54. Adjustments may be required under s 21E for the concurrent use of land where the purchaser is using the same area of land for making concurrent taxable and non-taxable supplies.

### **What if the parties agree to treat the supply as a supply of a going concern?**

55. The parties to a compulsorily zero-rated supply including land can also agree to treat the supply as the supply of a taxable activity as a going concern. This is because s 11(1)(m) (the going concern rule) and s 11(1)(mb) (the CZR rule) can both apply to the same supply. The application of s 11(1)(mb), which is an objective test, does not exclude the application of s 11(1)(m), or vice versa.
56. However, where both s 11(1)(m) and s 11(1)(mb) do apply to the same supply then the GST-registered purchaser may still need to make an output tax adjustment under s 20(3J). This is because a s 20(3J) adjustment needs to be considered whenever s 11(1)(mb) applies to a supply. The application of s 11(1)(m) in that situation does not prevent an adjustment under s 20(3J).

### **What are the vendor's obligations under the CZR rules?**

57. When making a supply wholly or partly consisting of land, the vendor has to determine whether the correct GST treatment of the supply is that it must be zero-rated under s 11(1)(mb). To do this, the vendor must be aware of their own GST-registration status at settlement as well as that of the purchaser (or their nominee). The vendor should be notified by the purchaser (or their nominee) about the **recipient of the supply's** registration status and their intentions for the goods (including land) being supplied. The vendor is entitled to rely on **the purchaser's** notice to standard-rate or zero-rate the supply, as appropriate (see s 78F(3)). This entitlement is intended to make it easier for the vendor to determine their GST treatment of the supply. If the **purchaser's most recent written notice to the** vendor indicates that the conditions in s 11(1)(mb) are or will be met at settlement, the vendor should generally zero-rate the supply. If the notice indicates otherwise, the vendor should generally standard-rate the supply. While **the vendor is not required to rely on the purchaser's notice, in the Commissioner's** view, a vendor should only depart from a **purchaser's** s 78F notice if they know at settlement the departure will result in the correct GST treatment being applied to the supply at settlement. The Commissioner considers this situation will not be common because mostly the vendor should be able to rely on the information **provided in the purchaser's notice.**
58. If the vendor incorrectly standard-rates or incorrectly zero-rates a supply, corrections to the GST treatment of the supply will need to be made (both by the vendor and the purchaser). (See further at [78].)

### **What happens if the purchaser does not provide the required information?**

59. If the purchaser refuses to or does not provide the required information about their GST-registration status and their intentions for the goods acquired (including land), it is recommended the vendor standard-rates the transaction, unless the vendor is

confident at settlement the CZR rules will apply to the supply and that zero-rating is the correct GST treatment of the supply. By standard rating the supply in this situation the vendor ensures that any GST payable for the supply is accounted for by the vendor at the appropriate time. If it is subsequently found that the supply should have been zero-rated, then the GST cash flows can be corrected.

### ***What are the vendor's record-keeping requirements?***

60. Under s 75(3B), even where a supply is compulsorily zero-rated, the vendor must keep sufficient records to enable the following details in relation to the supply to be determined:
- the name and address of the purchaser;
  - the GST-registration or tax file number of the purchaser (if known);
  - a description of the land; and
  - the consideration paid for the supply.
61. Where the vendor makes the supply to an agent for an undisclosed principal (the purchaser) they must keep sufficient records to be able to ascertain the name, address and GST registration or tax file number of the agent. In turn, the agent needs to keep sufficient records to do the same for the principal (see ss 75(3C) to 75(3E)).

### **What happens if the GST treatment is incorrect?**

62. **Sometimes, for a variety of reasons, a vendor's GST treatment of a transaction involving land may be incorrect. For example, a purchaser's circumstances might change and they fail to notify the vendor of the change before settlement, or a purchaser might enter into an agreement on the basis they will not be GST-registered, but it transpires that, in fact, they will be or should have been GST-registered at or before the settlement date. Sometimes, the Commissioner will back-date a person's GST registration.** The consequences of an incorrect GST treatment depend on whether the mistake is discovered before or after settlement. The general rules for correcting incorrectly rated land transactions are summarised in the table at [83].

### ***What happens if either party's circumstances change?***

63. For a supply to be zero-rated, the conditions for zero-rating in s 11(1)(mb) must be satisfied at the time of settlement. However, under the time of supply rules in s 9, often a vendor needs to determine whether the supply is standard-rated or zero-rated before settlement.
64. **The vendor's decision whether to zero-rate the supply is based on their knowledge of their GST-registration status and the information provided in the purchaser's notice to them. Sometimes after contracting but before settling the transaction, the vendor's or the purchaser's plans or GST-registration status may change. In the Commissioner's view, if the purchaser's intentions or status changes after they provide the s 78F notice to the vendor, the purchaser (or their nominee) should notify the vendor in writing of any relevant changes before settlement so the vendor may reconsider whether the CZR rules apply. (Often this might also be a contractual requirement in the sale and purchase agreement.) The vendor should also advise the purchaser before settlement of any change in their GST-registration status from that notified in the sale and purchase agreement.**

65. For example, when the purchaser entered into the sale and purchase agreement they may have notified the vendor that they expected to be GST registered at the time of settlement. The vendor relies on the **purchaser's** notice and zero-rates the transaction when the deposit is paid (that is, at the time of supply under s 9(1)). However, after the time of supply but before settlement, the purchaser nominates a third person (the nominee) to settle the transaction. (For CZR purposes, the purchaser or the nominated person (the nominee) must provide the s 78F notice about the **nominee's circumstances** (see s 78F(5)).) In this example, this means that an updated s 78F notice is required. The nominee notifies the vendor in writing they will not be a registered person at the time of settlement. The vendor must now standard-rate the supply. Conversely, a situation may arise where the parties become aware that at settlement a transaction should be zero-rated rather than standard-rated.
66. Changes in the GST treatment of a supply can affect the commercial pricing of the transaction. Whether this is the case will depend on the terms of the contract and **whether the consideration is stated as being inclusive of GST or "plus GST, if any"**. Also for a purchaser, the potential application of s 5(23) should be considered.
67. The time for testing the correct GST treatment of a compulsorily zero-rated supply is at the time of settlement (see s 11(8B)). Where the incorrect GST treatment was applied before settlement (for example, when the invoice was issued), the CZR rules do not require the parties to correct the treatment before the settlement date. However, if the mistake is discovered before settlement, voluntarily correcting the GST treatment prevents the GST treatment being incorrect at settlement and will also reduce any potential imposition of shortfall penalties (although the purchaser may still be liable to pay interest on any GST shortfall if a deposit was paid).

