Issues Paper

Public Rulings Unit discussion document on tax interpretative issues

No. 13: Consequences of GST group registration

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ISSUES PAPER: IRRUIP 13

Consequences of GST group registration

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1. Introduction

Purpose of this issues paper

1.1 This issues paper examines the consequences of GST group registration. All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

1.2 The GST group registration rules allow a group of related entities to be treated as a single entity for GST purposes. Section 55(7) explains that, once the entities are grouped, a representative member is responsible for most compliance matters and is deemed to carry on all the taxable activities of the group members. Supplies made or received by a group member are treated as made or received by the representative member. Taxable supplies between group members may be ignored. In this way, the Act creates a statutory fiction – something is treated as having been done by one person (the representative member), when in fact it has been done by another (the group member).

1.3 We understand that views differ about the extent of this statutory fiction. One view is that by deeming the representative member to make a group member's supply, the supply is still treated as "made" by the group member and simply attributed to the representative member. This view interprets the statutory fiction in a narrow way (the narrow interpretation). Another view is that by deeming the representative member to make a group member's supply, the supply is treated as "made" by the representative member. This view interprets the statutory fiction in a wider way (the wide interpretation).

1.4 In most cases, the consequences are the same under either interpretive approach. However, sometimes the consequences differ. This might occur, for example, where a non-resident or non-registered entity is in the group. This issues paper sets out both the narrow and wide interpretative approaches and identifies cases where the GST outcome differs depending on the approach applied. Where known, practical and compliance issues are also identified. It is intended that a draft public statement will be issued for consultation in due course.

1.5 It is possible that the GST grouping rules may be interpreted in yet other ways. Therefore, we welcome your views on alternative interpretations.

Scope of this issues paper

1.6 While the examples in this issues paper focus on groups of companies, the same principles apply to other entities that are eligible to group register for GST purposes.

1.7 All examples in this issues paper have a New Zealand-resident representative member. We understand this is likely to be the most common scenario for GST groups. We acknowledge that it is possible to have a non-resident representative member (provided that representative member is registered for

GST in New Zealand), however we understand this is less common. We also acknowledge that the residency of the representative member may have implications for how the rules are intended to operate. We welcome feedback on this aspect of the grouping rules.

1.8 The issues paper does not consider which entities may form a GST group. The Public Rulings Unit intends to draft a separate item on this topic in 2019. We welcome your comments on any issues that have been encountered in this area. These comments may be included in your feedback on this issues paper.

Summary of what we think

1.9 In most cases, it does not matter which interpretation is applied. The outcome and analysis are the same under both interpretations. Where the outcomes differ, it is unclear which interpretation should be preferred.

1.10 In some cases, the wide interpretation provides an outcome that is more consistent with the purpose of the grouping rules. For example, we think that on balance, the wide interpretation is more likely to reduce distortions that might arise between a New Zealand-resident single entity, a New Zealand-resident entity with an offshore branch; and a group structure with a New Zealand-resident representative member. However, in some cases the wide interpretation is less consistent with the purposes of the grouping rules. For example, in some cases the wide interpretation may increase compliance costs because some supplies will need to be recharacterised.

1.11 The narrow interpretation is more likely to result in reduced compliance costs, which is consistent with the purpose of the grouping rules. However, in some cross-border scenarios, the narrow interpretation gives an outcome which is different to the outcome for single entities or branches. This could result in distortions.

1.12 Therefore, we want to know what you think about these interpretive approaches.

Structure of this issues paper

1.13 This issues paper comprises five parts, concluding with a list of references. Following this introductory section, part 2 outlines the purposes of the GST group registration rules and explains two potential ways that these rules can be interpreted.

1.14 Part 3 considers the consequences of GST group registration under each of the paragraphs in s 55(7). It includes worked examples and identifies where the application of the different interpretive approaches will result in different GST outcomes.

1.15 Part 4 contains examples that address more complex and less common arrangements.

1.16 Part 5 concludes the discussion.

Questions for discussion

1.17 This issues paper presents our initial views only. Please let us know what you think.

1.18 Your feedback may be about the two interpretive approaches, practical concerns, the policy outcome or how to administer the tax laws.

1.19 In particular, we welcome your feedback on three questions.

1. Of the two interpretations, do you consider one stronger interpretively?
2. Do you see any practical or compliance difficulties with either interpretation?
3. Is there an alternative way to interpret the GST group registration rules?

2. Purposes of the GST grouping rules and interpretive approaches

2.1 This part explains the purposes of the GST group registration rules (from [2.2]) as well as the statutory fiction of the rules (from [2.6]). It also outlines two ways these rules could be interpreted: the narrow interpretation (from [2.12]) and the wide interpretation (from [2.22]).

Purposes of the GST grouping rules

2.2 The GST group registration rules are intended to treat a group of related entities as a single entity for GST purposes. This is known as the "single-entity" approach.[1] The rules are in s 55(7). They are broadly based on the United Kingdom's value-added tax legislation.

2.3 Under the single-entity approach, the legal structure of the group is disregarded and members of the group act as a single entity when undertaking transactions with third parties.

2.4 This approach is intended to reduce distortions that might arise between a single entity, a branch structure and a group structure.[2] The intention of the rules is to treat all structures in the same way for GST purposes. For example, by disregarding intra-group taxable supplies, a group of companies is treated in the same way as a single company that might make taxable supplies between different departments or branches. In the case of a single company, the supply would be a "self-supply" and disregarded. In the case of a group of companies, the supply may be disregarded. Therefore, the GST treatment is the same. This helps to ensure companies in a group are not advantaged or disadvantaged relative to companies using other structures.[3]

2.5 This approach is also intended to reduce compliance costs in two ways. Firstly, the representative member is deemed to act on behalf of the group members as if the group were a single entity (s 55(7)(a)). For example, the representative member is responsible for filing a single aggregated GST return on behalf of all members in the GST group, reducing compliance costs for those group members. The second way the rules reduce compliance costs is by disregarding intra-group taxable supplies (supplies between group members) for GST purposes. In this way, the cost of accounting for intra-group supplies is intended to be reduced.

1 *GST and Financial Services* (Policy Advice Division of Inland Revenue, Wellington, 2002), at 7.3.
2 Ibid, at 7.1.
3 Ibid, at 7.13.

Statutory fiction of the grouping rules

2.6 Section 55(7) is a deeming provision that creates a statutory fiction. This means that something is treated as having been done by one person (the representative member), when in fact, it has been done by another person (the group member). For example, under s 55(7)(a), a taxable activity that is carried on by one member of the group is deemed to be carried on by the representative member. Deeming also occurs in other parts of s 55(7), for example paras (d), (da), (dab), (db), (dc), (dd), (de), and (e).

2.7 When interpreting a deeming provision, it is necessary to understand the purpose of the provision. The deeming is then taken only as far as is necessary to achieve the purpose of the provision. One of the most often cited cases on this point is *Re Levy, ex parte Walton* (1881) 17 Ch D 746. In that case, James LJ stated, at 756:

> When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to.

2.8 This principle, as expressed in *Re Levy*, has been approved in New Zealand in *Tobin v Dorman* [1937] NZLR 937 (SC) at 942 and *Picton Borough v Marlin Motels (1971) Ltd* [1975] 1 NZLR 65 (SC) at 70.

2.9 As discussed above, the purposes of the GST group registration rules are to treat a group of related entities as a single entity for GST purposes. The aim is to relieve potential distortions that might arise between a single entity, a branch structure and a group structure and to reduce compliance costs. Therefore, in interpreting s 55(7) in the context of the Act, the deeming provision should be taken only as far as is necessary to achieve these purposes.

2.10 In practice, the issue of how to apply s 55(7) can be a difficult one. In considering this issue, we have identified two potential ways that the grouping rules could be interpreted. These are discussed in more detail below.

Interpretive approaches

2.11 The two interpretive approaches outlined below differ in how far to take the deeming in s 55(7) to achieve the purposes of the grouping rules. We refer to them as the narrow interpretation (discussed from [2.12]) and the wide interpretation (discussed from [2.22]).

Narrow interpretation

2.12 Under the narrow interpretation, by deeming the representative member to make a group member's supply, the supply is still treated as "made" by the group member and simply *attributed* to the representative member.

2.13 Under this interpretation, the characteristics of the representative member cannot colour or change the nature of the group member's supplies. Instead, the provisions of the Act are applied to the group member actually making the supply, and the grouping rules simply change the person who is treated as making that supply from the group member to the representative member. Effectively, the narrow interpretation could be viewed as applying the provisions of the Act to supplies made by a group member and then attributing the results to the representative member.

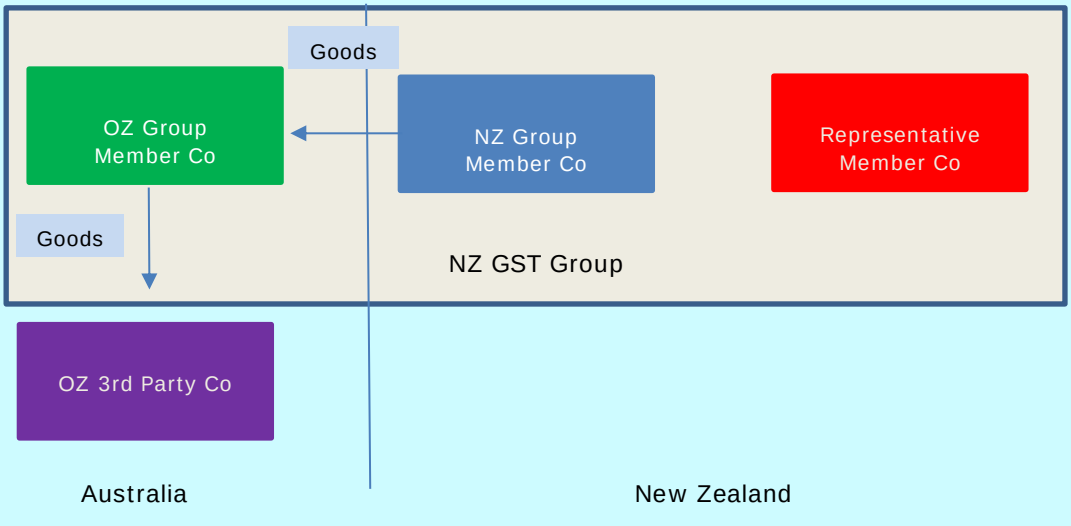
2.14 This interpretation is consistent with one of the purposes of the grouping rules, which is to reduce compliance costs. A single GST return is filed for the group, and intra-group taxable supplies may be disregarded.

2.15 In most cases, this interpretation is also consistent with the other purpose of the grouping rules – to reduce distortions between a single entity, a branch structure and a group structure. However, in some cases, the narrow interpretation can lead to distortions. To understand this, it is useful to look at a cross-border situation where the GST outcomes under the narrow and wide interpretations (discussed from [2.22]) can be compared.

Example 1

NZ GST Group

There are three companies in NZ GST group. Two are New Zealand–resident companies (NZ Group Member Co and Representative Member Co) and one is an Australian-resident company (OZ Group Member Co). NZ Group Member Co makes a supply of goods to OZ Group Member Co. OZ Group Member Co then makes a supply of those goods to OZ 3rd Party Co.



Single entity structure

2.16 If the group in Example 1 were a single entity resident in New Zealand, OZ Group Member Co and NZ Group Member Co would not exist, and the supply would be made to OZ 3rd Party Co by Rep Member Co. Even if the supply of goods is physically made in Australia, there is only one supplier – Rep Member Co. For GST purposes, the supply is made by Rep Member Co, which is resident in New Zealand. Therefore, the supply is subject to GST under s 8(2). However, as the goods have been exported to Australia and are in Australia at the time of supply, it is likely that they will be zero-rated under s 11(1)(c).

Branch structure

2.17 Similar analysis would apply if Example 1 contained a branch structure. (When considering branches, we assume that the branches are not separately registered under s 56, as they would then be treated as separate entities.)

2.18 If OZ Group Member Co and NZ Group Member Co were branches of Rep Member Co, the supply by OZ Group Member Co in Australia (as a branch of Rep Member Co) would be treated as a supply by Rep Member Co. As Rep Member Co is resident in New Zealand, the supply is subject to GST under s 8(2). However, once again, as the goods have been exported to Australia it is likely that they will be zero-rated under s 11(1)(c).

