

## **INTERPRETATION STATEMENT: IS 18/04**

### **GOODS AND SERVICES TAX – SINGLE SUPPLY OR MULTIPLE SUPPLIES**

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

#### **Contents**

Summary .....	1
Introduction .....	5
Analysing supplies involving boundary issues.....	6
Rights embedded in shares.....	6
Warranty services provided to a non-resident warrantor.....	6
Supplies including residences.....	7
Whether the supply should be treated as a single composite supply.....	7
What is the true and substantial nature of what is supplied to the recipient?.....	9
What are the relationships between the elements supplied?.....	10
Is it reasonable to sever the elements into separate supplies? .....	13
GST treatment of a single composite supply .....	14
Some supplies of land must be zero-rated .....	14
Other supplies may be partly zero-rated.....	14
Otherwise, GST treatment follows dominant element .....	15
GST treatment of multiple separate supplies.....	15
Examples .....	15
Example 1 – Services supplied to overseas students to help them to move to New Zealand....	15
Are the pre-arrival services separate zero-rated supplies?.....	15
Example 2 – Tablet provided as part of mortgage promotion .....	16
Is the supply of the tablet subject to GST? .....	16
Example 3 – Tablet available at reduced price as part of mortgage promotion.....	16
Is the supply of the tablet subject to GST? .....	17
Example 4 – Theatre tickets purchased on credit card and credit card surcharge.....	17
Is the credit card surcharge a separate supply?.....	17
Example 5 – Residential accommodation and cleaning services .....	17
Are the cleaning services subject to GST?.....	18
Example 6 – Loyalty points with a credit card .....	18
Should any of the services be exempt as a separate supply of financial services? .....	18
Example 7 – Treatment of transitional services supplied as part of the sale of a business (that includes the supply of land).....	19
References .....	21
Appendix – Legislation .....	22
Goods and Services Tax Act 1985.....	22

#### **Summary**

1. This Interpretation Statement updates and replaces “IS 17/03: Goods and services tax - Single supply or multiple supplies” *Tax Information Bulletin* Vol 29, No 4 (May 2017): 102.
2. A registered person who enters into a contract with a recipient to supply several goods and services needs to determine what sort of supply or supplies they have made so they can correctly account for GST. Where multiple elements are

supplied with potentially different GST treatments, the supplier must determine whether they have made a single composite supply (of all the elements) with a single GST treatment, or multiple separate supplies (of each element or a combination of elements) with different GST treatments.

3. In some cases, it may be clear from the contract that only a single element is supplied to the recipient. Boundary issues do not arise on the supply of a single element.
4. Boundary issues may arise where multiple elements are supplied together. Boundary issues arise where some elements of the supply are subject to GST at the standard rate and other elements are zero-rated, exempt or not subject to GST at all. If the GST treatment of each element of the supply is the same then boundary issues do not arise.
5. Sometimes the Act deems supplies of multiple elements to be treated in a particular manner (for example, ss 5(20B), 5(20) and 5(15)). Where the Act does not deem a particular outcome, the arrangement actually entered into and carried out between the supplier and recipient must be carefully considered. The answers to the following questions may help a registered person to decide whether they have made one composite supply or multiple separate supplies:
  - What is the true and substantial nature of what is supplied to the recipient for their payment?
  - What are the relationships between the elements supplied?
  - Is it reasonable to sever the elements into separate supplies?
6. The first question requires a registered person to identify the true and substantial nature of what is supplied to the recipient. This is determined objectively and examines what is supplied **from the recipient's perspective**.
7. The fact elements supplied to the recipient could have been supplied separately does not mean those elements should be severed from the rest of the supply. In addition, the fact a single price is charged to the recipient does not determine whether one or more than one supply is made. It is the actual supply made to the recipient that must be considered and not how the supply is invoiced or charged to the recipient.
8. In considering the second question, namely the relationships between the different elements supplied, the courts consider whether one element is merely ancillary or incidental to, or a necessary or integral part of, any other element of **the transaction**. The phrases "ancillary or incidental to" and "necessary or integral part of" are different descriptions of a similar test. The facts of each case will determine which description is more appropriate. Factors that indicate that elements are ancillary or incidental to, or a necessary or integral part of, a dominant element include whether the element is:
  - not an aim in itself; instead, the element facilitates, contributes to, or enables the supply of the dominant element;
  - a means of better enjoying the dominant element;
  - an optional extra and is not in any real or substantial sense part of the consideration for which a payment is made.



9. The third question to answer is whether a sufficient distinction exists between the different elements of a transaction to make it reasonable to sever them into separate supplies. This question requires taking an overall view and looking for the essential purpose of the transaction and not artificially splitting what, from an economic point of view, is a single supply. If, on an objective assessment, it is not reasonable to sever the different elements of the transaction, then there will be only one composite supply.
10. If there is one composite supply, the zero-rating provisions may apply to zero-rate part or all of the supply. The compulsory zero-rating of land provisions may mean the supply is zero-rated if it includes land: s 11(1)(mb). Additionally, despite being a single composite supply, part of the supply may be required to be zero-rated: ss 11, 11A, 11AB or 11B. If the zero-rating provisions do not apply, the GST treatment will follow the dominant element of the supply. If there is no dominant element (for example, the supply is made up of several equally important elements that are integral to each other), the GST treatment will be determined by the overall characteristics of the single composite supply.
11. If there are multiple supplies, the relevant provisions of the Act are applied to each supply. Where the recipient pays a global amount for multiple supplies with different GST treatments, the consideration is apportioned under s 10(18) between taxable supplies and non-taxable or exempt supplies.
12. The process is summarised in the following flowchart. The flowchart is intended to be an aid to interpretation only. A more detailed discussion of the process follows the flowchart:



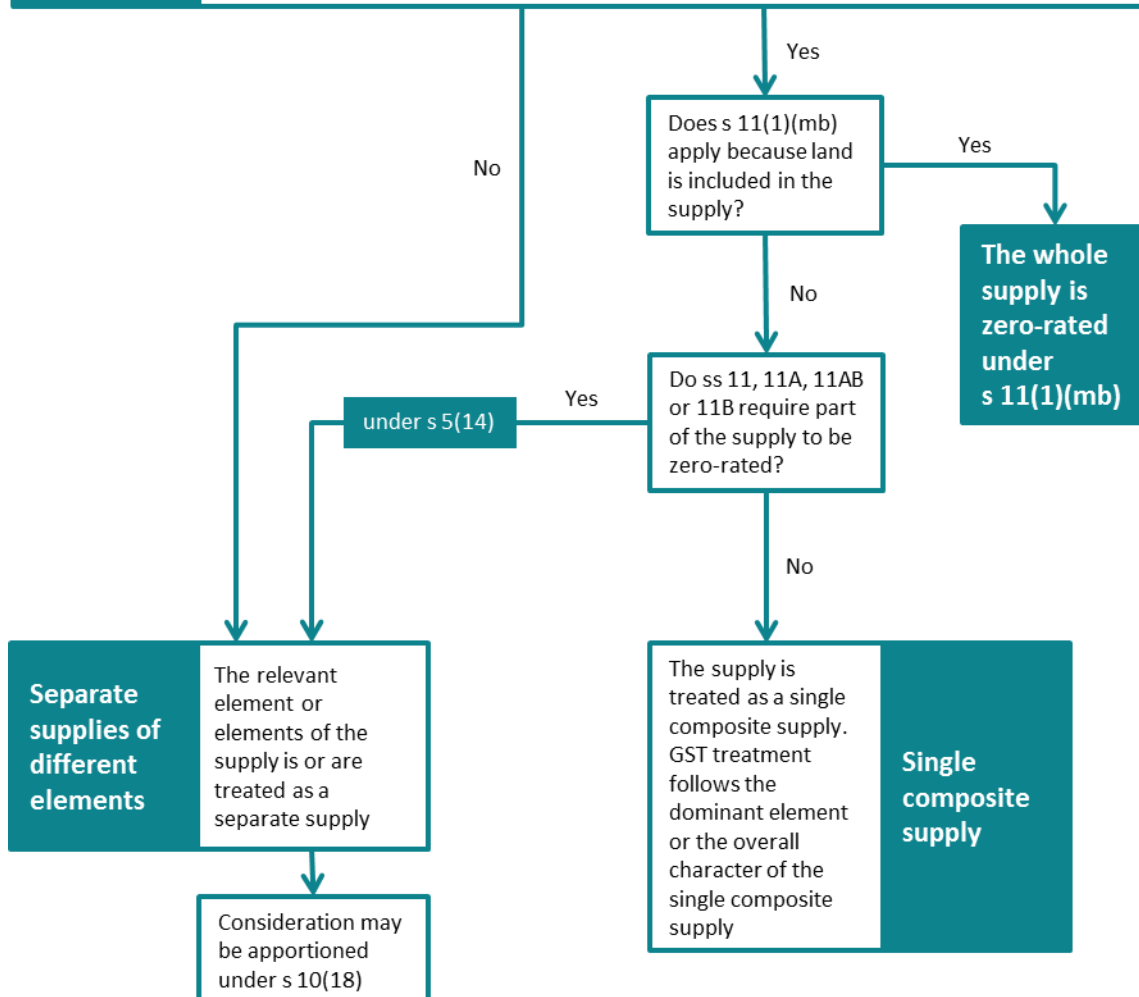
**This flowchart applies only if:**

- your transaction contains more than a single element
- you have a “boundary issue”
- you have applied any relevant specific deeming provisions, for example: 
  - s 5(14B): Rights embedded in shares
  - s 5(20): Warranty services provided to a non-resident warrantor
  - s 5(15): Supplies of residences

**Analyse the transaction from a typical customer’s point of view**

**Should all or some of the elements contained in the transaction be treated as a “single composite supply”? Consider:**

- What is the true and substantial nature of what is supplied to the recipient?
- What are the relationships between the elements supplied?
  - Is one element ancillary or incidental to another?
  - Is one element necessary or integral to another?
- Is it reasonable to sever the elements into separate supplies?
  - Take an overall view; look for the essential purpose of the transaction and do not “artificially split” what is from an economic perspective a single supply.