#### ***How can the vendor correct the GST treatment before settlement?***

68. Where the vendor incorrectly accounts for GST before settlement, voluntary corrections may be made **to the parties' tax** positions using the credit and debit notes mechanism in s 25. Credit and debit notes are used to adjust the tax payable on supplies in certain situations, including where s 11(1)(mb) is incorrectly applied to the treatment of the supply. A vendor issues a credit note when the tax charged on the tax invoice exceeds the actual tax charged on a supply (that is, when a supply is incorrectly standard-rated). A vendor issues a debit note when the actual tax exceeds the tax charged in the tax invoice for the supply (that is, when a supply is incorrectly zero-rated).
69. Where s 25 applies, and the vendor has accounted for an incorrect amount of output tax, the vendor is required to make an adjustment in the GST taxable period in which it became apparent that the output tax was incorrect.
70. A purchaser must make an adjustment if they have obtained a deduction for an amount of input tax that exceeds the output tax properly charged. The excess is deemed to be tax charged in relation to a taxable supply made by the purchaser. The supply is treated as having been made in the GST taxable period in which the purchaser:
- was issued with a credit note relating to the supply; or
  - received other notice or knowledge that the tax invoice they hold for the supply is incorrect.

*What happens if the supply was incorrectly standard-rated?*

71. If, before settlement, it is found that a supply was standard-rated when it should have been zero-rated, the vendor should correct their GST position in accordance with s 25. If the vendor has issued an invoice showing the supply as standard-rated the vendor must issue a credit note to the purchaser for the GST incorrectly charged on the supply (s 25(3)(a)). If the vendor furnished an incorrect return, the vendor should claim an input tax deduction for the GST output tax they incorrectly paid (s 25(2)(b)). Payment of any resulting refund may be withheld pending any review of the transaction by Inland Revenue (s 46). Inland Revenue may amend **the vendor's assessment to ensure** correctness.
72. The purchaser must account for output tax for an amount equal to any input tax deduction incorrectly obtained for the supply (s 25(4)). Depending on the underlying reason for the supply being incorrectly standard-rated, the purchaser may be liable for a shortfall penalty.

*What happens if the supply was incorrectly zero-rated?*

73. If, before settlement, a supply is zero-rated when it should have been standard-rated, the vendor should issue a debit notice to the purchaser (s 25(3)(b)) and pay the correct GST output tax for the supply (s 25(2)(a)). If GST-registered, the purchaser may be able to claim a deduction for a proportion of the input tax paid in relation to the supply subject to the ordinary rules.

**How can the vendor correct the GST treatment after settlement?**

74. Sometimes the correct GST treatment of a supply may not be established until after settlement. The consequences of correcting the GST treatment of a supply after settlement are set out below.

*What happens if the supply was incorrectly standard-rated?*

75. When a supply that should have been zero-rated is standard-rated and the GST output tax has been paid, the vendor may correct their treatment for GST purposes in accordance with s 25.
76. This correction is made by the vendor issuing a credit note to the purchaser for the GST incorrectly charged (s 25(3)(a)) and by claiming an input tax deduction for the GST output tax they incorrectly paid (s 25(2)(b)).
77. The purchaser must account for output tax for an amount equal to any input tax deduction incorrectly obtained for the supply (s 25(4)). Depending on the circumstances giving rise to the error the purchaser may be liable for shortfall penalties.

*What happens if the supply was incorrectly zero-rated?*

78. Where a supply is incorrectly treated by the parties as zero-rated instead of standard-rated (for example, **the purchaser's s 78F** notice was incorrect and the vendor relied on it) then in that situation s 5(23) applies. Under s 5(23) the purchaser is treated as though they were the vendor, making the purchaser liable for the GST output tax for the supply on the date of settlement. Section 5(23) states:

(23) If section 11(1)(mb) is treated as applying to a supply of goods and, after the date on which the relevant transaction is settled, it is found that the provision does not apply, the



recipient of the supply is treated as if they were a supplier making, on the date of settlement, a supply of those goods that is chargeable with tax under section 8(1).

79. The value of the supply made under s 5(23) is equal to the consideration for the original supply (s 10(7B)). (For GST purposes, the consideration for the original supply is the full purchase price, even if the amount in the sale and purchase agreement is described as being GST inclusive). The supply is treated as being made at the date of settlement. The purchaser must include the GST output tax in their relevant GST return. The purchaser may be liable to pay interest on the unpaid amount along with any applicable shortfall penalties.
80. A purchaser who is treated as a supplier under s 5(23) and who is not GST registered on settlement date is treated as if they were registered at the date of settlement, and they must apply for registration (see s 51B(4)). If they fail to apply, the Commissioner may register them (see s 51(4)(b)).
81. The purchaser cannot claim an input tax deduction for any deemed supply made under s 5(23), unless they are entitled to remain GST registered or they become registered for GST at a later date and use the relevant goods for making taxable supplies (see s 20(4B)).
82. Once GST is accounted for under s 5(23), the purchaser may request that the Commissioner cancel their GST registration (see s 51B(5)). Usually a person cancelling their registration must account for output tax on any goods and services forming part of the assets of a taxable activity carried on by the person (see s 5(3)). However, under s 51B(6), the rule in s 5(3) does not apply, if:
  - the person seeks cancellation of their registration by the end of the taxable period in which they have accounted for output tax under s 5(23); or
  - the Commissioner agrees **with the person's application that** s 5(3) should not apply.



### Summary of rules for correcting incorrectly rated land transactions

83. The following table summarises the rules for correcting the GST treatment of incorrectly rated land transactions:

Treatment of supply	BEFORE SETTLEMENT OF TRANSACTION		AFTER SETTLEMENT OF TRANSACTION	
	Vendor	Purchaser	Vendor	Purchaser
<b>Supply treated as standard-rated when it should have been zero-rated</b>	<p>Vendor issues a credit note under s 25(3)(a).</p> <p>If the vendor has furnished an incorrect return, the vendor should claim an input tax deduction for the GST output tax they incorrectly paid (s 25(2)(b) and s 20(3)).</p>	<p>If the purchaser has obtained an input tax deduction, the purchaser makes a s 25(4) adjustment in the period they become aware the standard-rated treatment is incorrect.</p>	<p>Vendor issues a credit note under s 25(3)(a).</p> <p>If the vendor has furnished an incorrect return, the vendor should claim an input tax deduction for the GST output tax they incorrectly paid (s 25(2)(b) and s 20(3)).</p>	<p>If the purchaser has obtained an input tax deduction, the purchaser makes a s 25(4) adjustment in the period they become aware the standard-rated treatment is incorrect.</p>
<b>Supply treated as zero-rated when it should have been standard-rated</b>	<p>The vendor should issue a debit note (s 25(3)(b)) and pay the GST output tax for the supply (s 25(2)(a)).</p>	<p>If the purchaser is not GST registered, no adjustment is necessary.</p> <p>If the purchaser is GST-registered they may be entitled to an input tax deduction, but only <i>to the extent</i> the goods are intended to be used for making taxable supplies.</p>	<p>Where s 5(23) applies to the purchaser, the vendor is not required to make any correction.</p>	<p>The purchaser is liable for output tax under s 5(23) where the parties have incorrectly treated the supply as zero-rated.</p> <p>The purchaser is not entitled to an input tax deduction for tax paid under s 5(23), unless they are entitled to remain or later become GST-registered, and then only <i>to the extent</i> the goods will be used for making taxable supplies (s20(4B)).</p>