Group structure

2.19 In Example 1, under the narrow interpretation, there are two supplies. The supply from NZ Group Member Co to OZ Group Member Co; and the supply from OZ Group Member Co to OZ 3rd Party Co. The first supply is likely zero-rated under s 11(1)(a). This is because NZ Group Member Co is likely to be the entity that has factually entered the goods for export. As the supply is an intra-group taxable supply it may be disregarded.

2.20 Because OZ Group Member Co is non-resident, the second supply will likely be treated as occurring in Australia, so will not be subject to GST because it is not made in New Zealand.

2.21 This outcome appears inconsistent with the GST treatment for single entities and branches and could increase distortions between these different structures. Therefore, in this situation, the narrow interpretation is inconsistent with one of the purposes of GST group registration.

Wide interpretation

2.22 Under the wide interpretation, the statutory fiction created by s 55(7) is to deem the representative member to make a group member's supply. The supply is treated as "made" by the representative member. Effectively, the wide interpretation could be viewed as applying the grouping rules first and attributing all supplies to the representative member before applying the provisions of the Act as if the supplies were made by the representative member.

2.23 If we view Example 1 under the wide interpretation, there are also two supplies - the supply from NZ Group Member Co to OZ Group Member Co; and the supply from OZ Group Member Co to OZ 3rd Party Co.

2.24 The first supply made from NZ Group Member Co to OZ Group Member Co is treated as made by Rep Member Co to OZ Group Member Co. The supply is zero-rated under either s 11(1)(a) or s 11(1)(c) (depending on which entity has factually entered the goods for export) and as it is an intra-group taxable supply it may be disregarded.

2.25 The second supply is treated as made by Rep Member Co to OZ 3rd Party Co. As Rep Member Co is resident in New Zealand, the supply is subject to GST under s 8(2). However, as the goods have been exported to Australia it is likely that they will be zero-rated under s 11(1)(c). This is the same GST outcome as under a single entity or a branch structure. Therefore, in this scenario, the wide interpretation seems more consistent than the narrow interpretation with one of the purposes of the grouping rules - to reduce distortions.

2.26 However, in terms of reducing compliance costs, this interpretation is arguably less consistent. Under both interpretations, intra-group taxable supplies may be disregarded and a single GST return is filed for the GST group. These features will reduce compliance costs. However, the wide interpretation may increase compliance costs in some cases because supplies may need to be recharacterised. In Example 1, the supply made by OZ Group Member Co to OZ 3rd Party Co was not subject to GST under the narrow interpretation. Therefore, for New Zealand GST purposes there would be no need to account for the supply in a New Zealand GST return. Under the wide interpretation, the supply is treated as made by Rep Member Co and will need to be included as a zero-rated supply in the group GST return. The group member would also need to issue a tax invoice (see s 55(7)(h)). In this case, compliance costs have increased.

Why the different interpretations matter

2.27 Where all members of a GST group are New Zealand–resident and GST-registered, it may not matter which interpretive approach is applied. This is because in most cases, the key characteristics of the group member and the representative member will be the same – both New Zealand–resident and GST-registered. Therefore, when determining how the Act applies to a supply, it will likely be irrelevant whether s 55(7) is interpreted widely or narrowly.

2.28 However, issues may arise in other situations, such as if one of the group members is non-resident or non-registered. In these cases, there may be different GST outcomes depending on the interpretation applied.

2.29 In part 3, we analyse the consequences of group registration and highlight areas where the different interpretive approaches will result in different GST outcomes.

3. Consequences of GST group registration

3.1 In this part we examine how s 55(7) operates. We also identify where we think there might be different GST outcomes, depending on the interpretive approach applied.

Section 55(7) – consequences of GST group registration

3.2 The consequences of GST group registration are set out at s 55(7). Section 55(7) refers to companies, but where the group is not a group of companies, s 55(8) applies and the references to companies in s 55(7) are read as including persons who are not companies:

> (7) Subject to subsection (7B), where any companies are a group of companies for the purposes of this section,—
>
> (a) any taxable activity carried on by a member of the group shall be deemed to be carried on by the representative member and not to be carried on by any other member of the group; and
>
> (b) all members of the group shall have the same taxable period pursuant to sections 15 to 15E and the same accounting basis pursuant to section 19 or section 19A; and
>
> (c) subject to paragraphs (db) and (dc), any taxable supply of goods and services by a member of the group to another member of the group may be disregarded; and
>
> (d) any other taxable supply of goods and services by a member of the group shall be deemed to be a taxable supply by the representative member; and
>
> (da) any supply of goods and services, other than a taxable supply, made by a member of the group, shall be deemed to be made by the representative member; and
>
> (dab) subject to paragraph (c), any supply of goods and services to a member of the group is a supply to the representative member; and
>
> (db) to the extent that goods and services acquired or produced or applied by any member of a group for the principal purpose of making taxable supplies are applied by the representative member of that group for a purpose other than that of making taxable supplies, that acquisition or production or application of those goods and services shall, for the purposes of section 21(1), be deemed to have been made by the representative member of that group; and
>
> (dc) to the extent that goods and services acquired or produced on or after 1 October 1986 by any member of a group other than for the principal purpose of making taxable supplies are applied by the representative member of that group for a purpose of making taxable supplies, that acquisition or production of those goods and services shall, for the purposes of section 21E, be deemed to have been made by the representative member of that group; and
>
> (dd) any statement or other information provided to a member of the group under section 78F shall be deemed to be provided to the representative member; and
>
> (de) any statement or other information provided by a member of the group under section 78F shall be deemed to be provided by the representative member; and
>
> (e) any input tax paid or payable by a member of the group shall be deemed to be paid or payable by the representative member; and

> (f) any obligation on any member of the group, other than the representative member, pursuant to section 16, shall be disregarded:
>
> provided that—
>
> (g) a member of the group is liable jointly and severally with all other members of the group for all tax payable by the representative member for each taxable period, or part of a taxable period, in which the member is part of the group, even if the member is no longer part of the group or a representative member ceases to exist; and
>
> (h) the provisions of section 24, section 75, and Part 8 shall continue to apply to all such members of the group.

3.3 The paragraphs of s 55(7) operate together to create the single taxable entity. They do this by treating the representative member as carrying on the taxable activities of all the group members. They also treat the representative member as making and receiving all supplies made or received by group members (with the exception of intra-group taxable supplies, which may be disregarded). Further, any input tax paid or payable by a group member is treated as being paid or payable by the representative member.

3.4 The paragraphs also explain when the statutory fiction is ignored. For example, group members continue to be responsible for issuing tax invoices, keeping records and registering for GST (if applicable) as if the grouping rules did not apply. Similarly, all group members are jointly and severally liable for any tax payable by the representative member.

3.5 Section 55(7) also deals with administrative matters. For example, it requires all group members to have the same taxable period and to use the same accounting basis. In addition, all group members (except the representative member) are relieved of the obligation to file a GST return.

3.6 Special rules are included to deal with the situation when goods or services are acquired before grouping for one purpose and are then applied for another purpose once grouped. There are also rules for treating the representative member as making or receiving any land statement provided by or to a group member.

3.7 The consequences of GST group registration are summarised for each paragraph of s 55(7) as follows:

- para (a) − the representative member carries on all taxable activities (discussed from [3.8]);
- para (b) − all members must have the same registration basis (discussed from [3.17]);
- para (c) − taxable supplies between members are disregarded (discussed from [3.40]);
- para (d) − the representative member is treated as making all taxable supplies to persons outside the group (discussed from [3.53]);
- para (da) − the representative member is treated as making all non-taxable supplies (discussed from [3.57]);
- para (dab) − the representative member is treated as receiving all supplies (discussed from [3.65]);

- paras (db) and (dc) – the representative member is treated as acquiring some pre-group registration supplies (discussed from [3.69]);
- paras (dd) and (de) – the representative member is treated as providing and receiving land statements (discussed from [3.78]);
- para (e) – the representative member is treated as paying all input tax (discussed from [3.84]);
- para (f) – only the representative member files GST returns (discussed from [3.88]);
- para (g) – all members are jointly and severally liable for all tax payable (discussed from [3.92]); and
- para (h) – all members are responsible for issuing tax invoices, record-keeping and registering for GST (discussed from [3.98]).

Paragraph (a) – representative member carries on all taxable activities

3.8 Under para (a), the representative member is deemed to carry on the group members' taxable activities for all purposes under the Act, with the exception of those purposes specifically excluded by paras (g) and (h) (see from [3.92]):

> (a) any taxable activity carried on by a member of the group shall be deemed to be carried on by the representative member and not to be carried on by any other member of the group; and

3.9 Subject to the inclusions and exclusions in s 6(2) and (3), "taxable activity" is defined in s 6(1) to mean a continuous or regular activity involving or intending to involve the supply of goods and services to another person for consideration.

3.10 "Taxable activity" is not geographically confined. This means a non-resident entity can carry on a "taxable activity" as defined in the Act.[4]

One taxable activity or many taxable activities

3.11 Under para (a) of s 55(7), the taxable activities of group members are deemed to be carried on by the representative member. This raises an issue - on grouping are the taxable activities of all group members merged or do they remain separate taxable activities?

3.12 We consider that whatever interpretation is applied to para (a), the group members' separate taxable activities are not pooled or merged so that they lose their distinctiveness. Instead, the representative member is deemed to carry on all the separate taxable activities of its members in the same way that a single entity carries on the taxable activities of its different departments or branches. This is consistent with the way a single registered person can carry on more than one taxable activity under a single GST registration. For

4 *GST: Business-to-Business Neutrality across Borders* (Policy Advice Division of Inland Revenue, Wellington, 2001) at 2.14.

example, in *Case R38* (1994) 16 NZTC 6,212, the Taxation Review Authority accepted that it was possible for a single registered person to carry on more than one taxable activity under the same GST registration. In this case, the taxpayer had multiple taxable activities: solicitor, deer farming and grazing, and land investment. (See also *Case P4* (1994) 14 NZTC 4,024 (TRA).)

3.13 We consider that merging all taxable activities into one single taxable activity would be extending the deeming in s 55(7) further than it needs to go to achieve the purpose of the grouping rules. Neither interpretive approach requires that all the taxable activities of the group members are merged into one taxable activity.

3.14 However, there are subtle differences, depending on the interpretive approach applied. Under the narrow interpretation the group member's taxable activity does not take on the characteristics of the representative member. For example, a non-registered entity's taxable activity is still a non-registered taxable activity once grouped. It is simply that the taxable activity is deemed to be carried on by the representative member.

3.15 Under the wide interpretation, a non-registered entity's taxable activity would take on the characteristics of the representative member. This means that once grouped, a non-registered entity's taxable activity would become a taxable activity carried on by a registered person. In this way, the wide interpretation is more consistent with the treatment of a single entity that carries on more than one taxable activity. All the taxable activities of the single entity are dealt with under a single GST registration. The narrow interpretation is less consistent with the treatment of a single entity carrying on more than one taxable activity. This is because it permits a non-registered taxable activity to remain a non-registered taxable activity once grouped.

3.16 Example 2 illustrates how the taxable activities of group members are deemed to be carried on by the representative member.

Example 2

Spring Co GST Group

Spring Co GST Group consists of two New Zealand-resident companies: Winter Co and Spring Co. Winter Co manufactures and sells torches. Spring Co manufactures and sells light bulbs.

Spring Co is the representative member of Spring Co GST Group.

Section 55(7)(a) deems any taxable activity carried on by a member of the group to be carried on by the representative member. Therefore, Spring Co, as representative member, is deemed to carry on the taxable activity of Winter Co.

This means the companies in Spring Co GST Group are treated as a single taxable entity for GST purposes. However, the taxable activities of Spring Co and of

Winter Co are not merged into one taxable activity. Spring Co is deemed to carry on both activities – manufacturing and selling torches and manufacturing and selling light bulbs.

Paragraph (b) – all members must have the same registration basis

3.17 Paragraph (b) states that all members of a GST group shall have the same taxable period and accounting basis:

> (b) all members of the group shall have the same taxable period pursuant to sections 15 to 15E and the same accounting basis pursuant to section 19 or section 19A; and

3.18 This provision is necessary to enable the representative member to file one group GST return. If all members retained different taxable periods and accounted for GST on a different accounting basis, it would be impossible for the representative member to file a single group return.