## Introduction

13. GST is imposed on the supply of goods and services in the course or furtherance of a taxable activity carried on by a registered person by reference to the value of the supply: s 8(1). **Supply is defined broadly to include "all forms of supply":** s 5(1). Supplies can be subject to GST at the standard rate, or be zero-rated, exempt or not subject to GST. Issues can arise where different elements of a supply are potentially subject to different GST treatments. These issues are referred to as "boundary issues".
14. Boundary issues arise only where multiple elements are supplied. Contracts for the supply of a single element do not raise boundary issues. Boundary issues primarily arise where some elements of the supply are subject to GST at the standard rate and other elements are zero-rated, exempt or not subject to GST. If the GST treatment of each element of the supply is the same, then boundary issues do not arise. Unlike other jurisdictions, New Zealand has relatively few boundary issues.
15. Where multiple elements are supplied with potentially different GST treatments, the supplier must determine whether they have made a single composite supply with a single GST treatment or multiple separate supplies with different GST treatments.
16. The single composite supply or multiple separate supplies issue arises in various scenarios. For example:
  - language schools – whether the supply of language tuition (standard-rated) is a separate supply from pre-arrival assistance services (zero-rated), which was considered in *Auckland Institute of Studies Ltd v CIR* (2002) 20 NZTC 17,685 (HC) and is discussed from [42];
  - credit card surcharges – whether the charge for paying by credit card (exempt) can be separated from the goods or services being paid for (standard-rated); and
  - loyalty cards – whether the supply of loyalty points (standard-rated) is a separate supply from the supply of credit card services (exempt).
17. The Commissioner considered specific single composite supply or multiple separate supplies issues in the following items:
  - "Financial Planning Fees – GST Treatment" *Tax Information Bulletin* Vol 13, No 7 (July 2001): 37 (IS0079). This statement addresses the GST treatment of financial planning fees charged to investors where the supply comprised exempt financial services and associated potentially standard-rated services.
  - "QB 12/07: Goods and Services Tax – Treatment of Transitional Services Supplied as Part of the Sale of a Business (that Includes the Supply of Land)" *Tax Information Bulletin* Vol 24, No 6 (July 2012): 65.
  - "Goods and Services Tax – GST and Retirement Villages" *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6 (IS 15/02). This statement addresses the GST treatment of taxable supplies of care services and accommodation in a commercial dwelling, and exempt supplies of financial services and accommodation in a non-commercial dwelling.

18. The purpose of this Interpretation Statement is to set out the general principles for determining whether a supply of multiple elements (supplied together in a single transaction) is a single composite supply or multiple separate supplies and to apply those principles to examples. The Commissioner considers that these general principles are consistent with those set out and applied in the items listed at [17].

### **Analysing supplies involving boundary issues**

19. Before reviewing how the courts have analysed boundary issues, it is necessary to consider whether any specific deeming provisions of the Act will apply.
20. The Act contains several provisions that prescribe how supplies must be treated. This means that irrespective of how the supply might be analysed under ordinary principles, the Act overrides this and specifies how the supply will be treated. This occurs, for example, in:
- s 5(14B) for rights embedded in shares;
  - s 5(20) for warranty services provided to a non-resident warrantor; and
  - s 5(15) for supplies including residences.
21. The application of these sections is discussed briefly in [22] to [29] below. This list is not exhaustive. Other provisions in the Act may have similar effects.

#### ***Rights embedded in shares***

22. Section 5(14B) was enacted (along with the definition of “associated supply” in s 2 and s 14(1B)) in response to the outcome in *CIR v Gulf Harbour Development Ltd* (2004) 21 NZTC 18,915 (CA) for supplies of equity securities and participatory securities (“shares”). *Gulf Harbour* is discussed from [31].
23. Section 5(14B) provides that if part of a supply of a share is the supply of a right to receive supplies of goods and services that are not exempt supplies, the supply of the right is treated as being a separate supply. This may mean the right is subject to GST rather than being an exempt financial service. For more information about s 5(14B), see “Goods and Services Tax – GST and Retirement Villages” *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6 (IS 15/02), [142]–[155].
24. If elements other than the shares (part of which is the right to receive non-exempt supplies) are supplied under the contract, those other elements must still be considered to determine whether there is a single composite supply or multiple separate supplies.

#### ***Warranty services provided to a non-resident warrantor***

25. Section 5(20) applies to the supply of services under a warranty covering imported goods. Commonly, two types of warranty cover imported goods:
- a factory warranty offered by the non-resident manufacturer to the importer; and
  - an extended warranty offered by the importer or distributor to the final consumer.

26. When the final consumer makes a claim on the warranty, the importer or distributor makes two supplies, namely, a supply of:
- goods and services to the final consumer; and
  - the service of remedying a defect under a factory warranty to the non-resident warrantor (zero-rated under s 11A(1)(ma)), who pays for the supply of that service.
27. Section 5(20) requires the supply of goods and services to the final consumer to be treated as the service of remedying a defect to the non-resident warrantor. It effectively ignores the supply of goods and services to the final consumer. This makes it more likely that the supply of warranty services by the importer or distributor can be zero-rated as a service supplied to a non-resident. For more information about ss 5(20) and 11A(1)(ma), see "**Zero-rating of Warranty payments**" *Tax Information Bulletin* Vol 14 No 11 (November 2002): 71.

### **Supplies including residences**

28. Section 5(15) deems a supply that includes a principal place of residence to be a separate supply from the supply of any other real property included in the supply. The section also applies to a dwelling that has been rented out by the vendor exclusively for accommodation for at least the preceding five years. For example, **when a farm (which includes the farmer's house and its surrounding curtilage) is sold**, s 5(15) provides that **the vendor's supply of the farmer's house and curtilage is a separate supply from the supply of the remainder of the farm**. The GST treatment of each supply is determined separately. Usually, the supply of the remainder of the farm must be zero-rated under s 11(1)(mb) while the supply **of the farmer's house and curtilage is not subject to GST because it is private and does not form part of the vendor's taxable activity**.
29. Once s 5(15) has been applied, the remaining elements (other than the principal place of residence or dwelling) supplied under the contract must still be considered to determine whether there is a single composite supply or multiple separate supplies.

### **Whether the supply should be treated as a single composite supply**

30. Once any relevant specific deeming provisions have been considered, the next step is to determine the nature of the supply. The approach of the New Zealand courts to identifying what has been supplied is to consider the true nature of the legal arrangements actually entered into and carried out by the supplier and the recipient in light of the surrounding circumstances: *Marac Life Assurance Ltd v CIR* (1986) 8 NZTC 5,086 (CA); *Gulf Harbour*.
31. In *Gulf Harbour*, the Court of Appeal emphasised the importance of identifying the true nature of the legal arrangements entered into between the supplier and the recipient when determining the GST consequences of a supply. In that case, the taxpayer supplied redeemable preference shares that included membership rights in a golf club (the rights were attached to the shares). The Commissioner argued the supply was of a golf club membership, so was subject to GST. Alternatively, the Commissioner argued that there were two supplies: a supply of a share and a supply of a golf club membership. The taxpayer argued that there was a single supply of a GST-exempt financial service (a share).