## Examples

84. The following examples illustrate how the CZR rules apply to common transactions involving land. They have been simplified to ensure the CZR principles are the focus of the examples. The examples include some GST inclusive transactions and some “plus GST, if any” transactions. This is to illustrate that different GST outcomes can arise for vendors and purchasers based on the different approaches to pricing. **If in doubt, parties should seek professional advice before agreeing the purchase price for a supply.**

### Example 1: Zero-rated supply of land to a purchaser’s nominee

85. Tidy Motors Limited is moving to bigger premises in Wiri and has agreed to sell its existing building to John. John intends to use the building as a place where he can carry on his joinery business. The agreement provides that the consideration for the supply includes any rates and body corporate fees previously paid by Tidy Motors Limited for the premises before settlement date, apportioned between Tidy Motors Limited and John at settlement.
86. When John agrees to purchase the new premises he completes the sale and purchase agreement as an individual. However, before settlement, he decides to nominate his company, Plane Joinery Limited, to be the actual purchaser. Accordingly, before settlement he notifies Tidy Motors Limited of this change and advises Tidy Motors Limited in writing that Plane Joinery Limited is GST registered, that the company intends using the premises for carrying on its business, and, as the purchaser is a company, no part of the premises will be a principal place of residence.
87. Under s 11(1)(mb), the supply of the premises must be zero-rated as the supply wholly or partly consists of land and:
- Tidy Motors Limited and Plane Joinery Limited are both GST registered;
  - the building will be used for the purpose of making taxable supplies; and
  - it will not be a principal place of residence for the purchaser, Plane Joinery Limited.
88. The sale of the premises is a supply of land and Tidy Motors Limited treats it as a zero-rated supply (including the apportioned rates and body corporate fees). Tidy Motors Limited makes sure sufficient records about the sale are retained to satisfy its record-keeping requirements. Plane Joinery Limited does not claim an input tax deduction because the supply was zero-rated.

### Example 2: Standard-rated supply of a new house

89. Big Sea Developers Limited is a GST-registered property developer in Papamoa. It is in the business of building and selling new homes and has developed a new subdivision. Sally, a GST-registered hairdresser, loves the seaside lifestyle and agrees to purchase a new house from Big Sea Developers Limited. She intends to live in the house but does not intend working from home. Sally makes sure she notifies Big Sea Developers in writing about how she intends to use the property before settlement date.
90. **Sally’s purchase of a new house** from Big Sea Developers should be standard-rated for GST. The supply of the house by the developer is a taxable supply because the **house forms part of the developer’s taxable activity**, so is not an exempt supply. The CZR rules do not apply to zero-rate the supply because, although Sally is GST

registered, she does not intend using the house to make taxable supplies and she will be using the house as her principal place of residence. Sally will not be entitled to claim a GST input tax deduction for the purchase because she will not be using the house in her taxable activity.

### Example 3: Standard-rated supply of bare land

91. Stephen, a GST-registered property developer, purchases land in his own name from a GST-registered vendor to build a three-storey building. The lower two levels **of the new building will be used as Stephen's business premises and the top level** will be used as a residence for his son. The supply of the bare land will not be zero-rated because at settlement Stephen intends using part of the land as a principal place of residence for his son. Stephen completes Schedule 2 to the sale and purchase agreement ensuring the vendor knows about his intentions for the land before the settlement date. The supply of the land for the residence is not a separate supply under s 5(15) because the vendor is simply supplying bare land and not an existing principal place of residence to Stephen. The supply will be standard-rated.
92. Stephen may claim GST input tax deductions but only to the extent the land will be used for making taxable supplies (see ss 20(3) and 20(3C)).
93. If Stephen purchases the bare land through his development company rather than in his own name, the CZR rules would likely apply to zero-rate the supply, as **Stephen's son cannot be a relative of the company. The company cannot** intend using part of the land as its principal place of residence. In that case, on acquisition, the company would need to make an output tax adjustment under s 20(3J) for the intended non-taxable use of the land and, subsequently, would need to consider whether any further adjustments are needed at the end of each adjustment period under ss 21 to 21D.

### Example 4: Supply of land, business and dwelling

94. Dylan owns a garden centre in Levin that he is selling to his neighbour Sharon. The agreement provides for all of the business assets to be transferred to Sharon, including the garden centre land, the shop, and a small house and garden that Dylan and his family built when they established the business. Dylan has not treated the house and its curtilage as part of his taxable activity.
95. Both Dylan and Sharon are GST registered. Sharon advises Dylan in writing that she intends using the garden centre assets for the purpose of making taxable supplies. Sharon intends carving off some of the garden centre land adjoining her existing house next door to the garden centre to build a private garage. She also **plans to convert Dylan's house into a café, so no** one will be living in the house after settlement.
96. Under s 5(15), where a supply includes a principal place of residence, the supply of the principal place of residence is deemed to be a separate supply from the supply of any other real property included in the supply. Accordingly, the supply of **Dylan's home and curtilage needs to be treated separately from the supply of the** rest of the garden centre assets for GST purposes.
97. Under s 11(1)(mb), the whole of the remaining supply of garden centre assets (that is, other than the house and curtilage) must be zero-rated as the supply wholly or partly consists of land and:
  - Dylan and Sharon are both GST registered;

- Sharon intends using at least some of the garden centre assets for making taxable supplies; and
  - Sharon does not intend to use the land acquired as a principal place of residence for herself or for any of her relatives.
98. **The supply of Dylan’s house and curtilage to Sharon is not subject to GST** because they never formed part of his taxable activity. Sharon may claim a **second-hand goods input tax deduction for the purchase of Dylan’s house and curtilage** because she will be using them in her taxable activity for making taxable supplies (see s 20(3)(a)(ia)).
99. Dylan returns the sale of the garden centre assets (other than his house and curtilage) as a zero-rated supply, and makes sure he keeps sufficient records about the sale to satisfy the record-keeping requirements.
100. Even though Sharon does not intend to use all the garden centre assets for making taxable supplies, the whole remaining supply of the garden centre assets (that is, other than the house and curtilage) must be zero-rated.
101. On acquisition, Sharon estimated (using a method that produces a fair and reasonable result (s 20(3G)) that she intends using 20% of the remaining garden centre land for her private purposes. On that basis, under s 20(3J), she calculated she needed to pay \$30,000 output tax. Sharon accounts for the output tax in her return. Sharon then, in the future, needs to consider making further adjustments under the apportionment rules, if her actual use of that land is different from her intended use (s 20(3J)(b)).