3.19 Paragraph (b) describes one of the consequences of grouping. Before grouping, all members have their own taxable period and accounting basis. When the members apply for GST group registration, they must choose an accounting basis and a taxable period. Once the application has been approved, all members of the group must use the chosen accounting basis and taxable period.

Accounting basis

3.20 Section 19 sets out the three ways a person can account for GST: the invoice basis, the payments basis and the hybrid basis:

> 19 Accounting basis
>
> (1) Subject to sections 19A to 19D, every registered person must account for tax payable on an invoice basis for the purpose of section 20.
>
> (1B) Despite subsection (1), if the Commissioner registers a non-resident person under section 54B, the person must account for tax payable on a payments basis for the purpose of section 20.
>
> (2) The Commissioner may, on application in that behalf by a registered person, direct that for the purposes of section 20 the registered person account for tax payable—
>
> (a) on a payments basis, if the registered person satisfies the requirements of section 19A(1); or
>
> (b) on a hybrid basis.
>
> (3) The Commissioner may, on application in that behalf by a registered person who pursuant to a direction of the Commissioner accounts for tax payable on a hybrid basis or a payments basis, direct that the registered person account for tax payable—
>
> (a) on an invoice basis; or
>
> (b) on a hybrid basis; or
>
> (c) on a payments basis, if the registered person satisfies the requirements of section 19A(1).

> (3B) Despite subsection (3), a liquidator, receiver, or administrator (as defined in section 239B of the Companies Act 1993) of a registered person who accounts for tax payable on a payments basis may not apply to change the registered person's accounting basis to an invoice basis.
>
> (4) Where the Commissioner gives a direction in respect of a registered person's accounting basis under subsection (2) or subsection (3) of this section or under section 19A(2), the registered person shall account for tax payable on the accounting basis directed by the Commissioner with effect from—
>
> (a) the commencement of the taxable period immediately following the taxable period during which the direction is given by the Commissioner, in any case to which paragraph (b) or paragraph (c) does not apply; or
>
> (b) the person's registration under this Act, where the direction is given by the Commissioner before the end of the first taxable period of the person that follows that registration; or
>
> (c) the commencement of such other taxable period as the Commissioner considers equitable, where the Commissioner and the person so agree.

3.21 Section 19A(1) establishes that a registered person may use the payments basis if:

- they are a non-profit body (s 19A(1)(a)(iii));
- they are a non-resident (s 19A(1)(a)(iv));
- their total taxable supplies in the previous 12 months were less than $2 million and their taxable supplies are not likely to exceed that in the next 12 months (s 19A(1)(b)); or
- the Commissioner considers it would be appropriate, based on the nature, volume and value of taxable supplies made by that registered person and the nature of the accounting system used (s 19A(1)(c)).

3.22 To give effect to s 55(7)(b), the reference to "person" in s 19 (and related provisions) must be read as a reference to the representative member acting as the GST group. This is because under para (a) of s 55(7), the representative member is deemed to carry on the taxable activities of the group members.

3.23 Therefore, eligibility to use an accounting basis is based on the total value of all taxable supplies likely to be made by the GST group for the next 12-month period, as if the group were a single taxable entity.

3.24 Under a narrow interpretation, the total value of all taxable supplies would not include supplies likely to be made by non-registered members of the GST group. Under a wide interpretation it would. This is because under the wide interpretation, the representative member (a registered person) would be deemed to make those supplies (see from [3.15]).

3.25 Once the group has chosen an accounting basis it needs to confirm this in the GST group registration form (IR 374). If the chosen group accounting basis would require a change for a particular member, that member must first make a separate application to the Commissioner under s 19(3) for approval to change its accounting basis. If approved, the Commissioner will provide that company with a calculation of adjustments that it will need to make to take account of any outstanding debtors and creditors.

3.26 Example 3 illustrates how an accounting basis may be chosen.

Example 3

Choosing an accounting basis

Before forming Spring Co GST Group, Winter Co and Spring Co each accounted for GST on a payments basis.

Winter Co estimated that its total taxable supplies for the next 12-month period were likely to be $1.5 million. Spring Co estimated that its total taxable supplies for the next 12-month period were likely to be $1 million.

When combined, Winter Co and Spring Co's total taxable supplies for the next 12-month period are likely to exceed $2 million. This means that once Spring Co GST Group is formed, it would not be eligible to account for GST on a payments basis unless it successfully applied to the Commissioner for permission to do so.

Spring Co and Winter Co decide that Spring Co GST Group should use the invoice basis. In addition to filing the GST group registration form, Winter Co and Spring Co each file an application to change their accounting basis from the payments basis to the invoice basis.

Taxable periods

3.27 Section 15 sets out the available taxable periods:

> 15 Taxable periods
>
> (1) A registered person's taxable period must be one of the following:
>
> (a) a 6-month period, if subsection (2) applies:
>
> (b) a 2-month period:
>
> (c) a 1-month period, if subsection (3) or (4) applies.
>
> (2) A person's taxable period may be a 6-month period if the person applies to the Commissioner to pay on that basis and—
>
> (a) the person's taxable supplies in a 12-month period are no more, and are not likely to be more, than $500,000:
>
> (b) the person makes 80% or more of the person's taxable supplies for an income year during a period of 6 months or less that ends with, or less than 1 month before, the end of the income year and has not had a 6-month period as a taxable period under this paragraph in the 24-month period before the application.
>
> (3) A person's taxable period may be a 1-month period if the person applies to the Commissioner to pay on that basis.
>
> (4) A person's taxable period must be a 1-month period if the person's taxable supplies in a 12-month period are more, or are likely to be more, than $24,000,000.
>
> (5) For the purposes of subsections (2) and (4),—
>
> (a) the 12-month period is a period that starts on the first day of a month and ends on the last day of a month:
>
> (b) the amount of a person's taxable supplies does not include the amount of taxable supplies arising as part of—

(i) the ending, including a premature ending, of a taxable activity carried on by the person:

(ii) a substantial and permanent reduction in the size or scale of a taxable activity carried on by the person:

(iii) the replacement of plant or a capital asset used in a taxable activity carried on by the person:

(c) the Governor-General, from time to time, may declare by Order in Council another amount as the limit applying to the value of a person's taxable supplies.

(6) Despite subsections (1) to (4), the taxable period of a non-resident supplier whose only supplies are supplies of remote services to which section 8(3)(c) applies, is a 3-month period, based on a first quarter ending on 31 March.

3.28 To give effect to para (b) of s 55(7), the reference to "person" in s 15 must be read as a reference to the representative member acting as the GST group.

3.29 Therefore, eligibility to use a particular taxable period is based on the total value of all taxable supplies likely to be made by the GST group for the next 12-month period, as if the group were a single taxable entity.

3.30 Under a narrow interpretation, the total value of all taxable supplies would not include supplies likely to be made by non-registered members of the GST group. Under a wide interpretation it would. This is because under the wide interpretation, the representative member (a registered person) would be deemed to make those supplies (see from [3.15]).

3.31 Once a group has determined an applicable taxable period it needs to confirm this in the GST group registration form (IR 374). The form notes that if the selected taxable period requires a change for a particular member, the group registration form will be treated as a written request to change that member's taxable period.

3.32 Example 4 illustrates how a taxable period might be chosen.

Example 4

Choosing a taxable period

Before forming Spring Co GST Group, Winter Co had a one-month taxable period and Spring Co had a two-month taxable period.

When the companies applied to the Commissioner to form Spring Co GST Group, they chose to file their GST returns on a two-monthly basis. They could have chosen a one-month taxable period under s 15(3). The companies could not choose a six-month taxable period because the group (as a whole) was expected to make taxable supplies in excess of $500,000 in the next 12 months.

The GST group registration form (IR 374) was treated as an application by Winter Co to change its taxable period from a one-month taxable period to a two-month taxable period.

Remote services suppliers and taxable periods

3.33 Under s 15(6), the taxable period of a remote services supplier must be a three-month period:

> (6) Despite subsections (1) to (4), the taxable period of a non-resident supplier whose only supplies are supplies of remote services to which section 8(3)(c) applies, is a 3-month period, based on a first quarter ending on 31 March.

3.34 If a GST group is made up of remote services suppliers (who only make supplies of remote services), then s 15(6) applies and the group must use a three-month taxable period.

3.35 However, a question arises as to whether a remote services supplier can GST group register with a New Zealand-resident company. At first glance, s 15(6) might appear to prevent this. Under this view, remote services suppliers (who only make supplies of remote services) must use a three-month taxable period and all other entities must use a one-month, two-month or six-month taxable period, effectively preventing remote services suppliers from grouping with New Zealand-resident companies or other non-remote services suppliers.

3.36 We think this view is incorrect. It requires para (b) to be interpreted as a prerequisite for grouping (that is, you must have the same taxable periods before you form a GST group) rather than as a consequence of grouping (that is, on grouping all members have to use the same taxable period).

3.37 In our opinion, s 15(6) does not prevent a remote services supplier from grouping with a New Zealand–resident company or with other non-remote services suppliers, such as non-resident companies that do not make supplies of remote services. Section 15(6) applies to remote services suppliers whose *only* supplies are supplies of remote services. As the GST group as a whole (and, therefore, the representative member) makes supplies in addition to remote services, s 15(6) does not apply.

3.38 This interpretation is consistent with the single-entity approach as the representative member is deemed to carry on the taxable activities of the group members under s 55(7)(a) as if the group were acting as one person making remote supplies and other types of supplies.

3.39 Example 5 illustrates how to align taxable periods when a group member only makes supplies of remote services.

Example 5

Aligning taxable periods when a group member only makes supplies of remote services

Fog Co is an Australian-resident company, a subsidiary of Spring Co and a remote services supplier. It provides consultancy services to Spring Co GST Group. Spring Co GST Group has a two-month taxable period. Fog Co (as a remote services supplier) has a three-month taxable period (s 15(6)). The group wants Fog Co to join Spring Co GST Group.

Paragraph (b) of s 55(7) requires all the companies in Spring Co GST Group to have the same taxable period. As Fog Co will be part of a GST group, s 15(6) will not apply. Section 15(6) applies only to remote services suppliers *whose only supplies are supplies of remote services*. As Spring Co GST Group as a single taxable entity (and, therefore, Spring Co as representative member) will make supplies in addition to remote services, s 15(6) does not apply.

This means Fog Co can join Spring Co GST group and adopt a two-month taxable period under s 15(1)(b).

Paragraph (c) – taxable supplies between members may be disregarded

3.40 We consider that the consequences of para (c) of s 55(7) are the same under either interpretive approach.

3.41 Paragraph (c) provides:

> (c) subject to paragraphs (db) and (dc), any taxable supply of goods and services by a member of the group to another member of the group may be disregarded; and

3.42 Paragraph (c) states that any taxable supplies of goods and services between group members may be disregarded (subject to paras (db) and (dc)). The Act does not define "disregarded", and there is no case law on the meaning of the word in the context of the Act. However, the *Concise Oxford English Dictionary* (12th ed, New York, 2011) defines "disregard" as:

> v. pay no attention to; ignore. ▸n. the action or state of disregarding or the state of being disregarded.

3.43 Based on the ordinary meaning of "disregard", the effect of para (c) is that a taxable supply between group members may be ignored for the purposes of the Act. Output tax is not imposed on that supply, input tax cannot be claimed by the recipient and a tax invoice does not have to be issued. However, group members must retain sufficient information of the disregarded supply for their

records under s 75, should the Commissioner need to verify any information relating to the disregarded supply.

3.44 This outcome is consistent with the overall purpose of the grouping rules, which is to treat a group of companies as a single entity for GST purposes. If the group were a single entity, then an intra-group "supply" would be a "self-supply" and would not be subject to GST.

3.45 Paragraph (c) uses the word "may". This means it is not mandatory for group members to disregard intra-group taxable supplies. However, this is one of the main compliance benefits of grouping.

3.46 Paragraph (c) applies to only taxable supplies. Exempt supplies between group members cannot be disregarded. There may also be input tax implications with intra-group exempt supplies.

3.47 Paragraph (c) is subject to paras (db) and (dc) (discussed from [3.69]). Paragraphs (db) and (dc) ensure goods acquired by a group member before group registration are still subject to the change-of-use provisions, so are not disregarded in these cases. (Clause 228 of the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill proposes to update paras (db) and (dc) to remove outdated references to the "principal purpose" test.)