32. The Court of Appeal stated that the Commissioner’s argument (at [39]) “involves putting the contractual arrangement to one side and looking at what in substance [the suppliers] were supplying ...”. The Court of Appeal considered the Commissioner was incorrectly looking at what “in substance” was being supplied, instead of looking at the contractual arrangement. The Court considered the “true nature” of a transaction must be ascertained by a careful consideration of the legal arrangements actually entered into and carried out – not by an assessment of the broad substance of the transaction, measured by the results intended and achieved, or of the overall economic consequences.
33. The Court of Appeal held that the golf club membership rights attached to each share were incidents of the share and no independent source or origin of those rights existed. As a result, the Court found for the taxpayer and held that there was a single supply of a share. The Act was subsequently amended in response to this outcome for supplies of equity securities and participatory securities: ss 2 (definition of “associated supply”), 5(14B) and 14(1B).
34. Where it is unclear whether there is one composite supply or multiple separate supplies under the contract, the transaction must be analysed further to determine the issue. Case law has established numerous principles to assist in this enquiry.
35. The leading New Zealand decision considering whether there is a single supply or multiple supplies is the High Court decision in *Auckland Institute*. In *Auckland Institute*, Hansen J considered the GST treatment of supplies to international students studying in New Zealand. The taxpayer provided tuition services to students coming to New Zealand from overseas. An associated company provided pre-arrival services. The students paid a single “global fee” to the taxpayer for all supplies from both the taxpayer and the associated company. One of the issues before the Court was whether it was appropriate to split the supply to enable the pre-arrival services to be zero-rated.
36. Hansen J discussed the approach of the House of Lords in *Card Protection Plan v Customs & Excise Commissioners* [2001] 2 All ER 143. In that case, the House of Lords considered whether a credit card protection plan offered to cardholders was a single composite supply or two independent supplies comprising the supply of VAT-exempt insurance and a separate supply of VAT-chargeable card registration services. The House of Lords concluded the dominant supply was of VAT-exempt insurance and the supply of the card registration services was ancillary to the exempt supply. In *Auckland Institute*, Hansen J summarised the principles from *Card Protection Plan* for determining whether a supply could be separated into multiple supplies (at [32]):
- Every supply of a service must normally be regarded as distinct and independent.
  - A supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system.
  - The essential features of a transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.
  - There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.



- Even if a single price is charged which may indicate a single supply, it must still be considered whether the arrangements indicated that the customer intended to purchase two distinct services.
37. After reviewing all the relevant authorities, Hansen J summarised the principles for determining whether a supply could be separated into multiple supplies (with one or more differing GST treatments) (at [36]):
- [a] In determining whether a supply may be apportioned for GST purposes, it is necessary to examine the true and substantial nature of the consideration given to determine whether there is a sufficient distinction between the allegedly different parts to make it reasonable to sever them and apportion them accordingly.
  - [b] The enquiry is to determine whether one element of the transaction (or consideration given) is a necessary or integral part of another or whether it is merely ancillary to or incidental to that other element.
  - [c] A service will be ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.
38. Based on these principles, the Commissioner considers it helpful to ask three questions when analysing the transaction:
- What is the true and substantial nature of what is supplied to the recipient?
  - What are the relationships between the elements supplied?
  - Is it reasonable to sever the elements into separate supplies?
39. When answering these questions, it is important to consider the supply from the perspective of a typical customer.

***What is the true and substantial nature of what is supplied to the recipient?***

40. The first question requires a registered person to identify the essential features of the arrangement – the true and substantial nature of what is supplied to the recipient for their payment. In doing so, it is important to examine what is supplied from the point of view of a “typical customer”: *Card Protection Plan*. In *Auckland Institute*, Hansen J stated:
- [44] In my view, the attempt to characterise all of the services provided by International as a separate supply is based on a fundamental misconception. It overlooks **the need to examine the supply from the point of view of the consumer**. It focuses on the arrangements between AIS and International. **It fails to consider the true and substantial nature of the consideration given to the consumer**.
- [45] The importance of examining the services provided under the contract between the supplier and recipient emerges clearly from the decision of the Court of Appeal in *Wilson & Horton Ltd v C of IR* (1995) 17 NZTC 12,325. ... Richardson J observed at 12,328 that **the statutory scheme is directed to contractual arrangements between the supplier and the recipient of the supply** ... [Emphasis added]
41. The Commissioner considers that **the phrase “the true and substantial nature” does not refer to an “in substance” analysis of the arrangement between the supplier and the recipient. Instead, “the true and substantial nature of the consideration given to the consumer” refers to what the recipient paid for and was supplied with. It requires an examination of the supply from the recipient’s perspective. The true and substantial nature of what is provided to the recipient (the supply or supplies) is determined objectively: *British Airways plc v Customs & Excise Commissioners* [1990] STC 643 (CA).**

42. The relevant arrangement is the one between the supplier and the recipient. It is irrelevant that the supplier may arrange some other party to deliver the goods or services **to the recipient on the supplier's behalf**. This was the view taken in *Auckland Institute*. In that case, one member of a group of companies contracted with overseas students to provide tuition services. The tuition services were provided to the students by another company in the group. Hansen J concluded that whether a service could be supplied separately (by another entity or a third party) was irrelevant in determining whether a single supply was made. Hansen J focused on the supply actually made under the contract with the recipient – **"the true and substantial nature"** of what was supplied to the recipient.
43. In this step, the focus is not on what one of the parties subjectively considered the supply was, or could have been. The relevant perspective is to consider what was supplied to the **recipient as viewed objectively from the recipient's** perspective. The fact a single price is charged to the recipient does not determine whether one or more than one supply is made. It is the actual supply made to the recipient that must be considered and not how the supply is invoiced or charged.

### **What are the relationships between the elements supplied?**

44. It is also helpful to consider the relationships between the different elements supplied. The courts consider whether one element of the transaction is merely ancillary or incidental to, or a necessary or integral part of, any other element of the transaction. **The phrases "ancillary or incidental to" and "necessary or integral part of" are different descriptions of a similar test:** *C & E Commrs v United Biscuits (UK) Limited* [1992] STC 325 (Ct of Sess). The Court in that case noted that one description might be more appropriate for one set of facts and the other for a different set of facts. This view was echoed in *College of Estate Management v Customs & Excise Commissioners* [2005] UKHL 62, where the Court noted that the applicable test will depend on the facts of the case. If one element of the transaction is ancillary or integral to another (dominant) element of the transaction, then there will be a single composite supply, with the GST treatment of that supply following the dominant element.
45. Examples of elements that are ancillary or incidental to, or a necessary or integral part of, a dominant element include where the element is:
- not an aim in itself; instead the goods or services facilitate, contribute to, or enable the supply of the dominant part;
  - a means of better enjoying the dominant supply;
  - an optional extra and not in any real or substantial sense part of the consideration for which a payment is made.
46. In *Auckland Institute* Hansen J quoted from *Customs & Excise Commissioners v Wellington Private Hospital Ltd* [1997] STC 445 (EWCA) at 462, where Millett LJ noted that the issue is not whether one element is ancillary or incidental to, or even a necessary or integral part of, the whole, but whether one element is merely ancillary or incidental to, or a necessary or integral part of, any other element of the transaction. Hansen J stated (at [30]):

The issue is not whether one element of a complex commercial transaction is ancillary or incidental to, or even a necessary or integral part of, the whole, **but whether one element of the transaction is merely ancillary or incidental to, or a necessary or integral part of, any other element of the transaction.** The reason why the former is the wrong question is

that it leaves the real issue unresolved; whether there is a single or a multiple supply. **The proper inquiry is whether one element of the transaction is so dominated by another element as to lose any separate identity as a supply for fiscal purposes, leaving the latter, the dominant element of the transaction, as the only supply. If the elements of the transaction are not in this relationship with each other, each remains as a supply in its own right with its own separate fiscal consequences.** [Emphasis added]

47. Hansen J held that the pre-arrival services were ancillary or incidental to the principal supply of tuition services. Therefore, the supply of tuition services and pre-arrival services comprised a single supply of tuition services:
- [48] ...They are goods and services provided to enable it (or AIS) to better perform the services supplied to students. Students did not contract for the provision of those services. It may be argued that the students benefited from them but, as Richardson J pointed out in *Wilson & Horton*, that is not the test.
- ...
- [53] Notwithstanding the Commissioner's concession that pre-arrival services constitute a separate supply, I am of the view that **all of the services provided by International/AIS to students overseas are an integral part of the supply of tuition services.** In terms of the fourth of the propositions in the *Card Plan Protection* case, **I would regard those services as not constituting an aim in itself but as a means of better enjoying the principal service.** [Emphasis added]
48. Hansen J concluded (at [52] and [59]) that the pre-arrival services were ancillary and integral to the supply of tuition, because they facilitated the students undertaking a course of study.
49. Hansen J borrowed heavily from the United Kingdom VAT cases when deciding whether the pre-arrival services were ancillary or integral to the supply of tuition. Although the categories of goods and services that are exempt or zero-rated under the United Kingdom VAT legislation differ from those under the New Zealand legislation, Hansen J considered the approaches taken in the United Kingdom VAT cases to be of assistance.
50. In *College of Estate Management*, the College provided a distance-learning course and the necessary written materials to complete the course. The Court considered that the written materials were not ancillary to the provision of the course, but neither was the supply of the written materials an end in itself. Lord Rodger stated:
- [10] ... But, since the court envisages that the principal supply may itself comprise more than one element, plainly, in cases where there is no ancillary supply, a single supply may still be made up of more than one element. **So where a taxpayer is involved in a transaction in which he performs several services, none of which can be singled out as the dominant or principal supply, it may nevertheless be necessary to consider whether, for tax purposes, they are properly to be regarded as elements of a single supply.** The supply of restaurant services is one example (see *Faaborg-Gelting Linien A/S v Finanzamt Flensburg* C-231/94 [1996] All ER (EC) 656, [1996] ECR I-2395).
- [11] ... In the present case, however—leaving aside any allocation of a proportion of the price—it would be highly artificial, to say the least, to describe the printed materials as nothing more than a means for the students the better to enjoy the education supplied by the College. In reality, those materials were the means by which the students obtained most of their education.
- [12] **But the mere fact that the supply of the printed materials cannot be described as ancillary does not mean that it is to be regarded as a separate supply for tax purposes.** One has still to decide whether, as a matter of statutory interpretation, the College should properly be regarded as making a separate supply of the printed materials or, rather, a single supply of education, of which the provision of the printed materials is merely one element. ... **The question is whether, for tax purposes, these are to be treated as separate supplies or merely as elements in some over-arching single supply.** ... [Emphasis added]

51. Lord Walker stated:

[30] ... **But there are other cases** (including the *Faaborg* case [C-231/94 *Faaborg-Gelting Linien A/S v Finanzamt Flensburg* [1996] STC 774 (ECJ)], the *Dr Beynon* case [*Beynon and Partners v Customs & Excise Commissioners* [2004] UKHL 53] and the present case) **in which it is inappropriate to analyse the transaction in terms of what is 'principal' and 'ancillary'**, and it is unhelpful to strain the natural meaning of 'ancillary' in an attempt to do so. Food is not ancillary to restaurant services; it is of central and indispensable importance to them; nevertheless there is a single supply of services (see the *Faaborg* case). Pharmaceuticals are not ancillary to medical care which requires the use of medication; again, they are of central and indispensable importance; nevertheless there is a single supply of services (see the *Dr Beynon* case).