**Example 5: Correcting an incorrectly standard-rated supply before settlement – plus GST, if any**

102. Max, a GST-registered vendor, agrees to sell land to Geoff for \$500,000 plus GST, if any. Geoff informs Max in writing that he does not expect to be GST registered at the time of settlement and has no intention of using the land for taxable purposes.
103. Before settlement, Max issues a tax invoice on the basis that the supply is standard-rated and GST of \$75,000 is chargeable on the supply. The invoice triggers the time of supply, and Max pays \$75,000 output tax.
104. Following the time of supply but before settlement, Geoff advises Max again in writing that his circumstances have changed and he will be registered for GST at the time of settlement, will use the land for making taxable supplies, and will not **use the land as his or his relative’s principal place of residence**. On this basis, the supply should be zero-rated at settlement. The parties want the correct GST position to be achieved before settlement. Therefore, Max issues a credit note to Geoff under s 25 and makes an input tax deduction of \$75,000 for the amount of GST output tax already paid (s 20(3)(a)(iii)). (Note: payment of any resulting refund may be withheld pending settlement (s 46) to ensure the correct treatment has been adopted).
105. **Settlement occurs and Geoff pays Max \$500,000. Geoff’s first return period ends** after settlement. Geoff claims no input tax deduction for the supply because it is a zero-rated supply.

### **Example 6: Correcting an incorrectly zero-rated supply before settlement – plus GST, if any**

106. Tamati, a GST-registered property developer, agrees to sell land to Graeme, who is not registered for GST, for \$1 million plus GST, if any. In the sale and purchase agreement, Graeme specified that on settlement he would be registered for GST, would acquire the property with the intention of using it for making taxable supplies, and would **not use it as his or his relative's principal place of residence**. Therefore, the parties treat the supply as zero-rated under the CZR rules.
107. Before the date of settlement, Tamati issues an invoice, triggering the time of supply. Since Tamati treats the transaction as zero-rated, he does not pay any GST output tax.
108. Following the time of supply but before settlement, Graeme informs Tamati that his circumstances have changed and that he will not be registered for GST at the date of settlement. As a result, the correct GST treatment of the transaction is to standard-rate the supply.
109. The parties want the correct amount of GST to be paid before settlement. Tamati issues a debit note under s 25 to Graeme showing the GST on the supply and pays GST output tax of \$150,000. Graeme pays Tamati the \$150,000 of GST but since Graeme is not registered for GST, he claims no input tax deduction for the purchase.

### **Example 7: Correcting an incorrectly zero-rated supply before settlement – GST-inclusive contract**

110. Troy, a GST-registered property developer, agrees to sell land to Gary, who is not registered for GST, for the GST-inclusive price of \$1 million. In the sale and purchase agreement, Gary advises that on settlement he will be registered for GST, will acquire the property with the intention of using it for making taxable supplies, and will not use it as his or any **relative's principal place of residence**. Therefore, the parties treat the supply as zero-rated under the CZR rules.
111. Before the date of settlement, Troy issues an invoice, triggering the time of supply. Since Troy treats the transaction as zero-rated, he does not pay any GST output tax.
112. Following the time of supply but before settlement, Gary informs Troy in writing that his circumstances have changed and that he will not be registered for GST at the date of settlement. As a result, the correct GST treatment of the transaction is to standard-rate the supply.
113. The parties want the correct amount of GST to be paid before settlement. As the parties agreed the purchase price includes GST, Troy issues a debit note under s 25 to Gary showing the GST tax fraction on the supply. Troy pays GST output tax of \$130,435. This reduces the purchase price Troy receives for the sale to \$869,565 (GST exclusive). Since Gary is not registered for GST, he claims no input tax deduction for the purchase.

### **Example 8: Correcting an incorrectly standard-rated supply after settlement**

114. Padma, a GST-registered vendor, agrees to sell land to Brent for \$200,000 plus GST, if any. Brent informs Padma in writing that he does not expect to be registered for GST at the time of settlement and does not intend to use the land for taxable purposes.

115. Before settlement, Padma issues a tax invoice showing GST of \$30,000 for the supply. The invoice triggers the time of supply and Padma pays the output tax. The parties settle the transaction.
116. Shortly after settlement, Brent is investigated by Inland Revenue and it is determined that, in fact, he has been carrying on a taxable activity and should have been GST registered since before he entered in to the sale and purchase agreement with Padma. His GST registration is backdated to before settlement. Since settlement Brent has been using the land for making taxable supplies and not as his **(or his relative's)** principal place of residence. This means that at the time of settlement, all conditions in s 11(1)(mb) for zero-rating were actually satisfied, so the supply should have been zero-rated rather than standard-rated.
117. On being advised of the incorrect treatment, Padma issues a credit note under s 25 and claims an input tax deduction for the \$30,000 output tax she paid before settlement in the return for the taxable period during which it became apparent that the output tax is incorrect. Padma also makes sure she keeps sufficient records about the sale to satisfy the record-keeping requirements for zero-rated supplies involving land. Since Brent has no input tax deduction, he is not required to make any adjustment when he receives the credit note.