3.48 An intra-group taxable supply can occur in different contexts. In most cases, intra-group taxable supplies may be disregarded. However, sometimes the context might mean the supply cannot be disregarded. For example, there may be a specific legislative provision such as s 55(7B), which states that a taxable supply is not disregarded if the supply is a supply of imported services subject to the reverse charge (discussed further from [4.33]).

3.49 We understand that some GST groups choose not to disregard intra-group taxable supplies. They think that disregarding the supply might prevent them from claiming input tax on the original taxable supply of those goods and services by a third party into the GST group. The 2002 discussion document *GST and Financial Services* made comments to that effect.[5] We disagree with those comments.

3.50 The ability to disregard intra-group taxable supplies is one of the main compliance benefits of GST grouping. If a GST group were unable to claim input tax on the original taxable supply coming into the group (which is then used to make the disregarded intra-group taxable supply), this would undermine any compliance benefit and would put the group at a disadvantage compared with a single entity or a branch. We consider that in these circumstances, the disregarded supply is looked-through to the ultimate supply being made outside the group. Input tax can therefore be claimed by the representative member on that original taxable supply into the group to the extent those goods and services are used or intended to be used to make taxable supplies outside the group (s 20(3C)). In a grouping context, goods or services used or intended to be used by group members to make taxable supplies outside the group are deemed to be used or intended to be used by the representative member. If that use or intended use changes (for example,

5 *GST and Financial Services* (Policy Advice Division of Inland Revenue, Wellington, 2002) at 8.2.

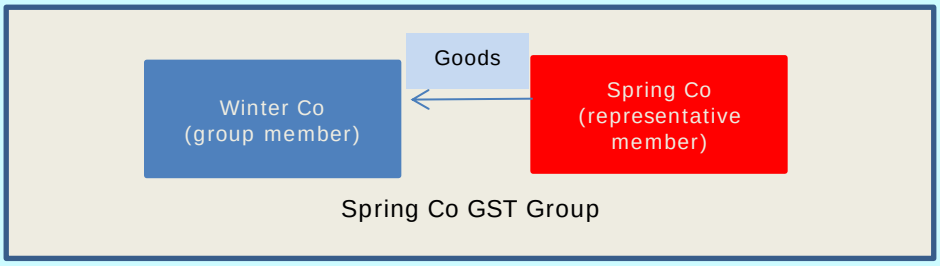
the goods and services are used to make exempt supplies), then the representative member will need to make an adjustment under s 21A. This outcome reflects the single taxable entity approach as it puts the group in the same position as if it were a single entity or a branch. Claiming input tax deductions and making adjustments in a GST group context are discussed from [4.57].

3.51 Example 6 illustrates how an intra-group taxable supply is disregarded.

Example 6

Taxable supplies between group members are disregarded

Spring Co agrees to sell some light bulbs to Winter Co for $1,000 plus GST. Winter Co intends to use those light bulbs in the torches it produces to make taxable supplies to customers outside the GST group. This is a taxable supply of goods and, if the companies were not grouped, Spring Co would need to account for $150 of output tax on this supply.



However, Spring Co and Winter Co are grouped for GST purposes. This means any taxable supplies made between group members may be disregarded. If the supply is disregarded, no output tax is charged on the supply of the light bulbs by Spring Co to Winter Co and no tax invoice is issued. Spring Co, as the representative member, is also unable to claim an input tax deduction on this supply.

However, disregarding the supply between Spring Co and Winter Co does not affect the group's ability to claim input tax on the goods Spring Co acquires from outside the group to make the supply to Winter Co. A full input tax deduction may be claimed by Spring Co (as representative member) on that supply because the group intends to use those goods to make taxable supplies to customers outside the GST group.

If, instead, Winter Co intends to use the goods to make exempt supplies then an input tax deduction would not be permitted.

3.52 More detailed examples illustrating how cross-border intra-group taxable supplies are treated are in part 4 (from [4.3]).

Paragraph (d) - the representative member is treated as making all other taxable supplies to persons outside the group

3.53 We consider that the consequences of para (d) of s 55(7) are the same under either interpretive approach.

3.54 Paragraph (d) deems all *other* taxable supplies made by a group member to be made by the representative member:

> (d) any other taxable supply of goods and services by a member of the group shall be deemed to be a taxable supply by the representative member; and

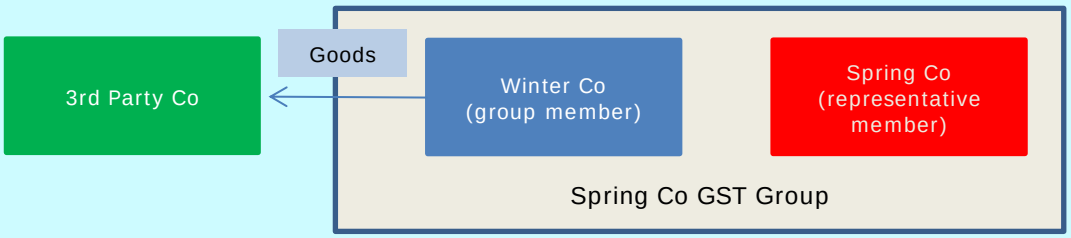
3.55 Therefore, para (d) applies to those taxable supplies not covered by para (c). These are taxable supplies group members make to persons outside the group; taxable supplies that are not disregarded under para (c); or taxable supplies group members make to other group members in circumstances where para (db) or para (dc) applies. Paragraph (d) helps to create the single taxable entity for the purposes of the grouping rules.

3.56 Example 7 illustrates the representative member being deemed to make any other taxable supplies.

Example 7

Representative member deemed to make any other taxable supplies

Winter Co makes a taxable supply of goods to 3rd Party Co. Under para (d), that supply is deemed to be made by Spring Co, as the representative member of the GST group.



Paragraph (d) (and paras (a) and (dab)) require Spring Co to account for GST on this supply in the group GST return.

Paragraph (da) – the representative member is treated as making all non-taxable supplies

3.57 Paragraph (da) of s 55(7) deems non-taxable supplies of goods and services made by a member of the group to be made by the representative member:

> (da) any supply of goods and services, other than a taxable supply, made by a member of the group, shall be deemed to be made by the representative member; and

3.58 Non-taxable supplies include exempt supplies, supplies where the supplier is not GST-registered, or the supply is not subject to GST. Paragraph (da) covers non-taxable supplies made intra-group as well as outside the group.

3.59 Examples 8–11 illustrate how para (da) applies:

- Example 8 illustrates an exempt supply of services made by a New Zealand-resident group member to a New Zealand-resident third party (at [3.61]).
- Example 9 illustrates an intra-group exempt supply of services between two New Zealand-resident group members (at [3.62]).
- Example 10 illustrates a non-taxable supply of goods by a New Zealand-resident group member to a New Zealand-resident third party (at [3.63]).
- Example 11 illustrates a non-taxable supply of goods made from outside New Zealand by a non-resident group member to a non-resident third party (at [3.64]).

3.60 As mentioned previously, the different interpretive approaches will lead to different GST outcomes in some cases. These different GST outcomes are highlighted below.

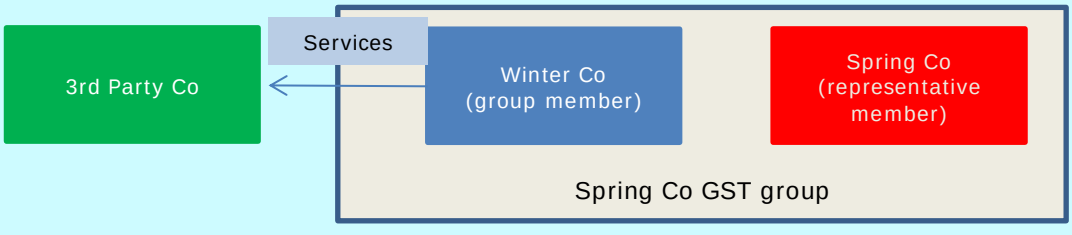
Exempt supply of services made by a New Zealand-resident group member to a New Zealand-resident third party

3.61 Example 8 illustrates how para (da) applies when there is a supply of services made by a New Zealand-resident group member to a New Zealand-resident third party.

Example 8

Exempt supply made by a New Zealand-resident group member to a New Zealand-resident third party

Winter Co supplies financial services to 3rd Party Co. The supply is an exempt supply for GST purposes, so Winter Co does not charge GST on this supply.



Paragraph (da) deems the supply of financial services to be made by Spring Co, as the representative member of the GST group. The supply remains an exempt supply.

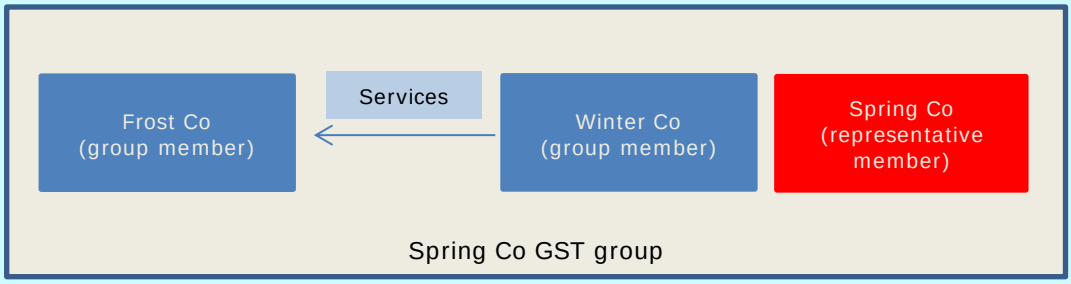
Intra-group exempt supply of services between two New Zealand-resident group members

3.62 Example 9 illustrates how para (da) applies where there is an intra-group exempt supply of services between two New Zealand-resident group members.

Example 9

Intra-group exempt supply of services between New Zealand-resident group members

Frost Co has joined Spring Co GST Group. Winter Co makes an exempt supply of financial services to Frost Co. The supply is an exempt supply for GST purposes, so Winter Co does not charge GST on this supply.



While the exempt supply is made between group members, it cannot be disregarded as taxable supplies can under para (c). The supply is deemed to be made by Spring Co as the representative member. The supply is also deemed to be received by Spring Co as the representative member under para (dab) (discussed from [3.65]). The supply remains an exempt supply.

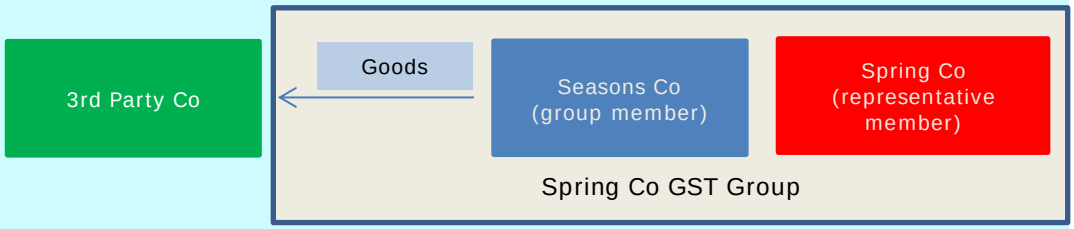
Non-taxable supply of goods by a New Zealand-resident group member to a New Zealand-resident third party

3.63 Example 10 concerns a non-taxable supply of goods made by a New Zealand-resident group member to a New Zealand-resident third party. In this example, because a group member is non-registered, the GST outcome will vary depending on which interpretation is applied.

Example 10

Non-taxable supply by a New Zealand-resident group member to a New Zealand-resident third party

Seasons Co has joined Spring Co GST Group. Seasons Co is not registered for GST as it has not made supplies in excess of $60,000 in the last 12 months, nor is it expected to make supplies in excess of $60,000 in the next 12 months. Seasons Co makes a non-taxable supply of goods to 3rd Party Co.



Paragraph (da) deems the non-taxable supply of goods to be made by Spring Co as the representative member.

Narrow interpretation

Under the narrow interpretation the non-taxable supply made by Seasons Co is simply attributed to Spring Co. The nature of the supply does not change. This means the supply would not need to be included in the group GST return by Spring Co and an input tax deduction could not be claimed in respect of the initial supply of these goods into the GST group.