...

[32] ... **What the judge called 'a component part of a single supply' may be (in the fullest sense) essential to it—a restaurant with no food is almost a contradiction in terms, and could not supply its customers with anything—and yet the economic reality is that the restaurateur provides a single supply of services.** Without the need to resort to gnomonic utterances such as 'the medium is the message', the same sort of relationship exists between the educational services which the College provides to a student who takes one of its distance-learning courses and the written materials which it provides to the student. [Emphasis added]

52. The House of Lords considered that the written materials were the means by which the students obtained most of their education. Their Lordships implied that the written materials were of central and indispensable importance to the educational services. The written materials were necessary to complete the course. The Court concluded that the supply of the written materials was part of the overall supply of education services.

53. *College of Estate Management* was recently distinguished in *Metropolitan International Schools v Revenue & Customs Commissioners* [2015] UKFTT 517 (TC). In *Metropolitan International* the Court said (at [66]) that "an element that is not an end in itself ranks as an ancillary element. Ancillary elements generally contribute to the better enjoyment of the principal element". On the facts of *Metropolitan International*, from a recipient's point of view, there was a supply of VAT-exempt manuals with a separate supply of optional educational services (which would not lead to any qualification unless the recipient undertook exams with a third party). This can be compared with *College of Estate Management*, where the facts showed that the overall characteristic of the supply was educational services (leading to a formal qualification) with the additional supply of written materials being part of the supply of the educational services.

54. An example of minor or peripheral parts of a composite supply is seen in *Tumble Tots (UK) Ltd v Revenue & Customs Commissioners* [2007] EWHC 103 Ch. In this case, it was held there was a single supply of membership of a club that conferred on a child the right to attendance at classes involving structured physical play. Other benefits received on admission to membership (a DVD, a CD, a gym bag, a membership card, personal accident insurance for a child while attending a class, and a subscription for a magazine) were not separate supplies, but were peripheral, and ancillary, to the supply of membership. Briggs J considered that it was "a matter of common sense" that the fee was for membership of the club and not the other benefits of membership (at [27]). To conclude otherwise "would be to allow the tail to wag the dog" (at [29]).

### ***Is it reasonable to sever the elements into separate supplies?***

55. Finally, it is necessary to consider whether it is reasonable to sever the elements of a transaction into separate supplies. This test requires taking an overall view, without over-zealous dissection, and to look for the essential (or dominant) purpose of the transaction: *College of Estate Management* (per Lord Walker); *Card Protection Plan*. A supply that comprises a single service from an economic point of view should not be artificially split: *Card Protection Plan*.
56. Similarly, in *Auckland Institute*, Hansen J cites Tipping J's judgment in *CIR v Smiths City Group Ltd* (1992) 14 NZTC 9,140 (HC). In *Smiths City*, Tipping J noted (at 9,144) that the Court "must decide as a matter of fact and degree whether there is in the transaction under scrutiny a sufficient distinction between the allegedly different parts to make it reasonable to sever them and apportion accordingly". If, on an objective examination, it is not reasonable to sever the different elements of the transaction, then there will be one composite supply only.
57. It appears from the cases cited above that the "reasonable" test focuses on the essential purpose of the transaction and on the elements themselves (whether there is a sufficient distinction between the elements to make it reasonable to sever them and apportion accordingly) rather than on whether a separate amount is charged for the element in question or on how easily a global fee can be apportioned.
58. Further, one of the principles from *Card Protection Plan* for determining whether a supply could be separated into multiple supplies (as summarised in *Auckland Institute* (at [32]) is:

Even if a single price is charged which may indicate a single supply, it must still be considered whether the arrangements indicated that the customer intended to purchase two distinct services.

59. Hansen J also stated in *Auckland Institute* (at [61]):

**I do not see the fee structure as a decisive consideration** but I think it tends to confirm that the services which the plaintiff claims are covered by the overseas assistance fee are more realistically to be seen as among the costs which AIS incurs in providing tuition services. [Emphasis added]

60. Hansen J's comments relate to an argument by the Commissioner that as there was no material difference between the fees charged to domestic and overseas students, the fee structure confirmed that a separate supply of overseas assistance services was not made to students. Hansen J did not consider that the fee structure was determinative.

61. And in *Customs & Excise Commissioners v British Telecommunications Plc* [1999] BTC 5,273 (which was cited in *Auckland Institute of Studies*) Lord Slynn said:

**On the authorities it is clear that the fact that one 'package price' is charged without separate charge for individual supplies being specified does not prevent there being two separate supplies for VAT purposes. In my opinion the fact that separate charges are identified in a contract or on an invoice does not on a consideration of all the circumstances necessarily prevent the various supplies from constituting one composite transaction nor does it prevent one supply from being ancillary to another supply which for VAT purposes is the dominant supply.** Even though it may be desirable to approach each supply as if it were a separate supply and even though each supply in a composite transaction may be an independent separate

supply the **essential features of a transaction** may show that one supply is ancillary to another and that it is the latter that for VAT purposes is to be treated as the supply.  
[Emphasis added]

62. Lord Hope (also in *British Telecommunications*) similarly considered that in all cases the essential features of the transaction must be identified. All the circumstances of the transaction must be considered and no one factor will determine whether there is a separate supply. Whether a separate charge is made or whether a separate price can be identified, whether the service could be supplied separately or whether the supplies are “physically and economically dissociable” (for example, where there is a supply of goods and a supply of services and the price for each supply can be identified) are not determinative.

### **GST treatment of a single composite supply**

63. If it is determined that there is a single composite supply, it is still necessary to determine whether there are any other specific provisions in the Act that may apply. For example, the following matters need to be considered.

#### ***Some supplies of land must be zero-rated***

64. The first is whether the single composite supply includes land and must be 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 supply is made by a vendor who is a registered person to a purchaser who is a registered person;
  - the purchaser acquires the goods (including land) supplied with the intention of using them for making taxable supplies; and
  - the land included in the supply is **not intended to be used as the purchaser’s principal place of residence or the principal place of residence of a relative of the purchaser.**
65. If s 11(1)(mb) applies, the single composite supply must be zero-rated, regardless of whether the land is the dominant element of the supply.

#### ***Other supplies may be partly zero-rated***

66. Sections 11, 11A, 11AB and 11B provide that some taxable supplies must be zero-rated. While all the zero-rating provisions apply to “a supply”, some indicate that part of the supply can be zero-rated by using the words “to the extent that” or other equivalent wording. Where a provision of ss 11, 11A, 11AB or 11B requires part of a supply to be zero-rated, the different elements of a single composite supply may be subject to different GST treatments.
67. These different GST treatments are achieved through s 5(14). Section 5(14) applies when a supply is subject to GST at the standard rate but any of the provisions of ss 11, 11A, 11AB or 11B require part of the supply to be zero-rated. If s 5(14) applies, the zero-rated part is treated as being a separate supply. For **a more detailed discussion of s 5(14), see “IS 08/01: GST — Role of section 5(14) of the Goods and Services Tax Act 1985 in Regard to the Zero-rating of Part of a Supply” Tax Information Bulletin Vol 20, No 5 (June 2008): 8.**

### ***Otherwise, GST treatment follows dominant element***

68. If the provisions of ss 11, 11A, 11AB or 11B do not apply to the single composite supply, the GST treatment of that supply will follow the dominant element of the supply. If there is no dominant element (for example, the supply is made up of several equally important elements that are integral to each other), the GST treatment will be determined by the overall characteristics of the single composite supply.

### **GST treatment of multiple separate supplies**

69. If there are multiple separate supplies, the relevant provisions of the Act are applied to each supply. This means that it is necessary to consider each separately identified supply to determine whether any of the specific provisions (such as, for example, s 11(1)(mb)) apply.
70. In some situations, a recipient may pay a global amount for multiple supplies with different GST treatments (for example, taxable supplies and exempt supplies). Section 10(18) provides that GST should be calculated on that part of the consideration that is properly attributable to the taxable supply. This means the consideration must be apportioned between taxable supplies and non-taxable supplies or exempt supplies.