### **Example 9: Correcting an incorrectly zero-rated supply after settlement**

118. Isla agrees to acquire land for a GST-inclusive price of \$1 million. In the notice provided to the vendor, Isla indicates she is registered for GST, intends using the land for making taxable supplies and will not use the land as her own or any **relative's principal place of residence**. On the basis of **Isla's** information, the vendor zero-rates the supply.
119. The transaction is settled on 1 March 2016. However, after settlement it is determined Isla should not have been registered for GST at settlement as she was not carrying on taxable activity. As a result, the supply was wrongly treated by the parties as being zero-rated. The notice provided by Isla, and relied on by the vendor, was incorrect. The supply should have been standard-rated.
120. In those circumstances, under s 5(23), Isla is treated as making a supply of the land on 1 March 2016 (the date of settlement) and she is required to account for GST output tax on the supply at the standard rate. Isla is treated as if she is registered at the date of settlement and she must apply for registration under s 51(2) (see s 51B(4)). If Isla does not register herself, under s 51(4) the Commissioner will register her.
121. Isla must include the GST output tax based on the value of the supply in her GST return. In this case the value of the supply is an amount equal to the consideration for the original supply (see [79]). For GST purposes, the consideration is \$1 million, even if described as a GST-inclusive amount. Therefore the GST output tax Isla must pay is:
- $$\text{\$1 million} \times 15\% = \text{\$150,000}$$
122. Isla is not able to claim an input tax deduction on the payment made under s 5(23) as this is denied by s 20(4B).
123. In the same taxable period in which Isla accounts for the output tax under s 5(23), she does not make any other taxable supplies. Therefore, under s 51B(5) she asks the Commissioner to cancel her registration. The Commissioner confirms **that Isla's**

deregistration relieves her from paying any additional tax on deregistration under s 5(3) (see s 51B(6)(a)).

### **Example 10: Correcting a non-taxable supply after settlement**

124. John and Kim have subdivided their lifestyle block into five sections. They are not registered for GST, and have recently just sold their first section privately to their neighbour Grant, who is GST-registered. The parties entered into a standard form sale and purchase agreement. Grant correctly completed the s 78F schedule to the sale and purchase agreement. He notified John and Kim that at settlement his intention was to use the land for making taxable supplies and he did not intend to use the land as his principal place of residence.
125. At settlement no GST was charged on the sale and Grant was preparing to claim a second hand goods deduction for the purchase price when Inland Revenue became aware of the transaction. It became apparent John and Kim should have been GST registered given their subdivision activities. Accordingly, John and Kim were registered with effect from when they began the subdivision activity. As a result, the sale of the section to Grant should have been zero-rated under s 11(1)(mb). This means Grant cannot claim a second hand goods deduction for the purchase.

## **References**

### **Subject references**

*Compulsory zero-rating of land  
Goods and services tax*

### **Legislative references**

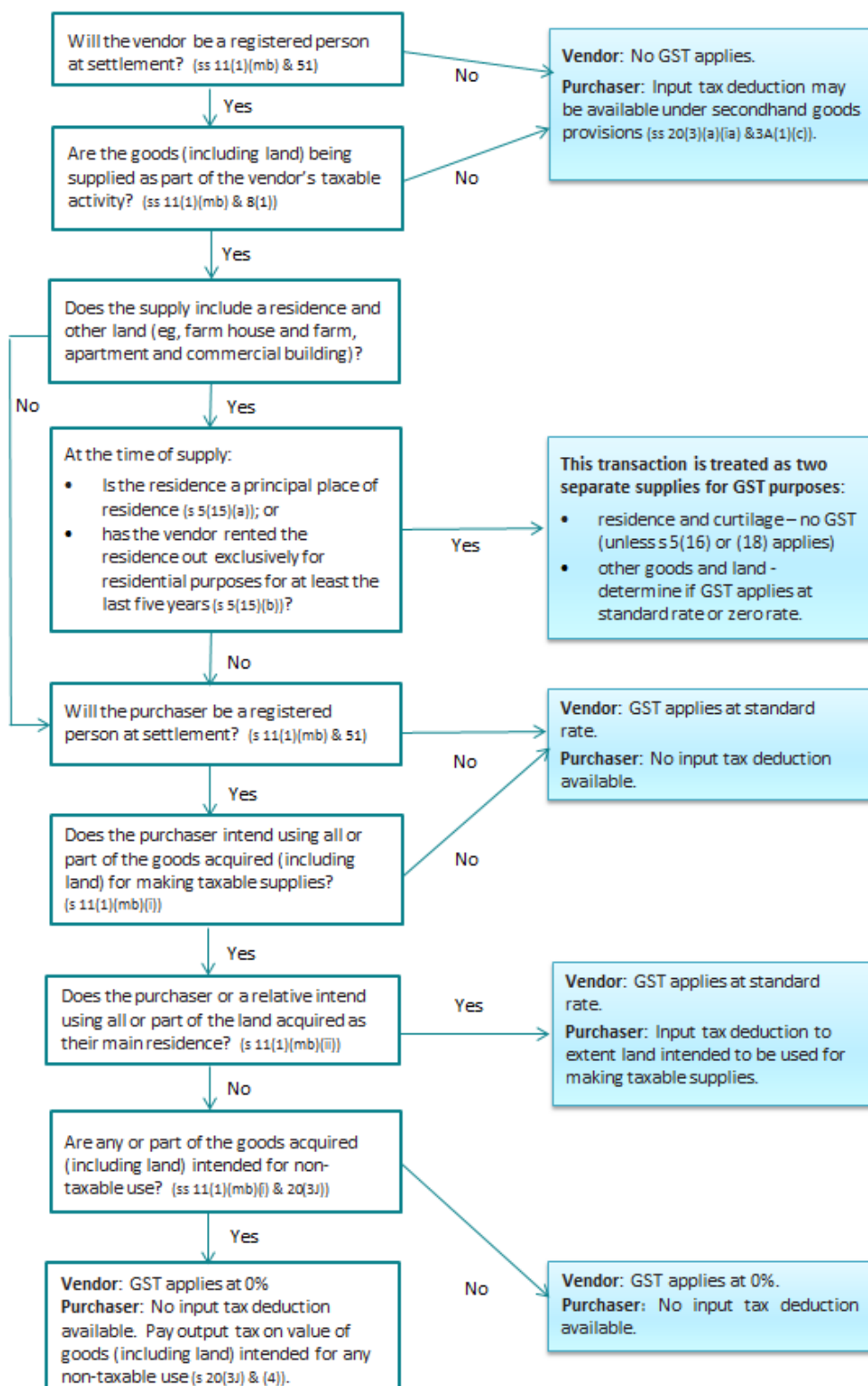
*Goods and Services Tax Act 1985, ss 2(1) (definitions of "land" and "zero-rating of land rules"), 2A(1)(c), 5(15) and (22) to (24), 11(1)(m) and (mb), (8B), and (8D), 14(1)(d), 20(3C), (3J), (3G), and (4B), 21 to 21H, 25, 51B(4) to (6), 60B(6), 75(3B) to (3D), and 78F*

### **Case references**

*Y & P NZ Limited v Wang [2017] NZCA 280  
Y & P NZ Limited v Wang [2017] NZSC 126*



## Appendix 1: Flowchart to determine if a supply including land is compulsorily zero-rated



## Appendix 2: Legislation

### Goods and Services Tax Act 1985

1. The term “land” is defined in s 2 for the purposes of the zero-rating of land rules:

**land**, in the zero-rating of land rules, —

- (a) includes—
  - (i) an estate or interest in land:
  - (ii) a right that gives rise to an interest in land:
  - (iii) an option to acquire land or an estate or interest in land:
  - (iv) a share in the share capital of a flat-owning or office-owning company, as defined in section 121A of the Land Transfer Act 1952:
- (b) does not include—
  - (i) a mortgage:
  - (ii) a lease of a dwelling:
  - (iii) [Repealed]

2. The term “zero-rating of land rules” is defined in s 2:

**zero-rating of land rules** means sections 5(24), 11(1)(mb), 60B(6), 75(3B), and 78F.

3. Section 2A(1)(c) provides:

(1) In this Act, associated persons or persons associated with each other are—

...