Wide interpretation

Under the wide interpretation Spring Co is deemed to make this supply. Spring Co is registered for GST so imposes its characteristics on the supply. Therefore, the nature of the supply changes from non-taxable to taxable. Output tax must be charged on this supply as it is now deemed to be made by GST-registered Spring Co. This outcome is consistent with the GST treatment of a single entity because a single entity cannot have non-taxable supplies if it conducts a regular and continuous activity alongside its taxable activity.

There may also be input tax implications under the wide interpretation. As the supply is changing from non-taxable to taxable, Spring Co (as representative member) may be able to claim an input tax deduction on the supply of goods into the group.

However, the GST outcome under the wide interpretation highlights an inconsistency in the legislation. This is because under para (h) the responsibility for issuing invoices remains with the group member, Seasons Co, but Seasons Co is not registered for GST and is therefore unable to issue a GST invoice.

Non-taxable supply of goods made from outside New Zealand by a non-resident group member to a non-resident third party

3.64 Example 11 concerns a non-taxable supply of goods made from outside New Zealand by a non-resident group member to a non-resident third party.

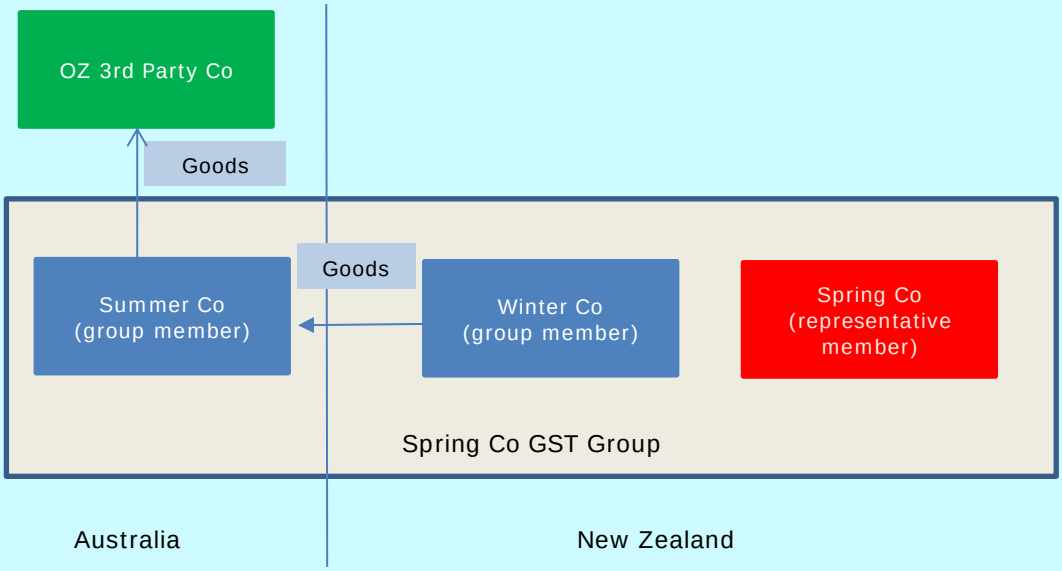
In this example, the GST outcome varies depending on which interpretation is applied.

Example 11

Non-taxable supply of goods made outside New Zealand

Summer Co (an Australian-resident company) has joined Spring Co GST Group. Summer Co is eligible to join the group because it is registered for GST under s 51 and satisfies the requirements of s 55(1).

Winter Co makes a supply of goods to Summer Co. Summer Co then makes a supply of goods to OZ 3rd Party Co. OZ 3rd Party Co is an Australian-resident company and not part of Spring Co GST Group.



Narrow interpretation

This is the same scenario discussed in Example 1. There are two supplies. The supply from Winter Co to Summer Co and the supply from Summer Co to OZ 3rd Party Co. The first supply is zero-rated under s 11(1)(a) and as it is an intra-group taxable supply it may be disregarded.

The second supply is a non-taxable supply of goods made by an Australian-resident company to another Australian-resident company in Australia.

Under para (da), any non-taxable supply of goods and services made by Summer Co is treated as being made by Spring Co. Under the narrow interpretation, Summer Co is treated as making the supply of goods in Australia to OZ 3rd Party Co. The resulting supply is then attributed to Spring Co. This means the supply by Summer Co to OZ 3rd Party Co in Australia is not subject to GST because the supply does not occur in New Zealand (or is not deemed to occur in New Zealand). Therefore, Spring Co would not include this supply in the group GST return.

As noted previously, arguably the narrow interpretation would lead to a different result than would be achieved in a single entity or branch situation.

Wide interpretation

Under the wide interpretation there are also two supplies – the supply from Winter Co to Summer Co and the supply from Summer Co to OZ 3rd Party Co. The first supply is zero-rated under s 11(1)(a) or s 11(1)(c) (depending on which entity factually entered the goods for export) and as it is an intra-group taxable supply it may be disregarded.

The second supply made by Summer Co to OZ 3rd Party Co is treated as being made by Spring Co to OZ 3rd Party Co. The substantive provisions are then applied to that supply. Because Spring Co is resident in New Zealand, the supply is subject to GST under s 8(2). However, as the goods have been exported to Australia, it is likely they will be zero-rated under s 11(1)(c). This means the supply would need to be included in the group GST return by Spring Co – although we note that no GST would be payable on the supply as it is zero-rated.

This result is arguably more consistent with the GST treatment for single entities and branches, so is consistent with one of the purposes of the grouping rules - to reduce distortions between different entities. However, this interpretation may lead to increased compliance costs, because the transaction needs to be accounted for in the group GST return. Therefore, in Example 11, the wide interpretation is arguably not consistent with one of the other purposes of the grouping rules – to reduce compliance costs.

Paragraph (dab) – the representative member is treated as receiving all supplies

3.65 We consider that the consequences of para (dab) of s 55(7) are the same under either interpretive approach.

3.66 Under para (dab), any supply (taxable or non-taxable) to a member of the group is treated as a supply to the representative member:

> (dab) subject to paragraph (c), any supply of goods and services to a member of the group is a supply to the representative member; and

3.67 Paragraph (dab) is subject to para (c), which means it is concerned only with:

- supplies made from outside the group to a member of the group; and
- intra-group supplies that paras (db) and (dc) remove from para (c).

3.68 Paragraph (dab) helps to complete the statutory fiction of the single taxable entity. Paragraphs (d) and (da) treat all supplies made by group members (except intra-group taxable supplies) to be made by the representative member. Paragraph (dab) treats all supplies made to group members to be made to the representative member. Therefore, in most cases, the representative member is treated as making all supplies made by the group and receiving all supplies received by the group. Arguably, this is the effect of para (a) in any event. However, by stating the position explicitly in paras (d), (da) and (dab) the matter is put beyond doubt, and additional detail is provided on how the grouping rules are intended to operate.

Paragraphs (db) and (dc) – goods and services acquired for one purpose but applied for another purpose

3.69 We consider that the consequences of paras (db) and (dc) of s 55(7) are the same under either interpretive approach.

3.70 Paragraphs (db) and (dc) state:

> (db) to the extent that goods and services acquired or produced or applied by any member of a group for the principal purpose of making taxable supplies are applied by the representative member of that group for a purpose other than that of making taxable supplies, that acquisition or production or application of those goods and services shall, for the purposes of section 21(1), be deemed to have been made by the representative member of that group; and
>
> (dc) to the extent that goods and services acquired or produced on or after 1 October 1986 by any member of a group other than for the principal purpose of making taxable supplies are applied by the representative member of that group for a purpose of making taxable supplies, that acquisition or production of those goods and services shall, for the purposes of section 21E, be deemed to have been made by the representative member of that group; and

3.71 Paragraphs (db) and (dc) cover the situation where, before grouping, an entity acquires goods or services for the principal purpose of making taxable supplies and once grouped, uses those supplies for a non-taxable purpose (and vice versa).

3.72 If the entity is not part of a GST group, it must make an adjustment for the subsequent application of those goods or services under s 21A.

3.73 If the entity is part of a GST group, then paras (db) and (dc) treat the initial acquisition of the goods or services as being made by the representative member. The grouping rules already treat any subsequent application of those goods or services as being made by the representative member, so in this way it is the same "person" acquiring the goods or services and subsequently applying them for a different purpose. Therefore, paras (db) and (dc) require the representative member to make an adjustment for a change of use under s 21A.

3.74 Had paras (db) and (dc) not been included, para (a) would have deemed the acquisition or production of the goods and services to be by the group member and the non-taxable supply to be made by the representative member (that is, a different registered person). Therefore, arguably no change-of-use adjustment would be required. This would be because s 20(3C)(a) applies only when the same person who acquired or produced the goods and services for making taxable supplies applies those goods for a non-taxable purpose.

3.75 Where the goods or services are acquired once grouped, paras (db) and (dc) are not required as it is the representative member who is treated as making the initial and subsequent supplies, so s 21A clearly applies.

3.76 Clause 228 of the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill proposes to remove the outdated reference to the "principal purpose" test and to merge the paragraphs into one,

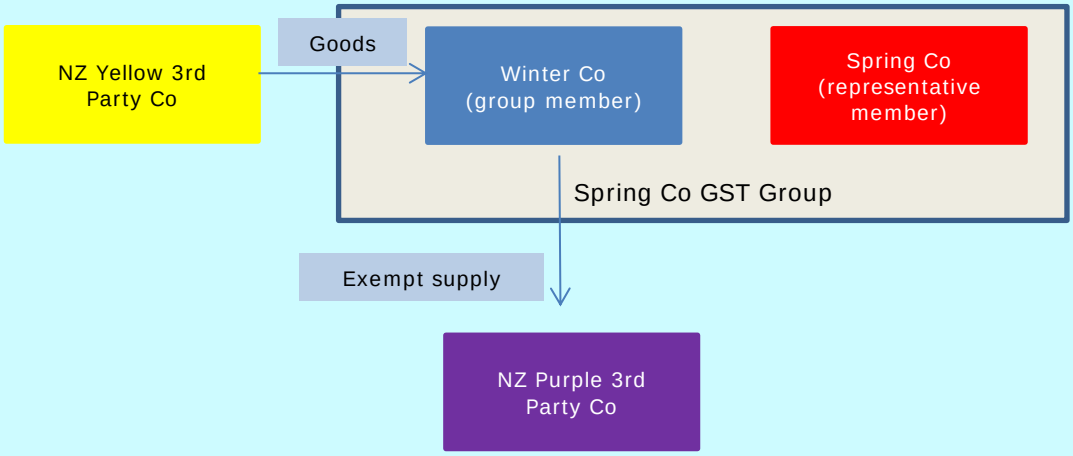
repealing para (dc). If this clause is enacted, we think the new para (db) will operate in the same way as the approach set out above.

3.77 Example 12 illustrates what happens when goods acquired for one purpose before grouping are applied for another purpose after grouping.

Example 12

Goods acquired for one purpose before grouping but applied for another purpose after grouping

Before Spring Co GST Group is formed, Winter Co acquires goods from NZ Yellow 3rd Party Co for the purpose of making taxable supplies. Winter Co deducted input tax on this supply. After Spring Co GST Group is formed, Winter Co uses the goods to make an exempt supply to NZ Purple 3rd Party Co.



If Winter Co was not part of Spring Co GST Group, it would need to make an adjustment for the change in use. As part of a group, an adjustment still needs to be made. This adjustment is undertaken by Spring Co as the representative member.

Paragraph (db) requires Spring Co to make this adjustment because it treats the initial acquisition of the goods (pre-grouping) to have been made by Spring Co. It also treats Spring Co as making the exempt supply to NZ Purple 3rd Party Co made, in fact, by Winter Co (para (da)).

Paragraphs (dd) and (de) – the representative member is treated as providing and receiving land statements

3.78 We consider that the consequences of paras (dd) and (de) of s 55(7) are the same under either interpretive approach.

3.79 Paragraphs (dd) and (de) provide that any statement or other information provided to or by a member of the GST group under s 78F is treated as provided to or by the representative member:

> (dd) any statement or other information provided to a member of the group under section 78F shall be deemed to be provided to the representative member; and

(de) any statement or other information provided by a member of the group under section 78F shall be deemed to be provided by the representative member; and

3.80 Section 78F contains the disclosure requirements for the zero-rating of land transactions. Section 78F requires a recipient of a supply of land to provide the necessary information to the supplier to enable the supplier to determine whether the supply should be zero-rated. The supplier may then rely on that information to determine the tax treatment of the supply. The statement must be made in writing to the supplier and must explain whether, at the date of settlement the recipient:

- is, or expects to be, a registered person; and
- is acquiring the goods with the intention of using them for making taxable supplies; and
- intends to use the land as a principal place of residence (or an associated person intends to use the land in this way).