### **Examples**

71. The following examples illustrate how the law applies. All persons mentioned in the examples are GST registered.

#### **Example 1 – Services supplied to overseas students to help them to move to New Zealand**

72. Ecological Education Ltd offers education services to students in New Zealand. The education services are intended to provide students with a qualification in eco-management. Almost all of Ecological Education's students are from overseas. To help students moving to New Zealand, Ecological Education provides various pre-arrival services to the students while they are still overseas (for example, interpreting and translating services, assistance with immigration procedures and the completion of enrolment applications). Ecological Education charges the student a single fee for the tuition costs and the pre-arrival services.

#### ***Are the pre-arrival services separate zero-rated supplies?***

73. No. The pre-arrival services are part of a single composite supply of standard-rated education services, so are also standard-rated.
74. First, it is necessary to identify the supply by considering the true nature of the legal arrangements actually entered into and carried out by the supplier and the recipient in light of the surrounding circumstances. It is evident from the arrangement that Ecological Education supplies multiple elements, namely education services to the students in New Zealand, and various pre-arrival services to students while they are still overseas, all for a single fee.
75. To decide whether Ecological Education has made one composite supply or multiple separate supplies it is helpful to consider the true and substantive nature of what is supplied to the student **from the recipient's** (that is, **the student's**)

perspective. From the student's **point of view**, the dominant supply is of education services. Considering the relationship between the elements supplied, the pre-arrival services are ancillary or incidental to the supply of education services. The pre-arrival services are not aims in themselves, but are a means of better enjoying the education services. Accordingly, there is a single composite supply of education services that is subject to GST at the standard rate.

### **Example 2 – Tablet provided as part of mortgage promotion**

76. Andrew needs to obtain a mortgage of \$250,000 to purchase land for the expansion of his manufacturing business. He approaches New Bank, because of its recent mortgage promotion. He gets his mortgage approved and, as part of the mortgage promotion, he receives a new tablet.
77. If these were separate supplies, the mortgage would be an exempt supply of financial services under s 14(1)(a). The supply of the tablet would be a taxable supply under s 8.

#### ***Is the supply of the tablet subject to GST?***

78. No. The tablet is an incidental part of a single composite, exempt supply of the mortgage, so is also exempt from GST.
79. The true nature of the legal arrangement is a loan from New Bank to Andrew (secured by a mortgage over the land). The contract also includes a supply of goods from New Bank to Andrew. Therefore, New Bank supplies multiple elements to Andrew, namely a loan and a tablet. The question is whether these two elements are a single composite supply or multiple separate supplies. As with example 1, the nature of the supply has to be considered from the **recipient's** (that is, **Andrew's**) **perspective**.
80. Unlike example 1, the supply of the tablet cannot be considered ancillary to the supply of financial services, because it does not facilitate, contribute to or enable the supply of the dominant part of the transaction (the mortgage). The supply of the tablet does not directly affect the supply of the mortgage in any material sense.
81. However, the supply of the tablet is incidental, minor or peripheral to the dominant element of the supply. Andrew would not have entered into a mortgage simply to receive the tablet. Obtaining the tablet is not an aim in itself. **Andrew's aim is to obtain a mortgage**. Objectively, the supply of the tablet does not change or facilitate the dominant element, which is the mortgage. The supply of the tablet is also not sufficiently distinct from the supply of the mortgage to make it reasonable to sever and apportion the parts. It is the supply of the mortgage that triggers the supply of the tablet.
82. In this situation, there is a single composite, exempt supply of a mortgage. The supply of the tablet is an incidental or peripheral supply to the dominant supply of GST-exempt financial services. This means all elements of the supply under the agreement are exempt for GST.

### **Example 3 – Tablet available at reduced price as part of mortgage promotion**

83. As a variation to the facts of example 2, Andrew still needs to obtain a mortgage to purchase land for the expansion of his manufacturing business. He approaches



New Bank, because of its recent mortgage promotion. **New Bank's mortgage** promotion is that for new borrowings in the range of what Andrew wants to borrow, it is offering customers the opportunity to purchase for \$500 a new tablet valued at **\$1,500**. **Andrew's** mortgage is approved and, as part of the mortgage promotion, he takes up the opportunity to get a new tablet for \$500.

***Is the supply of the tablet subject to GST?***

84. Yes. The supply of the tablet is separate to the supply of the mortgage. Therefore, although the mortgage is exempt as the supply of financial services, the tablet is a taxable supply.
85. Unlike example 2, the tablet is not incidental to taking out the mortgage. **Obtaining the tablet was an aim in itself. While Andrew's primary aim was to obtain a mortgage, obtaining the new tablet was a separate objective.** As in example 2, the supply of the tablet does not change or facilitate the dominant element, which is the mortgage. However, in this case the supply of the tablet is sufficiently distinct from the supply of the mortgage to make it reasonable to sever and apportion the elements. The tablet was not part of the supply of the mortgage – it was separately pursued by Andrew for further consideration.

**Example 4 – Theatre tickets purchased on credit card and credit card surcharge**

86. To celebrate the expansion of his business, Andrew buys theatre tickets for all his employees. Andrew purchases the tickets from the theatre box office using his credit card. The theatre charges Andrew a credit card surcharge.

***Is the credit card surcharge a separate supply?***

87. No. The credit card surcharge is part of a single composite supply of standard rated theatre tickets.
88. The true nature of the legal arrangement is for the supply of multiple elements, namely theatre tickets and the facility to pay for those tickets by credit card, with each element itemised and charged for separately. It is necessary to consider whether there is any relationship between the supply of the tickets and the supply of the payment facility (being the facility to pay with a credit card). Viewing the arrangement between Andrew and the theatre **from Andrew's point of view**, the dominant supply is the supply of theatre tickets. While he is paying a surcharge for using his credit card, the dominant supply remains the supply of theatre tickets. **Andrew's ability to use his credit card is not an aim in itself.** The facility to pay by credit card is ancillary to the dominant supply of the theatre tickets, in the sense that it enables the supply to occur.
89. There is a single composite, taxable supply of theatre tickets. This means all the elements of the supply under the agreement are subject to GST.

**Example 5 – Residential accommodation and cleaning services**

90. **Andrew's parents are looking to move into a villa that is part of a retirement complex.** The villa stands alone and, **at this stage, Andrew's parents do not** require any care. When considering the options, Andrew convinces his parents that they should get the option offered by the retirement complex of having a cleaner come to the villa weekly.

91. If these are separate supplies, the supply of the right to live in the villa would be an exempt supply of residential accommodation under s 14(1)(c). The supply of the cleaning services would be a taxable supply under s 8.

***Are the cleaning services subject to GST?***

92. Yes. The cleaning services are a separate supply to the supply of the right to live in the villa.
93. The dominant supply is the right to live in the villa. In some respects, the cleaning services could be seen as ancillary or incidental to the right to live in the villa. However, in this case, the cleaning services are not necessary or incidental to the right to live in the villa – they are an extra service that not all recipients require. In this case, a separate amount is charged for the cleaning services. This fact may indicate multiple separate supplies, but it is not determinative. It must still be considered whether the arrangements indicate that **Andrew’s parents** intended to purchase two distinct services. **While Andrew’s parents’ primary aim** was to obtain the right to live in the villa, obtaining the cleaning services was a separate objective. In this case the supply of the cleaning services is sufficiently distinct from the supply of the right to live in the villa to make it reasonable to sever and apportion the elements.

**Example 6 – Loyalty points with a credit card**

94. Electronics Ltd (an electronics retail chain) operates a customer loyalty programme in its retail stores. Registered customers receive loyalty points for shopping at Electronics Ltd and these loyalty points entitle them to future discounts at Electronics Ltd.
95. New Bank wants to expand its credit card business. It decides to enter into an arrangement with Electronics Ltd. Under the terms of the arrangement, New Bank and Electronics Ltd intend to provide additional loyalty points in Electronics **Ltd’s loyalty programme** to registered customers who use the New Bank credit card to purchase goods from Electronics Ltd.
96. New Bank pays Electronics Ltd for services associated with promoting and maintaining the loyalty programme. These services include access to Electronics **Ltd’s** customer database, marketing the loyalty programme (including the provision of all marketing material), encouraging customers to use the New Bank credit card, managing all non-credit card aspects of the loyalty programme, accepting in-store account payments, assisting the retail stores to accept in-store account payments and provide loyalty points, and training the retail store employees on how the loyalty programme works.
97. Electronics Ltd wants to know how it should treat the services it supplies to New Bank for GST purposes.

***Should any of the services be exempt as a separate supply of financial services?***

98. No. The services are all part of a single composite supply of standard-rated marketing and promotional services.
99. The contract between New Bank and Electronics Ltd provides for the supply of several services from Electronics Ltd to New Bank. It is necessary to consider whether there is any relationship between the various services provided. The

focus must be on what is supplied to the recipient. The recipient of these services is New Bank, despite the fact some of the services are supplied directly to New Bank's customers (for example, answering questions about the loyalty programme).