- (c) two persons who are—
  - (i) connected by blood relationship:
  - (ii) connected by marriage, civil union or de facto relationship:
  - (iii) connected by adoption:
  - (iv) [Repealed.]

4. Section 5(2) provides:

(2) For the purposes of this Act, where any goods acquired (whether in terms of a hire purchase agreement or otherwise) or produced by a person (that person being referred to hereafter in this subsection as the first person) are sold, under a power exercisable by another person (that person being referred to hereafter in this subsection as the second person), in or towards the satisfaction of a debt owed by the first person, those goods shall be deemed to be supplied in the course or furtherance of a taxable activity carried on by the first person (being deemed a registered person), unless—

- (a) the supply of those goods would not be a taxable supply if those goods were sold by the first person (notwithstanding that the first person may not be the owner of those goods) and the first person has furnished to the second person a statement in writing stating fully and correctly the reasons why that supply would not be a taxable supply; or
- (b) where the second person has not been notified as described in paragraph (a), that person may determine, in relation to any reasonable information held, that the supply of those goods would not have been a taxable supply if those goods had been sold by the first person (notwithstanding that the first person may not be the owner of those goods).

5. Section 5(15) provides:

(15) When either of the following supplies are included in a supply, they are deemed to be a separate supply from the supply of any other real property that is included in the supply:

- (a) a supply of a principal place of residence:
- (b) a supply referred to in section 14(1)(d).

6. Section 5(16) provides:

(16) Where a registered person has claimed a deduction in accordance with section 20(3) in respect of the supply of a dwelling, any subsequent supply by the registered person of—

- (a) the dwelling; or

- (b) any land or other part of the dwelling that has ceased or will by reason of the supply cease to be appurtenant to or enjoyed with the dwelling,—

will, for the avoidance of doubt but subject to subsections (17), (18), and (19)(b), be deemed to be a taxable supply.

7. Section 5(22) provides:

- (22) In relation to a supply to which subsection (2) applies, if the supply by the first person would be zero-rated under section 11(1)(mb), the second person must zero-rate the supply in the same way.

8. Section 5(23) provides:

- (23) If section 11(1)(mb) is treated as applying to a supply of goods and, after the date on which the relevant transaction is settled, it is found that the provision does not apply, the recipient of the supply is treated as if they were a supplier making, on the date of settlement, a supply of those goods that is chargeable with tax under section 8(1).

9. Section 5(24) provides:

- (24) If a supply that wholly or partly consists of land is made, and the supply includes the provision of services, the supply of the services is treated as a supply of goods for the purposes of section 11(1)(mb).

10. Section 11(1)(m) provides:

**11 Zero-rating of goods**

- (1) A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:

...

- (m) the supply to a registered person of a taxable activity, or part of a taxable activity, that is a going concern at the time of the supply, if—
  - (i) the supplier and the recipient agree that the supply is the supply of a going concern, and their agreement is recorded in a document; and
  - (ii) the supplier and the recipient intend that the supply is of a taxable activity, or part of a taxable activity, that is capable of being carried on as a going concern by the recipient; or

11. Section 11(1)(mb) provides:

**11 Zero-rating of goods**

- (1) A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:

...

- (mb) the supply wholly or partly consists of land, being a supply—
  - (i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and
  - (ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or

12. Section 11(8B) and (8D) provides:

- (8B) Whether a supply of goods is zero-rated under subsection (1)(mb) is determined at the time of settlement of the transaction relating to the supply.

...

- (8D) For the purposes of the zero-rating of land rules,—

- (a) a supply that is an assignment or surrender of an interest in land is a supply under subsection (1)(mb) if it meets the requirements set out in that subsection and paragraph (b) does not apply;
- (ab) a supply that is a surrender of a right to a payment under an agreement for the supply of an interest in land is a supply under subsection (1)(mb) if the supply of the interest in land meets the requirements set out in that subsection;
- (b) a supply of an interest in land that meets the requirements of subsection (1)(mb), and is made under an agreement providing for periodic payments for supplies of the interest in land, is not a supply under that subsection for the purposes of a payment for the supply paid or payable under the agreement if—

- (i) each amount payable under the agreement that is not a regular payment is anticipated, when the agreement is entered, to be 25% or less of the consideration specified in the agreement (the term consideration) for all supplies of the interest in land during the period referred to in subparagraph (iv); and
  - (ii) the payment, if not a regular payment, is 25% or less of the term consideration; and
  - (iii) each amount that is paid or payable before the payment, and is not a regular payment, is 25% or less of the term consideration; and
  - (iv) the term consideration is treated as being the amount of consideration calculated under the agreement for supplies anticipated to be made during a period that is the longer of 1 year and the shortest possible fixed term of the agreement:
- (c) a supply by a person who is the lessee under a lease agreement is a supply under subsection (1)(mb), despite paragraph (b), if—
- (i) the supply is to a person who is not the lessor supplying an interest in land under the lease agreement to the lessee; and
  - (ii) **the supply is made under an arrangement that involves the lessee's** surrender of the interest in land to the lessor and the supply by the lessor of the interest in land under another lease agreement to a person other than the lessee; and
  - (iii) the supplies of the interest in land under the lease agreements meet the requirements set out in subsection (1)(mb):
- (d) a registered person who is a non-profit body that is resident in New Zealand and acquires goods is treated, to the extent to which the person acquires the goods with an intention of using them other than for making exempt supplies, as acquiring the goods with the intention of using them for making taxable supplies.