3.81 Paragraphs (dd) and (de) ensure that the information the group member is required to provide or receive under s 78F is deemed to be provided or received by the representative member.

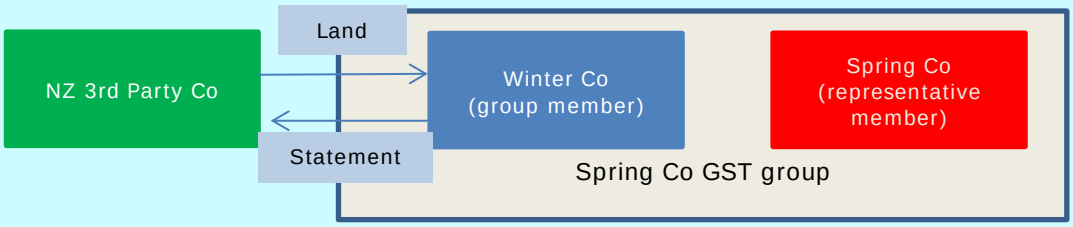
3.82 The group member actually buying or selling the land is obviously the entity that must provide or receive the s 78F statement. However, without paras (dd) and (de), it might have been suggested that, as the representative member is treated as making the supply of land (under para (d)), the s 78F statement must also be provided or received by the representative member. Paragraphs (dd) and (de) clarify that it is the group member that must provide or receive the s 78F statement. However, the representative member will be treated as providing or receiving that statement.

3.83 Example 13 illustrates who is treated as providing land statements.

Example 13

Representative member is treated as providing land statements

Winter Co has decided to purchase some land from NZ 3rd Party Co, an unrelated company. Under s 78F, Winter Co must provide NZ 3rd Party Co with a disclosure statement at the date of settlement (covering the factors set out in s 78F), so NZ 3rd Party Co can determine the correct tax treatment of the supply of land.



Under s 55(7)(de), any statement Winter Co provides under s 78F to NZ 3rd Party Co is deemed to be provided by Spring Co, as the representative member.

Paragraph (e) – the representative member is treated as paying all input tax

3.84 We consider that the consequences of para (e) of s 55(7) are the same under either interpretive approach.

3.85 Paragraph (e) provides that any input tax paid or payable by a group member is deemed to be paid or payable by the representative member:

> (e) any input tax paid or payable by a member of the group shall be deemed to be paid or payable by the representative member; and

3.86 Paragraph (e) is similar to paras (d), (da) and (dab) in that it is a logical consequence of deeming the representative member to carry on the taxable activities of the group members under para (a). By deeming the representative member to have paid the group member's input tax, para (e) authorises the representative member to deduct that input tax when calculating the amount of tax payable by the group under s 20.

3.87 Claiming input tax deductions and making adjustments in a GST group context are discussed from [4.57].

Paragraph (f) – only the representative member files GST returns

3.88 We consider that the consequences of para (f) of s 55(7) are the same under either interpretive approach.

3.89 Paragraph (f) relieves all group members (except the representative member) from filing a GST return under s 16:

> (f) any obligation on any member of the group, other than the representative member, pursuant to section 16, shall be disregarded:

3.90 Section 16 provides:

> 16 Taxable period returns
>
> (1) A registered person must provide a return setting out the amount of tax payable by them for a taxable period, calculated under section 20.
>
> (2) A return required by subsection (1) must be provided on or before—
>
> (a) the 28th of the month following the end of the taxable period, if paragraph (b) or (c) do not apply; or
>
> (b) 15 January, if the month following the end of the taxable period is December; or
>
> (c) 7 May, if the month following the end of the taxable period is April.
>
> (3) If the circumstances of a non-profit body or a particular case mean a variation is required in the date on which a return must be provided, the Commissioner may vary the date.
>
> (4) A person who ceases to be a registered person must provide a final return for the part of the last taxable period for which they were registered.

(5) A return required by subsection (4) must be provided on or before—

(a) the 28th of the month following the end of the taxable period, if paragraph (b) or (c) do not apply; or

(b) 15 January, if the month following the end of the taxable period is December; or

(c) 7 May, if the month following the end of the taxable period is April.

(6) A return must contain a notice of the assessment that must be made under section 92B of the Tax Administration Act 1994.

3.91 Once the entities are grouped, "registered person" in s 16 must be read as "representative member". This naturally follows from para (a) because the representative member is deemed to carry on the taxable activities of the group members. Paragraph (f) puts this beyond doubt.

Paragraph (g) – all members are jointly and severally liable for all tax payable

3.92 We consider that the consequences of para (g) of s 55(7) are the same under either interpretive approach.

3.93 Paragraphs (g) and (h) are provisos to the previous paragraphs. This means they apply despite the consequences outlined for paras (a) to (f). Paragraph (g) states:

(g) a member of the group is liable jointly and severally with all other members of the group for all tax payable by the representative member for each taxable period, or part of a taxable period, in which the member is part of the group, even if the member is no longer part of the group or a representative member ceases to exist; and

3.94 Paragraph (g) provides that a group member is jointly and severally liable with all other group members for all tax deemed payable by the representative member. This liability applies for each taxable period or part of a taxable period in which the group member is part of the GST group.

3.95 If a group member leaves the GST group, they will still be liable for any tax payable for the taxable periods in which they were a member of the group. Similarly, if the representative member ceases to exist, liability will remain with the group members for the taxable periods in which they were a member of the group.

3.96 Therefore, even though the representative member is deemed to carry on the taxable activities of the group members, liability for any tax payable is shared among all group members. In this way, para (g) exposes a group member to additional liability than they would otherwise be exposed to if they were not grouped.

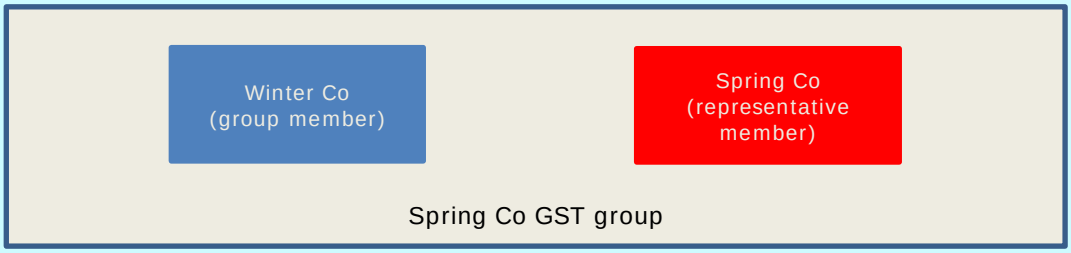
3.97 Example 14 illustrates the implications of joint and several liability in two circumstances.

Example 14

Joint and several liability when a group member leaves the group

Frost Co leaves Spring Co GST Group at the end of March. In June, a calculation error is uncovered with the group's March GST return, resulting in an additional $5,000 of tax being payable. Spring Co contacts Frost Co and asks it to pay its share of the outstanding tax. Spring Co reminds Frost Co that it remains jointly and severally liable with Spring Co and Winter Co for all tax payable by the representative member for the taxable periods in which it was a member of Spring Co GST Group.

Joint and several liability when a representative member is in liquidation



Spring Co goes into liquidation without filing the latest GST return for Spring Co GST Group. The group currently owes Inland Revenue GST of $5,000. As Spring Co does not have sufficient funds to pay its share, Winter Co must pay the amount owing to Inland Revenue. This is because, under para (g), Winter Co is jointly and severally liable for any tax payable by the representative member.

Paragraph (h) – sections 24 and 75 and Part 8 (ss 51–54C) continue to apply to all members of the group

3.98 We consider that the consequences of para (h) of s 55(7) are the same under either interpretive approach.

3.99 Paragraph (h) provides:

> (h) the provisions of section 24, section 75, and Part 8 shall continue to apply to all such members of the group.

3.100 Paragraph (h) ensures that the administrative and compliance provisions at s 24 (tax invoices), s 75 (keeping of records), and Part 8 (ss 51–54C – registration) continue to apply to all group members, as if the group did not exist. Therefore, even though the representative member is deemed to carry on the taxable activities of the group members under para (a), group members are still required to issue invoices, keep records and (if applicable) register for GST, as if the group did not exist.

3.101 However, the representative member is responsible for issuing a shared tax invoice where two or more group members combine to make a supply to a third-party recipient (s 24BA). The representative member must also keep relevant records relating to the shared tax invoice.

3.102 Example 15 illustrates the implications of various administrative and compliance issues.

Example 15

Administrative and compliance issues

Tax invoices

Winter Co is about to issue its first invoice since joining Spring Co GST Group. Winter Co wants to know whether it must issue the tax invoice in its own name or in Spring Co's name.

While Spring Co (as representative member) is deemed to carry on Winter Co's taxable activity, para (h) means s 24 (tax invoices) still applies to Winter Co as if it were not part of a GST group. This means Winter Co must issue tax invoices in its own name.

Shared tax invoices

Sun Co and Winter Co provide goods and services to the same third-party company. Spring Co, as representative member, wants to know whether it may issue a shared tax invoice.

Under s 24BA, a shared tax invoice may be issued by Spring Co on behalf of Sun Co and Winter Co. Spring Co must ensure the tax invoice meets the requirements of a share tax invoice set out in s 24BA(1) and must maintain sufficient records as required by s 24BA(3).

Trading name change

Winter Co decides to change its trading name to Water Co. Winter Co asks Spring Co, as representative member, to notify the Commissioner of this change.

Section 53(2) (which is in Part 8) contains the requirements for notifying the Commissioner of a trading name change. While Spring Co, as representative member, is deemed to carry on Winter Co's taxable activity, para (h) means Part 8 still applies to Winter Co as if it were not part of a GST group. Therefore, Winter Co must apply to the Commissioner to change its trading name.

Group member ceases trading

Winter Co decides to cease trading. Therefore, it will be leaving Spring Co GST Group and needs to cancel its GST registration. Winter Co asks Spring Co, as representative member, to notify the Commissioner of these decisions.

While Spring Co, as representative member, is responsible for notifying the Commissioner that Winter Co has left Spring Co GST Group (s 55(4)), Winter Co also has notification obligations.

Under s 53(1)(d), Winter Co has 21 days to notify the Commissioner that it has ceased to be eligible to be a member of a group. Section 53(1)(d) (which is in Part 8) applies to Winter Co as if it were not part of a GST group.

Winter Co is also responsible for cancelling its own GST registration. Under s 52(2), Winter Co needs to ask the Commissioner to cancel its GST registration. Section 52(2) (which is in Part 8) applies to Winter Co as if it were not part of a GST group.

4. Further examples – less common and more complex arrangements

4.1 The examples in this part cover less common arrangements or involve the application of several different paragraphs of s 55(7). The examples concern:

- cross-border intra-group taxable supplies (from [4.3], Examples 16–23);
- making elections and notifying the Commissioner when part of a GST group (from [4.51]);
- the availability of input tax deductions (from [4.57], Examples 24–27);
- financial services supplied to or between group members under the business-to-business regime (from [4.78], Examples 27–29);
- GST on capital-raising costs (from [4.96], Example 30); and
- sale of a business by a GST group (from [4.102], Example 31).

4.2 Examples 16–31 are included because of the uncertainty about how the law applies. We welcome your feedback on these examples. We would also like to hear about other examples that could be addressed in a public statement.

Cross-border intra-group taxable supplies

4.3 Examples 16–23 concern cross-border intra-group taxable supplies. In some cases, these supplies may be disregarded under para (c) of s 55(7). This might occur, for example, where a GST group has a mix of resident and non-resident members. However, special rules apply to cross-border intra-group taxable supplies of imported goods and services that mean they cannot be disregarded in all cases.