100. The supply could be broken down into separate elements (some taxable at the standard rate and some exempt). However, this would not appropriately reflect what is supplied to the recipient, New Bank. The supply from Electronics Ltd to New Bank is a supply of all the elements. From New Bank's perspective, it has contracted with Electronics Ltd for the supply of all those elements as a single package of marketing and promotional services. It is helpful to consider the relationship between the different elements of the supply when deciding whether Electronics Ltd has made one composite supply or multiple separate supplies to New Bank.
101. The dominant element of the supply to New Bank is marketing and promotional services for the loyalty programme. While Electronics Ltd may, as part of that dominant element, be providing financial services, such as accepting account payments, these are ancillary to the dominant element when packaged together. This is because these parts of the supply are not aims in themselves. They are included so that New Bank can better enjoy the dominant element of the supply of marketing and promotional services. It is also helpful to consider the essential purpose of the transaction between New Bank and Electronics Ltd, namely, the provision of a single package of marketing and promotional services. It would not be reasonable to sever the elements of the transaction into separate supplies.
102. In this situation there is a single composite, taxable supply of marketing and promotional services. The GST treatment of the dominant element of the supply (marketing and promotional services) is a taxable supply at the standard rate. Therefore, the ancillary or incidental supplies are also taxable at the standard rate.

### **Example 7 – Treatment of transitional services supplied as part of the sale of a business (that includes the supply of land)**

103. "QB 12/07: Goods and Services Tax – Treatment of Transitional Services Supplied as Part of the Sale of a Business (that Includes the Supply of Land)" *Tax Information Bulletin* Vol 24, No 6 (July 2012): 65 provides an example of the application of the principles set out in this Interpretation Statement.
104. QB 12/07 considers whether transitional services provided by the vendor as part of the sale of a business (that includes the supply of land) will be part of a single composite supply and therefore zero-rated for GST purposes where:
  - the services and the sale of the business form part of the same contractual arrangement, and
  - the services are not provided for a separately identifiable consideration.
105. The examples consider two fact scenarios. The first scenario is where the vendor provides basic transitional services as part of the sale of the business. The vendor agrees to be onsite for a week from the day of transfer to show the purchaser how the business operates, to answer any questions that the purchaser has and to facilitate a smooth transfer of the business.

106. In this situation there is a single composite, zero-rated supply of a business that includes land. The dominant element of the agreement is the supply of the business (including land). The services are not extensive and are provided for only a short period of time. Further, the nature of the services is to facilitate a smooth transfer of the business to the purchaser. Consequently, the services provided are ancillary and incidental to the supply of the business. They do not constitute an aim in themselves, but rather are a means for the purchaser to better enjoy the supply of the business.
107. The second scenario is where the vendor provides extensive transitional services as part of the sale of the business. The vendor agrees to manage the business for the purchaser for an initial period of 12 months.
108. In this situation there are two separate supplies - one of the land/business and one of transitional services. The transitional services are relatively extensive and are provided over a 12 month period. They are an aim in themselves for the purchaser who requires someone to run the business on an on-going basis. The fact that the services are not provided for a separately identifiable consideration is not determinative. The supply of these transitional services should be standard-rated, as ss 11(1)(mb) and 5(24) do not apply.
109. As noted in the example, no amount of consideration has been attributed to the transitional services. Therefore, the total consideration provided for under the agreement will need to be apportioned between the zero-rated supply (the business/land) and the standard-rated supply (the transitional services).
110. The Commissioner considers that these outcomes are consistent with the general principles set out and applied in this Interpretation Statement.

## References

### Related rulings/statements

- "Financial Planning Fees – GST Treatment" *Tax Information Bulletin* Vol 13, No 7 (July 2001): 37 (IS 0079)
- "Goods and Services Tax - GST and Retirement Villages" *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6 (IS 15/02)
- "IS 08/01: GST – Role of Section 5(14) of the Goods and Services Tax Act 1985 in Regard to the Zero-rating of Part of a Supply" *Tax Information Bulletin* Vol 20, No 5 (June 2008): 8
- "QB 12/07: Goods and Services Tax – Treatment of Transitional Services Supplied as Part of the Sale of a Business (that Includes the Supply of Land)" *Tax Information Bulletin* Vol 24, No 6 (July 2012): 65
- "Zero-rating of Warranty Payments" *Tax Information Bulletin* Vol 14, No 11 (November 2002): 71

### Subject references

- Apportionment
- GST
- Multiple supplies
- Single supply

### Legislative references

- Goods and Services Tax Act 1985, ss 5, 8, 10, 11, 11A, 11AB, 11B, 14

### Case references

- Auckland Institute of Studies Ltd v CIR* (2002) 20 NZTC 17,685 (HC)
- British Airways plc v C & E Commrs* [1990] STC 643 (CA)
- Card Protection Plan v C & E Commrs* [2001] 2 All ER 143 (HL)
- CIR v Gulf Harbour Development Ltd* (2004) 21 NZTC 18,915 (CA)
- CIR v Smiths City Group Limited* (1992) 14 NZTC 9,140 (HC)
- College of Estate Management v Customs & Excise Commissioners* [2005] UKHL 62, 4 All ER 933
- Customs & Excise Commissioners v British Telecommunications Plc* [1999] BTC 5,273
- Customs & Excise Commissioners v United Biscuits (UK) Limited* [1992] STC 325
- Customs & Excise Commissioners v Wellington Private Hospital Ltd* [1997] STC 445 (EWCA)
- Marac Life Assurance Ltd v CIR* (1986) 8 NZTC 5,086 (CA)
- Metropolitan International Schools v Revenue & Customs Commissioners* [2015] UKFTT 517 (TC)
- Tumble Tots (UK) Ltd v Revenue & Customs Commissioners* [2007] EWHC 103 Ch

## Appendix – Legislation

### Goods and Services Tax Act 1985

1. Section 5(1), (14), (14B), (15) and (20) provide:

#### **5 Meaning of term “supply”**

- (1) For the purposes of this Act, the term supply includes all forms of supply.
- ...
- (14) If a supply is charged with a tax under section 8, but section 11, 11A, 11AB, 11B, or 11C requires part of the supply to be charged at the rate of 0%, that part of the supply is treated as being a separate supply.
- (14B) If part of a supply of an equity security or participatory security is the supply of a right to receive supplies of goods and services that are not exempt supplies, the supply of the right is treated as being a supply of goods and services made for a consideration.
- (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).
- ...
- (20) A supply of services to which section 11A(1)(ma) applies is treated as the only supply of services for the consideration provided by the warrantor.

2. Section 8(1) provides:

#### **8 Imposition of goods and services tax on supply**

- (1) Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 15% on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after 1 October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.
- ...

3. Section 10(18) provides:

#### **10 Value of supply of goods and services**

- (18) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.
- ...

4. Section 11 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:
- (a) the supplier has entered the goods for export under the Customs and Excise Act 1996 and the goods have been exported by the supplier; or
  - (b) the goods have been deemed to be entered for export under the Customs and Excise Act 1996 and the goods have been exported by the supplier; or
  - (c) the supplier has satisfied the Commissioner that the goods have been exported by the supplier to a place outside New Zealand; or
  - (d) subject to subsection (4), the supplier will enter the goods for export under the Customs and Excise Act 1996 in the course of, or as a condition of, making the supply, and will export the goods; or

- (e) subject to subsection (4), the goods will be deemed to be entered for export under the Customs and Excise Act 1996 and will be exported by the supplier in the course of, or as a condition of, making the supply; or
- (eb) subject to subsection (4), the goods supplied—
  - (i) are supplied to a recipient who is a non-resident; and
  - (ii) have been entered for export under the Customs and Excise Act 1996 by the supplier or will be entered for export by the supplier in the course of or as a condition of making the supply; and
  - (iii) are exported by the recipient; and
  - (iv) are not intended by the recipient for later importation into New Zealand for use other than in making taxable supplies or exempt supplies, with the absence of such an intention being confirmed by the recipient in a document retained by the supplier; and
  - (v) are not used or altered by the recipient before being exported, except to the extent necessary to prepare the goods for export; and
  - (vi) leave New Zealand under an arrangement agreed by the supplier and the recipient at or before the time of the supply; and
  - (vii) do not leave New Zealand in the possession of a passenger or crew member of an aircraft or ship; or
- (f) goods that would otherwise have been exported are destroyed, die or cease to exist in circumstances beyond the control of both the supplier and the recipient; or
- (g) subject to subsection (6), the goods are supplied by a supplier who is licensed under section 12 of the Customs and Excise Act 1996, if—
  - (i) the supplier has been licensed by the chief executive of the New Zealand Customs Service to operate a sealed bag system; and
  - (ii) the goods are supplied in accordance with the sealed bag system; and
  - (iii) the goods are entered, or are deemed to be entered, for export under the Customs and Excise Act 1996; or
- (h) the goods and services are supplied—
  - (i) by a supplier who is licensed under section 12 of the Customs and Excise Act 1996; and
  - (ii) within an area licensed under section 12 of the Customs and Excise Act 1996 as a customs controlled area for the processing of persons arriving in or departing from New Zealand; and
  - (iii) to either—
    - (A) an inbound air traveller; or
    - (B) an outbound air traveller who picks up the goods upon returning to New Zealand; or
- (i) subject to subsection (7), the supply of a boat or an aircraft by way of sale to a recipient who exports the boat or aircraft under its own power to a place outside New Zealand; or
- (j) the goods are not situated in New Zealand at the time of supply and—
  - (i) the goods are not situated in New Zealand at the time of delivery to the recipient;
  - (ii) the recipient pays tax under section 12 on the importation of the goods into New Zealand; or
- (k) the goods have been supplied in the course of repairing, renovating, modifying or treating goods to which section 11A(1)(h) or 11A(1)(i) applies and the goods supplied—
  - (i) are wrought into, affixed to, attached to or otherwise form part of those other goods; or