13. Section 14(1)(d) provides:

**14 Exempt supplies**

- (1) The following supplies of goods and services shall be exempt from tax:
- ...
- (d) the supply, being a sale, by any registered person in the course or furtherance of any taxable activity of—
- (i) any dwelling; or
  - (ii) the reversionary interest in the fee simple estate of any leasehold land,—
- that has been used by the registered person for a period of 5 years or more before the date of the supply exclusively for the making of any supply or supplies referred to in paragraph (c) or paragraph (ca):

14. Section 20(3C)(a) provides for the apportionment of input tax deductions on acquisition:

- (3C) For the purposes of subsection (3), and if subsections (3D) or (3L) do not apply,—
- (a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:

15. Section 20(3J) provides for an output tax adjustment on acquisition of compulsorily zero-rated goods/land:

- (3J) For a supply to which section 11(1)(mb) applies, the recipient must,—
- (a) on acquisition,—
    - (i) identify the nominal amount of tax (the **nominal GST component**) that would be chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in section 8(1); and
    - (ii) determine the extent to which they intend to use the goods or services as described in subsection (3G); and
    - (iii) treat as output tax, for attribution to a taxable period under section 20(4), an amount that is the same proportion of the nominal GST component as the proportion of the use of the goods and services that is non-taxable use; and

- (b) for later adjustment periods, make adjustments under the apportionment rules set out in sections 20G and 21 to 21H in relation to the taxable supply referred to in paragraph (a).

16. Section 20(4B) provides:

**20 Calculation of tax payable**

...

- (4B) A person who is treated under section 5(23) as a supplier of goods under section 11(1)(mb) is denied a deduction under subsection (3) in relation to the supply. However, this subsection does not apply to a person required to account for tax under section 5(23) who is either a registered person or later becomes a registered person and uses the relevant goods for making taxable supplies.

17. Section 25 provides a mechanism for issuing credit and debit notes:

**25 Credit and debit notes**

- (1) This section shall apply where, in relation to the supply of goods and services by any registered person,—
  - (a) that supply of goods and services has been cancelled; or
  - (aa) the nature of that supply of goods and services has been fundamentally varied or altered; or
  - (ab) section 11(1)(mb) was incorrectly applied to the treatment of the supply, so that the supply was either zero-rated when it should not have been, or not zero-rated when it should have been; or
  - (b) the previously agreed consideration for that supply of goods and services has been altered, whether due to the offer of a discount or otherwise; or
  - (c) the goods and services or part of those goods and services supplied have been returned to the supplier,—  
and the supplier has—
    - (d) provided a tax invoice in relation to that supply and as a result of any 1 or more of the above events, the amount shown thereon as tax charged on that supply is incorrect; or
    - (e) furnished a return in relation to the taxable period for which output tax on that supply is attributable and, as a result of any 1 or more of the above events, has accounted for an incorrect amount of output tax on that supply.
- (2) Where a supplier has accounted for an incorrect amount of output tax as specified in subsection (1)(e), that supplier shall make an adjustment in calculating the tax payable by that supplier in the return for the taxable period during which it has become apparent that the output tax is incorrect, and if—
  - (a) the output tax properly charged in relation to that supply exceeds the output tax actually accounted for by the supplier, the amount of that excess shall be deemed to be tax charged on a taxable supply made by that supplier and be attributable to the taxable period in which the adjustment is to be made, and not attributable to any prior taxable period:
  - (b) the output tax actually accounted for exceeds the output tax properly charged in relation to that supply, that supplier shall make a deduction under section 20(3) of the amount of that excess.
- (3) Subject to this section, where a tax invoice has been provided as specified in subsection (1)(d), and—
  - (a) the amount shown as tax charged on that tax invoice exceeds the actual tax charged in respect of that supply, the supplier shall provide the recipient with a credit note, containing the following particulars:
    - (i) the words “credit note” in a prominent place;
    - (ii) the name and registration number of the registered person;
    - (iii) the name and address of the recipient;
    - (iv) the date on which the credit note was issued;
    - (v) either—
      - (A) the amount of consideration for that supply contained in the tax invoice referred to above, the correct amount of consideration for the supply, the difference between those 2 amounts, and the tax charged

- in respect of that supply to the extent that it relates to the amount of that difference; or
- (B) where the tax charged in respect of the supply is the tax fraction of the consideration, the difference referred to above in this subparagraph and a statement that that difference includes a charge in respect of the tax:
- (vi) [Repealed]
- (vii) a brief explanation of the circumstances giving rise to the issuing of the credit note:
- (b) the actual tax charged in respect of that supply exceeds the tax charged shown on the tax invoice, the supplier shall provide the recipient with a debit note, containing the following particulars:
- (i) the words "**debit note**" in a prominent place:
- (ii) the name and registration number of the registered person:
- (iii) the name and address of the recipient:
- (iv) the date on which the debit note was issued:
- (v) either—
- (A) the amount of consideration for that supply contained in the tax invoice referred to above, the correct amount of consideration for the supply, the difference between those 2 amounts, and the tax charged in respect of that supply to the extent that it relates to the amount of that difference; or
- (B) where the tax charged in respect of the supply is the tax fraction of the consideration, the difference referred to above in this subparagraph and a statement that that difference includes a charge in respect of the tax:
- (vi) [Repealed]
- (vii) a brief explanation of the circumstances giving rise to the issuing of the debit note:
- provided that—
- (c) it shall not be lawful to issue more than 1 credit note or debit note for the amount of the excess:
- (d) if any registered person claims to have lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked "**copy only**":
- (e) a supplier shall not be required to provide a recipient with a credit note pursuant to paragraph (a) in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of the recipient taking up a prompt payment discount offered by the supplier and that the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice:
- (f) in the case of a supply to which subsection (1)(ab) applies, a credit note may not be issued after 7 years from the date of settlement of the transaction relating to the supply.
- (3A) Where a recipient, being a registered person, creates a document containing the particulars specified in this section and purporting to be a credit note or a debit note in respect of a supply of goods and services made to the recipient by a supplier, being a registered person, that document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under subsection (3) where—
- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or class or classes of recipients in relation to the supplies or class or classes of supplies to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this subsection applies; and
- (c) a copy of any such document is provided to the supplier and another copy is retained by the recipient:
- provided that—