4.4 The examples cover a cross-border intra-group:

- taxable supply exported goods (from [4.5], Example 16);
- taxable supply of exported goods (not exported within 28 days) (from [4.8], Example 17);
- taxable supply of exported services (from [4.12], Example 18);
- taxable supply of exported services that are required to be standard-rated (from [4.15], Example 19);
- supply of imported goods where the goods are not in New Zealand at the time of supply (from [4.21], Example 20);
- supply of imported goods where the goods are in New Zealand at the time of supply (from [4.22], Example 21);
- supply of imported services subject to the reverse charge (from [4.33], Example 22); and
- supply of imported remote services (from [4.38], Example 23).

Exported goods

Goods exported within 28 days

4.5 We consider that the consequences are the same under either interpretive approach.

4.6 A supply of goods will be zero-rated under s 11(1)(d) where the supplier enters the goods for export under the Customs and Excise Act 1996. To be eligible for zero-rating, the goods must be entered for export within 28 days from the time of supply, otherwise the supply must be standard-rated (s 11(4)).

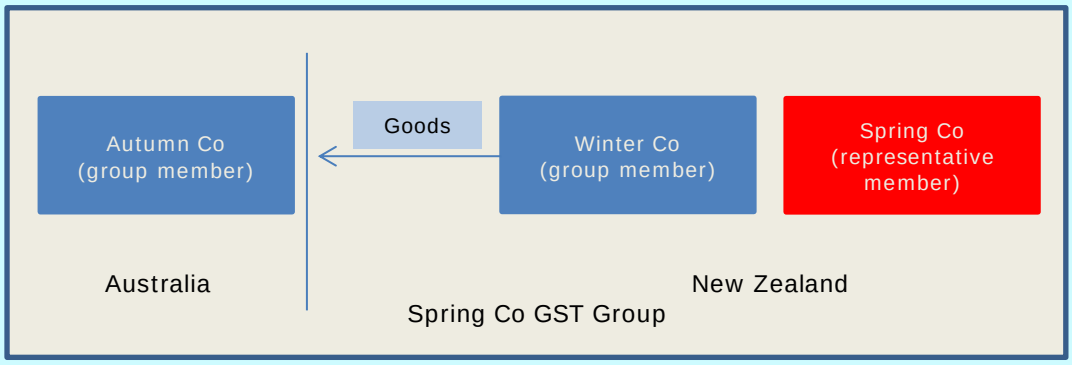
4.7 Example 16 considers the outcome under each interpretive approach where the supply of goods is made by a New Zealand–resident company to a non-resident company in the same GST group.

Example 16

Cross-border intra-group taxable supply of exported goods

Autumn Co has joined Spring Co GST Group. Autumn Co is an Australian-resident company that sells industrial torches to the New Zealand and Australian markets. It is eligible to be a part of Spring Co GST Group because it is registered for GST under s 51.

Winter Co agrees to sell a crate of torch lenses to Autumn Co for $1,000. Before group registration, the goods would have been eligible to be zero-rated as they are entered for export by Winter Co within 28 days of the time of supply. However, as the companies are now grouped, para (a) deems Spring Co to carry on the taxable activity of Winter Co and Autumn Co and para (c) permits intra-group taxable supplies to be disregarded. Spring Co GST Group would like to know how this supply should be treated for GST purposes.



Narrow interpretation

Under the narrow interpretation Winter Co makes the supply to Autumn Co and the goods are eligible to be zero-rated under s 11(1)(a) as they are entered for export by Winter Co within 28 days of the time of supply. The supply is then attributed to Spring Co. However, as the supply is a taxable supply between two members of the same GST group the supply may be disregarded for GST purposes. In this case, disregarding the supply has the same effect as if the supply were zero-rated. The treatment is also consistent with branch treatment because supplies between branches are ignored for GST purposes.

Spring Co, as the representative member, can claim input tax on the goods and services acquired from outside the GST group by Winter Co to make the supply to Autumn Co.

Wide interpretation

Under the wide interpretation the supply of goods between Winter Co and Autumn Co is deemed to be made by Spring Co. This may affect whether the goods can be zero-rated under s 11(1)(a). That section requires the goods to be entered for export by the supplier. Under the wide interpretation, the supplier of the goods is Spring Co. Factually, the goods are likely to have been entered for export by Winter Co. However, as the goods have been exported, the supply by Spring Co should still be zero-rated under s 11(1)(c). As the supply is a taxable supply of goods between two group members it may be disregarded under para (c).

Spring Co, as the representative member, can claim input tax on the goods and services acquired from outside the GST group by Winter Co to make the supply to Autumn Co.

Goods not exported within 28 days

4.8 We consider that the consequences are the same under either interpretive approach.

4.9 In certain circumstances, it may not be possible for goods to be exported within 28 days of the time of supply. In these circumstances, a supplier may apply to the Commissioner for an extension. Under s 11(5), the Commissioner may extend the 28-day period if the supplier can show that:

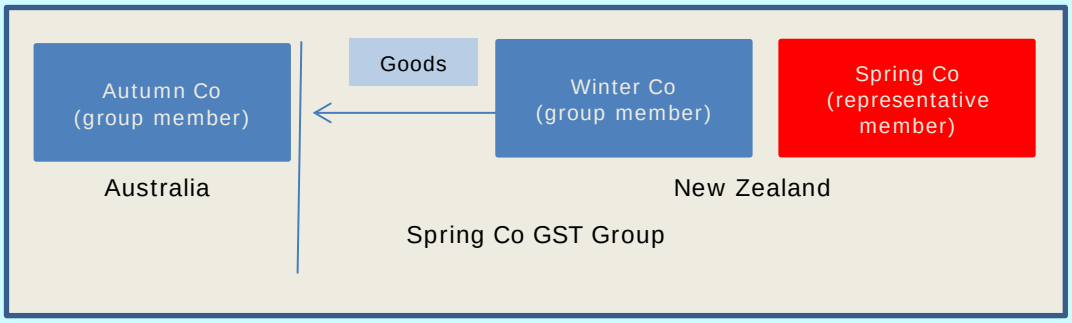
- circumstances beyond their control (or the control of the recipient) have prevented the export of goods within the required period; or
- due to the nature of a supply it is not practicable for the supplier to export the goods within the required period.

4.10 We consider that where the supplier and the recipient are part of the same GST group it may not be necessary to make an application under s 11(5). This is because under para (c) the supply may be disregarded for GST purposes. This is illustrated in Example 17.

Example 17

Cross-border intra-group taxable supply of exported goods not exported within 28 days

The facts in this example are the same as in Example 16. However, due to a manufacturing fault Winter Co is not able to enter the goods for export within 28 days of the time of supply.



If the companies were not part of the same GST group, Winter Co would need to seek an extension to the 28-day export requirement under s 11(5) otherwise the supply would be subject to GST at 15%.

However, as Winter Co and Autumn Co are part of the same GST group and as the supply is a taxable standard-rated supply between group members, the supply can be disregarded. This gives the same result as if the supply were zero-rated. Therefore, an extension does not need to be sought under s 11(5) in relation to this supply. This outcome occurs under both the narrow and wide interpretations.

4.11 It is our understanding that this outcome is consistent with branch treatment. If a registered person sends goods to its branch in Australia to sell to the Australian market there is no supply when the goods are sent overseas so there are no GST consequences. When the goods are eventually sold in Australia, they may be zero-rated under either s 11(1)(c) or (j) on the basis that the goods have been exported or that they are outside New Zealand at the time of supply and delivered to a recipient also outside New Zealand.

Exported services

4.12 We consider that the consequences are the same under either interpretive approach.

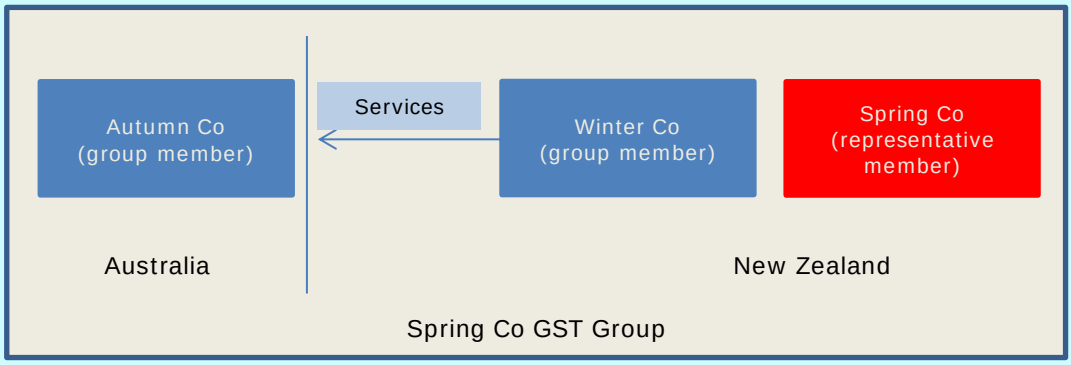
4.13 A supply of exported services will be zero-rated under s 11A(1)(k) where the services are supplied to a person who is not resident in New Zealand and who is outside New Zealand when the services are performed.

4.14 If a taxable supply of services is made by a New Zealand-resident company to a non-resident company and those companies are part of the same GST group, the supply of exported services may be disregarded. This is illustrated in Example 18.

Example 18

Cross-border intra-group taxable supply of exported services

Winter Co makes a supply of exported services to Autumn Co. Spring Co GST Group would like to know how this supply should be treated for GST purposes.



Narrow interpretation

Under the narrow interpretation Winter Co makes a supply of services to Autumn Co. The supply is a zero-rated supply under s 11A(1)(k) and is attributed to Spring Co. As it is a taxable supply, it may be disregarded under para (c).

Wide interpretation

Under the wide interpretation the supply of services from Winter Co to Autumn Co is deemed to be made by Spring Co. The supply is zero-rated under s 11A(1)(k). Therefore, the supply may be disregarded under para (c) as it is a taxable supply between two group members.

The outcome is the same under each interpretation. The outcome under each interpretation is also consistent with branch treatment because supplies between branches are ignored for GST purposes.

Exported services required to be standard-rated

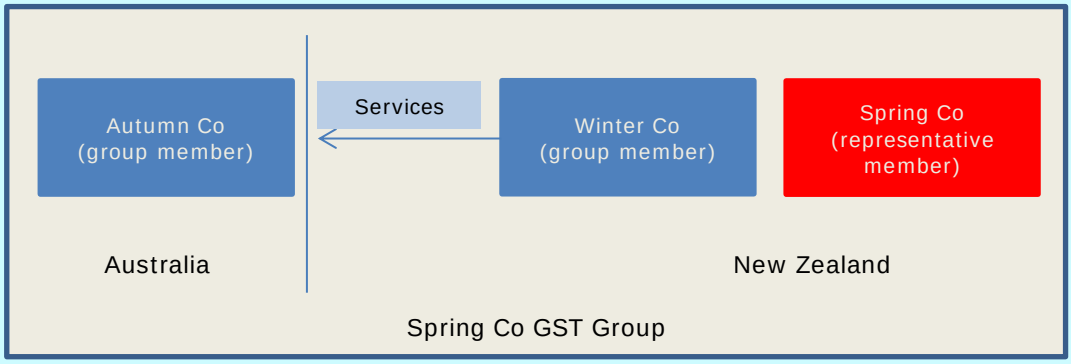
4.15 We consider that the consequences are the same under either interpretive approach.

4.16 Some exported services are required to be standard-rated under s 11A(1)(k). For example, if exported services are supplied in connection with land in New Zealand and are intended to enable a change in ownership of that land, then the supply must be standard-rated under s 11A(1)(k). However, if the companies supplying and receiving the services are part of the same GST group, this taxable supply may be disregarded. See Example 19.

Example 19

Exported services that are required to be standard-rated

Autumn Co owns land in New Zealand that it wants to sell to a third party. Winter Co agrees to have its in-house lawyer handle the conveyancing work for Autumn Co for a fee of $1,000. The group wants to know how to treat this supply for GST purposes.



As the conveyancing work is supplied in connection with land in New Zealand and is intended to assist a change in ownership of that land, the supply would not qualify for zero-rating under s 11A(1)(k) and must instead be standard-rated. However, as this is a taxable supply between two group members, the supply can be disregarded under para (c). This analysis applies under both the narrow and wide interpretations.

Imported goods

4.17 An intra-group supply of imported goods may be subject to GST in two ways:

- Under s 12, GST is levied on goods imported into New Zealand at the rate of 15%. Discussed from [4.18].
- Under s 8, GST may also be charged on the supply of goods between two registered persons. Discussed at [4.20].