- (ii) are consumable goods that become unusable or worthless as a direct result of being used in the repair, renovation, modification or treatment process; or
- (ka) the goods are supplied for use on, or the use of, a pleasure craft, being a temporary import within the meaning of section 116 of the Customs and Excise Act 1996, that cause or enable the craft to sail, or that ensure the safety of passengers and crew on the craft; or
- (l) the goods supplied are consumable stores intended for use on—
  - (i) an aircraft on a flight, or going, to a destination outside New Zealand; or
  - (ii) a fishing ship outside, or going outside, New Zealand fisheries waters; or
  - (iib) a ship, other than a pleasure craft, carrying consumable stores to a foreign-going ship or to a fishing ship that meets the requirements in subparagraph (ii); or
  - (iii) a foreign-going ship; or
  - (iv) a pleasure craft that is a temporary import within the meaning of section 116 of the Customs and Excise Act 1996 going to a destination outside New Zealand fisheries waters; or
- (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
- (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
- (n) the supply of new fine metal, being the first supply of the new fine metal after its refining, by the refiner to a dealer in fine metal, for the purpose of supplying the fine metal for use as an investment item; or
- (o) the goods are supplied to or by the Crown as consideration for a supply—
  - (i) for which there is no payment of a price; and
  - (ii) that is chargeable at the rate of 0% under section 11A(1)(s) or (t); or
- (p) the goods are—
  - (i) jigs, patterns, templates, dies, punches, and similar machine tools to be used in New Zealand solely to manufacture goods that will be for export from New Zealand; and
  - (ii) supplied to a recipient who is a non-resident, and not a registered person.
- (2) For the purpose of subsection (1)(n), if a person is both a refiner of and a dealer in fine metal, the new fine metal is treated as having been supplied to the dealer at a time immediately before the making of an exempt supply of the new fine metal.
- (3) Subsection (1)(a) to (1)(l) do not apply to a supply of goods by a registered person if—
  - (a) the registered person, or another person associated with the registered person, has deducted, under section 20(3), input tax as defined in section 3A(1)(c) in respect of the goods; or
  - (b) the goods have been or will be reimported into New Zealand by the supplier.
- (3B) Subsection (3)(a) does not apply to a supply of goods if the recipient gives the registered person at or before the time of the supply an undertaking, and records the undertaking in a document, that neither the recipient nor an associated person will cause the goods to be reimported into New Zealand in a condition that is substantially the same as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (1)(l).



- (3C) Despite subsection (3B), a registered person is treated as having supplied goods in the course or furtherance of a taxable activity and must be charged with tax at the rate specified in section 8 if—
- (a) the supply of the goods by the registered person was charged with tax under subsection (1)(a) to (l); and
  - (b) the goods are imported into New Zealand; and
  - (c) the goods are reacquired by the registered person in substantially the same condition as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (l); and
  - (d) the registered person deducted under section 20(3) input tax as defined in section 3A(1)(c) in relation to the original supply of the goods under subsection (1)(a) to (l).
- (3D) Subsection (3C)—
- (a) applies at the time the goods are reacquired by the registered person;
  - (b) does not apply if tax is paid under section 12 on the importation of the goods into New Zealand.
- (4) If subsection (1)(d), (e), or (eb) applies and the person required to export the goods does not do so within 28 days beginning on the day of the time of supply or a longer period that the Commissioner has allowed under subsection (5), the supply of the goods must be charged with tax at the rate specified in section 8 despite subsection (1)(d), (e), and (eb) but subject to subsection (1)(a), (1)(b) and subsection (5).
- (5) The Commissioner may extend the 28-day period before a supply of goods is charged with tax at the rate specified in section 8 if the Commissioner has determined, after the supplier has applied, that—
- (a) circumstances beyond the control of the supplier and the recipient have prevented, or will prevent, the export of the goods within 28 days beginning on the day of the time of supply; or
  - (b) due to the nature of the supply, it is not practicable for the supplier to export the goods, or a class of the goods, within 28 days beginning on the day of the time of supply.
- (6) If subsection (1)(g) applies and the goods cannot be evidenced, as specified by the chief executive of the New Zealand Customs Service in accordance with the sealed bag system, as being exported within 28 days beginning on the day of the time of supply, despite subsection (1)(g), the supply must be charged with tax at the rate specified in section 8.
- (7) Subsection (1)(i) applies to the supply of a boat or an aircraft, if—
- (a) the boat or aircraft is exported within 60 days beginning on the date on which the **recipient or the recipient's agent takes physical possession of it**, or within a longer period as the Commissioner may allow under subsection (8); and
  - (b) the vendor or the purchaser provides the Commissioner with such documentation and undertakings as the Commissioner may require in relation to—
    - (i) records of the sale of the supply; and
    - (ii) limitations on dealings in and the uses to which the boat or aircraft will be put before export; and
    - (iii) the proposed and actual date of export.
- (8) The Commissioner may extend the 60-day period if the Commissioner is satisfied, upon the application of the supplier, that circumstances beyond the control of the supplier and the recipient have prevented, or will prevent, the export of the boat or aircraft within the period.
- (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.
- (8C) Despite subsections (1)(mb) and (8B), a supplier may choose to apply the provisions of this Act applying before the changes made by the Taxation (GST and Remedial Matters) Act 2010 if they enter into a binding agreement before 1 April 2011 for which the time of supply is on or after that date.
- (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:
  - (b) the supply of an interest in land is not a supply under subsection (1)(mb), despite meeting the requirements set out in that subsection if—
    - (i) the supply is made periodically; and
    - (ii) for an amount paid or payable under the agreement for the supply in advance of, or contemporaneously with, the supply being made, the payment—
      - (A) totals 25% or less of the consideration specified in the agreement; and
      - (B) relates to the longer of 1 year and the shortest possible fixed term of the agreement; and
      - (C) is not itself a regular payment under the agreement:
  - (c) a supply of an interest in land by way of a procurement by a third party of an existing lease is a supply under subsection (1)(mb) if it meets the requirements set out in that subsection.
- (9) For the purpose of this section—
- aircraft** has the meaning set out in section 2 of the Civil Aviation Act 1990
- consumable stores** means—
- (a) goods that passengers and crew on board an aircraft or a ship have available to consume; and
  - (b) goods necessary to operate or maintain an aircraft or a ship, including fuel and lubricants but excluding spare parts and equipment
- fishing ship** has the meaning set out in section 2 of the Maritime Transport Act 1994
- foreign-going ship** means a ship on a voyage, or going, to a destination outside New Zealand, other than a pleasure craft or a fishing ship
- New Zealand fisheries waters** has the meaning set out in section 2 of the Fisheries Act 1996
- pleasure craft** has the meaning set out in section 2 of the Maritime Transport Act 1994
- sealed bag system** means a system under which a supplier—
- (a) is licensed to operate an export warehouse; and
  - (b) may, with the authorisation of the chief executive of the New Zealand Customs Service, and subject to any conditions that the chief executive may specify, supply goods in a sealed bag to individuals intending to travel overseas within 5 days beginning on the day of the time of supply; and
  - (c) must provide evidence that the goods have been exported from New Zealand within 5 days beginning on the day of the time of supply, and if conditions have been specified by the chief executive of the New Zealand Customs Service, in accordance with those conditions
- ship** has the meaning set out in section 2 of the Maritime Transport Act 1994.