- (d) where a credit note is issued pursuant to this subsection, any credit note issued by the supplier in respect of that supply shall be deemed not to be a credit note for the purposes of this Act:
  - (e) where a debit note is issued pursuant to this subsection, any debit note issued by the supplier in respect of that supply shall be deemed not to be a debit note for the purposes of this Act.
- (3B) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or class of supplies, and that it would be impractical to require that a credit note or a debit note be issued pursuant to this section, the Commissioner may determine that, subject to any conditions that the Commissioner may consider necessary,—
- (a) any 1 or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or
  - (b) a credit note or, as the case may be, a debit note is not required to be issued.
- (3C) Notwithstanding anything in subsection (3) where, in relation to any taxable supplies, or a class or classes of taxable supplies, made by a supplier to a recipient, or a class or classes of recipients,—
- (a) the supplier has provided, in terms of section 24, 1 or more tax invoices to a recipient in respect of those taxable supplies; and
  - (b) the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of those taxable supplies to a recipient,—
  - (c) the Commissioner may determine in respect of any recipient, or class or classes of recipients, that, subject to any conditions that the Commissioner may consider necessary, the supplier may issue 1 credit note or debit note to each recipient with respect to those tax invoices.
- (4) Where any recipient, being a registered person, has been issued with a credit note pursuant to subsection (3)(a), or has been notified, or otherwise knows that any tax invoice which that registered person holds is incorrect as a result of any 1 or more of the events specified in any of paragraphs (a), (aa), (ab), (b), and (c) of subsection (1), and has made a deduction of any amount of input tax in any taxable period in respect of that supply of goods and services to which the credit note or that notice or other knowledge, as the case may be, relates, the amount of the excess referred to in subsection (3)(a) shall be deemed to be tax charged in relation to a taxable supply made by the recipient attributable to the taxable period in which the credit note was issued, or that notice or, as the case may be, other knowledge was received, to the extent that the input tax deducted exceeds the output tax properly charged.
- (5) Where any recipient, being a registered person, has been issued with a debit note pursuant to subsection (3)(b), and has made a deduction of any amount of input tax in any taxable period in respect of that supply of goods and services to which that debit note relates, the recipient shall make a deduction under section 20(3) of the amount of the excess referred to in subsection (3)(b) in the taxable period in which the debit note is issued, to the extent that the output tax properly charged exceeds the input tax deducted.
- (6) Where any amount of tax charged is required to be shown on any credit note or debit note, and that amount consists of any number of dollars and cents together with any fraction or part of a cent, that fraction or part of that cent,—
- (a) if less than or equal to half of that cent, may be disregarded for the purposes of this section:
  - (b) if in excess of half of that cent, shall be deemed for the purposes of this section to be an amount equal to 1 cent.

18. Section 51B(4) to (6) provides:

- (4) For the purposes of this Act, in relation to a supply to which section 11(1)(mb) applies, a recipient who is treated as a supplier under section 5(23)—
  - (a) is treated as registered from the date of the supply under section 5(23); and
  - (b) must apply under section 51(2) to the Commissioner for registration.
- (5) A person who is treated as registered under subsection (4)(b) may ask the Commissioner to cancel their registration under section 52(2) once they have accounted for output tax as required under section 5(23).
- (6) For the purposes of subsection (5), section 5(3) does not apply if—
  - (a) the person seeks cancellation of their registration by the end of the taxable period in which they have accounted for the output tax under section 5(23); or



- (b) the Commissioner so determines, on application by the person.

19. Section 60B(1) and (6) provides:

- (1) This section applies when a person (**person A**) enters into a contract to supply goods and services to another person (**person B**), and person B directs person A to provide the goods and services to a nominated person (**person C**) who is not party to the contract.
- ...
- (6) Despite subsections (2) to (4), for a supply that wholly or partly consists of land, the supply is treated as made by person A to person C.

20. Section 75(3B) to (3E) provides:

- (3B) For the purposes of section 11(1)(mb), the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:
- (a) the name and address of the recipient; and
- (b) the registration number of the recipient; and
- (c) a description of the land; and
- (d) the consideration for the supply.
- (3C) Subsections (3D) and (3E) apply when a supply that wholly or partly consists of land is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal.
- (3D) The requirements of subsection (3B)(a) and (b) are met if the supplier maintains sufficient records to enable the particulars of the [[name, and address, and registration number or tax file number, as applicable]] of the agent to be ascertained.
- (3E) The agent must maintain sufficient records in relation to the undisclosed principal to enable the name, address, and, if the principal is a registered person or expects to be a registered person, the registration number of the principal to be ascertained.

21. Section 78F provides:

**78F Liability in relation to supplies of land**

- (1) This section applies in relation to a supply that wholly or partly consists of land.
- (2) At or before settlement of the transaction relating to the supply, the recipient is required to notify the supplier as to whether, at the date of settlement,—
- (a) they are, or expect to be, a registered person; and
- (b) they are acquiring the goods with the intention of using them for making taxable supplies; and
- (c) they do not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c).
- (2B) For the purposes of subsection (2)(a), a recipient who is a registered person, or who expects to be a registered person, must provide their registration number to the supplier at or before the date of settlement.
- (3) The supplier may rely on the information provided as required by subsection (2) in determining the tax treatment of the supply.
- (4) For the purposes of section 5(2), the notice referred to in subsection (2) must be provided to the second person referred to in section 5(2).
- (5) For the purposes of section 60B and a contract for a supply that wholly or partly consists of land, when the person who enters the contract (**person B**) nominates another person (**person C**) to receive the supply, the requirements of subsection (2) are met if—
- (a) person B provides the required information as it relates to their expectation of the circumstances of person C;
- (b) person C provides the required information.
- (6) When a supply is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal, the requirements of subsection (2) are met if the agent notifies the supplier as to whether, at the date of settlement, the principal as recipient—
- (a) is, or expects to be, a registered person; and
- (b) is acquiring the goods or services with the intention of using them for making taxable supplies; and

- (c) does not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c).
- (7) When a supply is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal, the agent must provide their registration number to the supplier at or before the date of settlement. If the agent does not have a registration number, their tax file number may be provided in its place. On meeting the requirements of this subsection, the person is treated as having met the requirements of subsection (2B).

## **Tax Administration Act 1994**

22. Section 14C provides:

### **14C Applying or notifying**

- (1) This section applies when a provision in this Act, the Income Tax Act 2007, or the Goods and Services Tax Act 1985 refers to or describes person A—
  - (a) applying to person B for something;
  - (b) notifying person B about something.
- (2) Person A may communicate—
  - (a) by electronic means, if person A complies with the provisions of the Electronic Transactions Act 2002, for an item of information delivered in a way referred to in section 14F; or
  - (b) in print and delivered in a way referred to in section 14F, whether the document is handwritten, typewritten, or otherwise visibly represented, and whether copied or reproduced on paper; or
  - (c) in another manner permitted by the Commissioner.
- (3) However, communication under this section does not include communication on the internet or by other electronic means, if person B is not directly alerted to the communication in some manner.
- (4) Section 14E may apply to override the application of this section.