5. Section 11A provides:

**11A Zero-rating of services**

- (1) A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:
  - (a) the services, not being ancillary transport activities such as loading, unloading and handling, are the transport of passengers or goods—
    - (i) from a place outside New Zealand to another place outside New Zealand; or
    - (ii) from a place in New Zealand to a place outside New Zealand; or
    - (iii) from a place outside New Zealand to a place in New Zealand; or

- (b) the services are the transport of passengers from a place in New Zealand to another place in New Zealand to the extent that the transport is by aircraft, as defined in section 2 of the Civil Aviation Act 1990, and is international carriage for the purpose of that Act; or
- (bb) the services are the transport of passengers from a place in New Zealand to another place in New Zealand by sea as part of an international cruise if either the first place of departure, or the final place of destination, of the cruise is outside New Zealand; or
- (c) the services, including ancillary transport activities such as loading, unloading and handling, are the transport of goods from a place in New Zealand to another place in New Zealand to the extent that the services are supplied by the same supplier as part of the supply of services to which paragraph (a)(ii) or (a)(iii) applies; or
- (cb) the services, including ancillary activities such as loading, unloading, handling and storing, are the transport of household goods from a place in New Zealand to another place in New Zealand, if—
  - (i) the services are supplied to a person who, at the time of the supply, is non-resident and outside New Zealand; and
  - (ii) the goods are entered for home consumption under the Customs and Excise Act 1996; and
  - (iii) the arrangement for the supply of the services is made before the goods are entered; and
  - (iv) the services are reasonably expected to be completed within the period of 28 days that begins on the date of entry of the goods; or
- (d) the services are the insuring, or the arranging of the insurance, or the arranging of the transport of passengers or goods to which any one of paragraphs (a) to (cb) applies; or
- (e) the services are supplied directly in connection with land situated outside New Zealand or any improvement to the land; or
- (f) the services are supplied directly in connection with moveable personal property, other than choses in action, situated outside New Zealand when the services are performed; or
- (g) the services are supplied to overseas postal organisations for the delivery in New Zealand of postal articles mailed outside New Zealand; or
- (h) the services are supplied directly in connection with goods supplied from outside New Zealand and whose destination is outside New Zealand, including stores for craft, only if the goods are not removed from the ship or aircraft in which they arrived while the ship or aircraft is in New Zealand; or
- (i) the services are supplied directly in connection with goods referred to in section 116 of the Customs and Excise Act 1996; or
- (j) the services are physically performed outside New Zealand or are the arranging of services that are physically performed outside New Zealand, other than a supply of remote services provided to a person resident in New Zealand who is not a registered person; or
- (k) subject to subsection (2), the services are supplied to a person who is a non-resident and who is outside New Zealand at the time the services are performed, not being services which are—
  - (i) supplied directly in connection with—
    - (A) land situated in New Zealand or any improvement to the land; or
    - (B) moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed; or
  - (ii) the acceptance of an obligation to refrain from carrying on a taxable activity, to the extent that the activity would have occurred within New Zealand; or
- (l) subject to subsection (2), the services are the supply of information to a person who is a non-resident and who is outside New Zealand at the time the services are performed, if the services are supplied directly in connection with moveable personal property situated in New Zealand at the time the services are performed; or

- (m) the services are supplied—
  - (i) directly in connection with goods, the supply of which was subject to any one of section 11(1)(a) to (eb); and
  - (ii) to a recipient who, when the services are performed, is a non-resident and outside New Zealand; or
  
- (maa) the services are supplied—
  - (i) directly in connection with goods, the supply of which is subject to section 11(1)(p); and
  - (ii) to a recipient who, when the services are performed, is a non-resident and not a registered person; or
- (ma) the services relate to goods under warranty to the extent that the services are—
  - (i) provided under the warranty; and
  - (ii) supplied for consideration that is given by a warrantor who is a non-resident, not a registered person and who is outside New Zealand at the time the services are performed; and
  - (iii) in respect of goods that were subject to tax under section 12(1); or
- (n) subject to subsection (4), the services are—
  - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyrights, plant variety rights, know-how, confidential information, trade secrets or similar rights; or
  - (ii) other services in respect of rights listed in subparagraph (i), including services involved in the making of searches, the giving of advice, opposing a grant or seeking the revocation of the rights, or opposing steps taken to enforce the rights; or
- (o) the services are the acceptance of an obligation to refrain from pursuing or exercising in whole or in part rights listed in paragraph (n) to the extent that the rights are for use outside New Zealand; or
- (p) the services are the acceptance of an obligation to refrain from carrying on a taxable activity if the activity would have occurred outside New Zealand; or
- (q) the services are financial services that are supplied in respect of a taxable period, by a registered person who has made an election under section 20F, to a registered person who makes supplies of goods and services such that taxable supplies that are not charged with tax at the rate of 0% under this paragraph or under paragraph (r) make up not less than 75% of the total value of the supplies in respect of—
  - (i) a 12-month period that includes the taxable period; or
  - (ii) a period acceptable to the Commissioner; or
- (r) the services are financial services that are supplied in respect of a taxable period, by a registered person who has made an election under section 20F, to a person who is a member of a group of companies for the purposes of section IA 6 of the Income Tax Act 2007 and—
  - (i) the members of the group make supplies of goods and services to persons who are not members of the group in respect of—
    - (A) a 12-month period that includes the taxable period; or
    - (B) a period acceptable to the Commissioner; and
  - (ii) not less than 75% of the total value of the supplies referred to in subparagraph (i) consists of taxable supplies that are not charged with tax at the rate of 0% under this paragraph or under paragraph (q); or
- (s) the services are an emissions unit and the supply is the transfer of the emissions unit, other than a transfer by the Crown under—
  - (i) an agreement relating to a project to reduce emissions:

- (ii) a negotiated greenhouse agreement, to a person because the person exceeds the milestone targets under the agreement:
  - (t) the services are an emissions unit, and the supply is the surrender of the emissions unit under section 63 of the Climate Change Response Act 2002; or
  - (u) the services are supplied to or by the Crown as consideration for a supply—
    - (i) for which there is no payment of a price; and
    - (ii) that is chargeable at the rate of 0% under paragraph (s) or (t); or
  - (v) **[Repealed]**
  - (w) the supply is a sale or other disposal of services that are a unit—
    - (i) issued by reference to the sequestration, or avoidance of emission, of human-induced greenhouse gases; and
    - (ii) other than an emissions unit; and
    - (iii) verified to an internationally recognised standard; or
  - (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.
- (1B) Subsection (1)(j) does not apply to a supply of services that is treated by section 8(4B) as being made in New Zealand unless the nature of the services is such that the services can be physically received at no time and place other than the time and place at which the services are physically performed.
- (2) Subsection (1)(k) and (1)(l) do not apply to a supply of services under an agreement that is entered into, whether directly or indirectly, with a person (person A) who is a non-resident if—
- (a) the performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be, received in New Zealand by another person (person B), including—
    - (i) an employee of person A; or
    - (ii) if person A is a company, a director of the company; and
  - (b) it is reasonably foreseeable, at the time the agreement is entered into, that person B will not receive the performance of the services in the course of making taxable or exempt supplies.
- (3) For the purpose of subsection (1)(k), (1)(l) and (1)(ma), and subsection (1)(n) as modified by subsection (4)(b), outside New Zealand, for a company or an unincorporated body that is not resident, includes a minor presence in New Zealand, or a presence that is not effectively connected with the supply.
- (3B) For the purpose of subsection (1)(k), outside New Zealand, for a natural person, includes a minor presence in New Zealand that is not directly in connection with the supply.
- (4) Subsection (1)(n) applies only to the extent that—
- (a) the rights are for use outside New Zealand; or
  - (b) the services are supplied to a person who is a non-resident and who is outside New Zealand when the services are performed.
- (5) This section does not apply to supplies of telecommunications services.
- (6) The availability of a deduction under subsection (1)(q) and (r) must be determined using a method allowed by section 20E.
- (7) Subsection (1)(x) does not apply to a supply of services for which the supplier subsequently makes an election under section 24(5B).

6. Section 11AB provides:

**11AB Zero-rating of telecommunications services**

A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% if—

- (a) the services are the supply of telecommunications services to an overseas telecommunications supplier by a telecommunications supplier who is a resident; or

- (b) the services are the supply of telecommunications services to a person, not being an overseas telecommunications supplier, for a telecommunications service that is initiated outside New Zealand under section 8(9).

7. Section 11B provides:

**11B Zero-rating of some supplies by territorial authorities, some supplies involving contributions to local authorities**

- (1) A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% if the supplier is a territorial authority and the consideration for the supply is proceeds from the local authorities petroleum tax paid to the supplier under section 198 of the Local Government Act 1974.
- (1B) If a supply under section 5(7B) of goods and services by a local authority to a registered person is chargeable with tax under section 8, the supply must be charged at the rate of 0% to the extent that the contribution made by the registered person to the local authority consists of land.
- (1C) If a supply under section 5(7C) of goods and services by a person to a local authority is chargeable with tax under section 8, the supply must be charged at the rate of 0% if the local authority is a registered person.
- (1D) *[Repealed]*
- (1E) *[Repealed]*
- (2) For the purpose of subsection (1)—

**local authorities petroleum tax** is local authorities petroleum tax levied in accordance with Part 11 of the Local Government Act 1974

**territorial authority** means a territorial authority within the meaning of the Local Government Act 2002.

8. Section 14(1)(a) and (c) and (1B)(a)-(c) provides:

**14 Exempt supplies**

- (1) The following supplies of goods and services shall be exempt from tax:
  - (a) the supply of any financial services (together with the supply of any other goods and services, supplied by the supplier of those financial services, which are reasonably incidental and necessary to that supply of financial services), not being a supply referred to in subsection (1B):
  - ...
  - (c) the supply of accommodation in any dwelling by way of—
    - (i) hire; or
    - (ii) a service occupancy agreement; or
    - (iii) a licence to occupy:
  - ...
- (1B) The following supplies are excluded from the exemption under subsection (1):
  - (a) a supply of financial services that, in the absence of subsection (1)(a), would be charged with tax at the rate of zero per cent under section 11A:
  - (b) a supply described in paragraph (b) of the definition of “associated supply”:
  - (c) a supply of goods and services which (although being part of a supply of goods and services which, but for this paragraph, would be an exempt supply under subsection (1)(a)) is not in itself, as between the supplier of that first-mentioned supply and the recipient, a supply of financial services in respect of which subsection (1)(a) applies.
  - ...