GST levied on imported goods (s 12)

4.18 Under s 12, GST is levied on goods imported into New Zealand at the rate of 15%. This levy is collected by the New Zealand Customs Service. Section 12(1) provides:

> (1) Notwithstanding anything in this Act, a tax to be known as goods and services tax shall be levied, collected, and paid in accordance with the provisions of this section at the rate of 15% on the importation of goods (not being fine metal) into New Zealand, being goods that are—
>
> (a) entered therein, or delivered, for home consumption under the Customs and Excise Act 2018; or
>
> (b) entered for delivery to a manufacturing area licensed under section 59 of the Customs and Excise Act 2018; or
>
> (c) before their entry, or delivery, for home consumption or, as the case may be, entry for delivery to a manufacturing area licensed under

section 59 of the Customs and Excise Act 2018, dealt with in breach of any provision of the Customs and Excise Act 2018,—

by reference to the value of the goods as determined under subsection (2).

4.19 Section 12(1) requires GST to be levied on all imported goods by reference to their value. It is not imposed on goods as a result of a supply being made. This is an important distinction. Because para (c) requires there to be a "taxable supply" before the supply between two group members is disregarded, para (c) will not permit GST groups to "disregard" GST imposed on imported goods.

GST charged on a cross-border supply of goods

4.20 In addition, GST may also be charged on the cross-border supply of goods between two group members under s 8. This might occur, for example, if the supplier is a GST registered non-resident and the goods are in New Zealand at the time of supply (s 8(3)). In these circumstances, GST is charged on the supply at the rate of 15%. However, if the goods are supplied for the purposes of carrying on the recipient's taxable activity, the goods are treated as supplied outside New Zealand, unless the parties agree otherwise (s 8(4)).

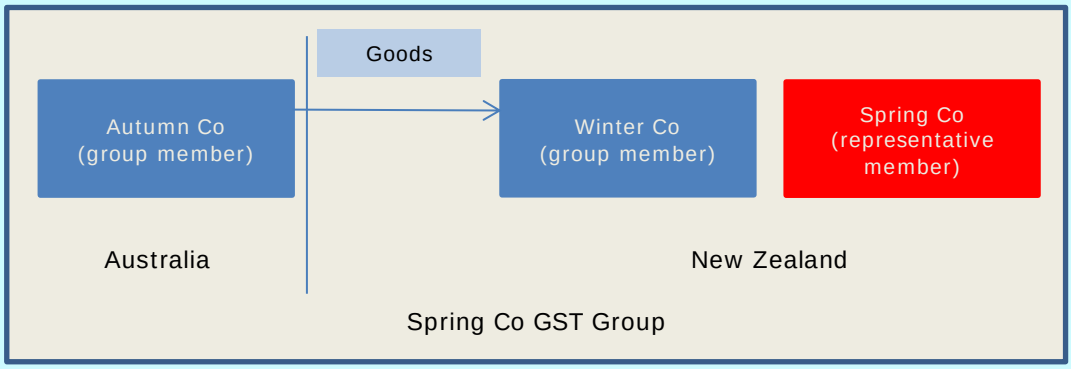
Imported goods where the goods are not in New Zealand at the time of supply

4.21 Example 20 illustrates the implications of a cross-border intra-group supply of imported goods where goods are not in New Zealand at the time of supply.

Example 20

Cross-border intra-group supply of imported goods where goods are not in New Zealand at the time of supply

Autumn Co makes an intra-group supply of goods to Winter Co. The goods are not in New Zealand at the time of supply. GST of 15% is levied on the goods under s 12(1) when they are imported into New Zealand. Customs duty may also be imposed.



Narrow interpretation

Under the narrow interpretation because Autumn Co is resident in Australia and the goods are physically in Australia at the time of supply, GST will not be imposed on the supply by Autumn Co to Winter Co (s 8(2)). The supply by Autumn Co to Winter Co is outside the New Zealand tax base and will therefore not give rise to a GST liability.

As Autumn Co is registered for GST in New Zealand it can (through Spring Co) claim back the import GST levied under s 12, assuming that the goods are acquired to make taxable supplies. Spring Co is authorised to claim back the import GST under para (e).

Wide interpretation

Under the wide interpretation the supply by Autumn Co to Winter Co is deemed to be made by Spring Co. Because Spring Co is a New Zealand resident, the supply is deemed to take place in New Zealand despite the goods not being in New Zealand at the time of supply. This means the supply is a taxable supply subject to s 8. However, because the supply is a taxable supply between two group members, it may be disregarded under para (c).

Under the wide interpretation, Spring Co can claim back the import GST levied under s 12, assuming that the goods are acquired to make taxable supplies.

Imported goods where the goods are in New Zealand at the time of supply

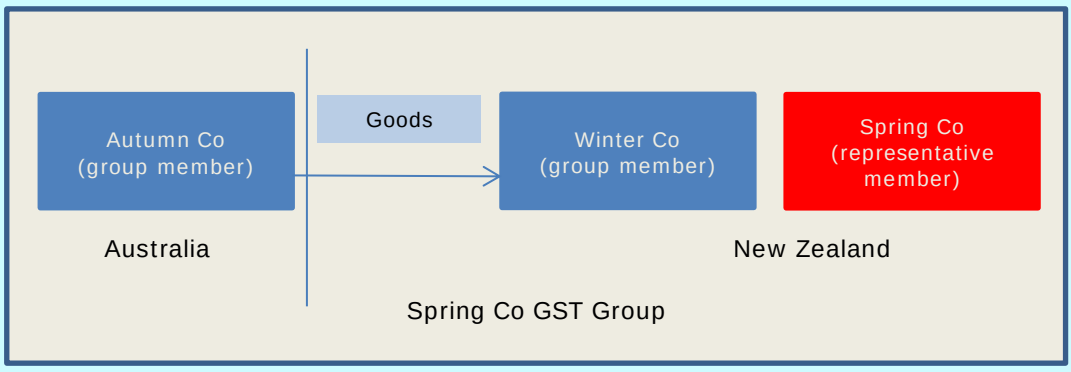
4.22 We consider that the consequences are the same under either interpretive approach.

4.23 Different rules apply where the goods are in New Zealand at the time of supply. This is illustrated in Example 21.

Example 21

Cross-border intra-group supply of imported goods where the goods are in New Zealand at the time of supply

Autumn Co makes a supply of goods to Winter Co. The goods are in New Zealand at the time of supply. Winter Co intends to use those goods for the purpose of carrying on its taxable activity.



4.24 As in the earlier examples in this section, because Autumn Co is non-resident, the GST analysis differs depending on the interpretation applied. However, the GST outcome will be the same.

4.25 In Example 21, under both interpretations, GST of 15% is levied on the goods under s 12(1) when they are imported into New Zealand. Customs duty may also be imposed.

Narrow interpretation

4.26 In Example 21, under the narrow interpretation as the goods are in New Zealand at the time of supply, they are treated as being supplied by Autumn Co in New Zealand under s 8(3)(a). Therefore, the supply is a taxable supply. However, because Winter Co has acquired the goods for the purposes of carrying on its taxable activity, s 8(4) applies to treat the supply as taking place outside New Zealand. As the supply is now deemed to take place outside New Zealand, it is not a taxable supply.

4.27 Alternatively, Autumn Co and Winter Co could agree to treat the supply as taking place inside New Zealand under s 8(4). If the companies agree to this, the supply would be treated as an intra-group taxable supply and it may be disregarded under para (c).

4.28 Disregarding the supply ensures that there is consistent treatment between branches and companies. An intra-branch transfer of goods would also be disregarded for GST purposes.

Wide interpretation

4.29 In Example 21, under the wide interpretation the supply by Autumn Co to Winter Co is deemed to be made by Spring Co. Because Spring Co is a New Zealand resident, the supply is deemed to take place in New Zealand. This means the supply is a taxable supply subject to s 8. However, because the supply is a taxable supply between two group members, it may be disregarded under para (c). Section 8(3)(a) does not apply.

4.30 Disregarding the supply ensures that there is consistent treatment between branches and companies. An intra-branch transfer of goods would also be disregarded for GST purposes.

Imported services

4.31 Certain supplies of imported services may be subject to GST. If the requirements of s 8(4B) are met, a supply of imported services may be treated as being made in New Zealand and, therefore, subject to GST. This is known as the "reverse charge".

4.32 However, if the supply of imported services does not meet the requirements of s 8(4B), the supply may still be subject to GST if the supply is a supply of remote services under s 8(3)(c). We now consider how these supplies might be treated in a grouping context.

Reverse charge

4.33 We consider that the consequences are the same under either interpretive approach.

4.34 The reverse charge applies where a non-resident supplier supplies services into New Zealand. The reverse charge deems the supply of imported services to have been made in New Zealand by the recipient of the supply. Therefore, the supply becomes subject to GST (s 5B).

4.35 The reverse charge applies only to services supplied by a non-resident to a New Zealand recipient. Not all New Zealand recipients need to apply the reverse charge. New Zealand recipients who are not registered for GST do not need to apply the reverse charge unless they become liable to register for GST – potentially because they have received imported services in excess of the registration threshold. For registered persons, New Zealand recipients intending to use the services 95% or more in their taxable activity to make taxable supplies do not need to apply the reverse charge. Recipients intending to use less than 95% of the imported services for making taxable supplies will be subject to the reverse charge if the supply would have been a taxable supply were it made in New Zealand by a registered person in the course or furtherance of their taxable activity (s 8(4B)).

4.36 The grouping rules are modified in cases where the reverse charge applies. If a supply of imported services is treated as made in New Zealand, s 55(7B) provides that paras (a), (c), (d), (da), (dab), (db), (dc), (dd) and (de) do not apply.[6] Section 55(7B) states:

> Subsection (7), apart from paragraphs (b) and (e) to (h), does not apply to a group of companies in relation to a supply of services that is treated by section 8(4B) as being made in New Zealand.

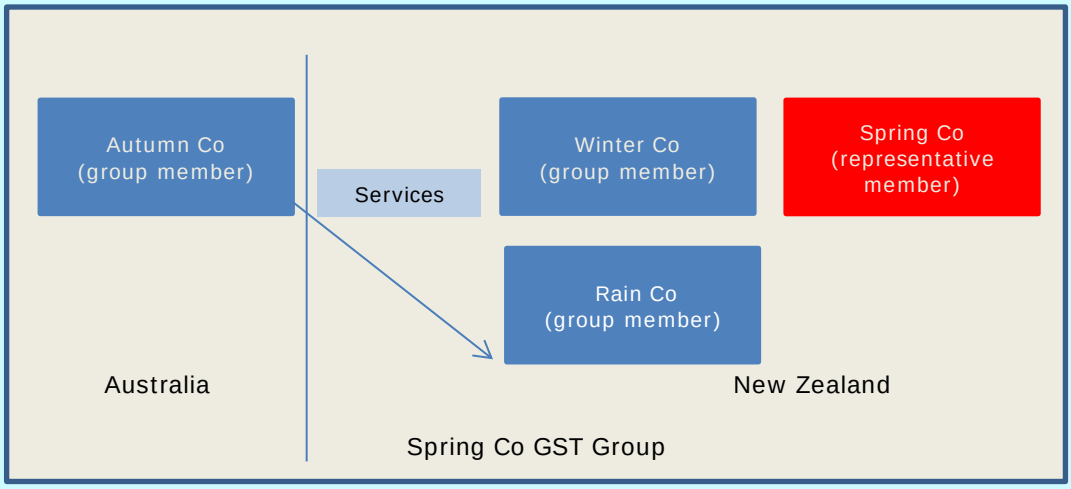
4.37 The effect of s 55(7B) seems to be that an intra-group taxable supply of imported services cannot be disregarded and must be included in the group GST return. The single taxable entity disappears, and each company in the group is recognised as a separate entity for the purposes of the reverse charge rules. This is illustrated in Example 22.

6 Paragraph (b) (registration basis) and paras (e) to (h) (predominantly administrative matters) continue to apply where there is a reverse charge supply.

Example 22

Cross-border intra-group supply of imported services subject to the reverse charge

Autumn Co provides software services to Rain Co, a New-Zealand-resident subsidiary of Winter Co and a member of Spring Co GST Group. Rain Co is a financial services company and is not registered for GST in New Zealand. Spring Co GST Group would like to know how this supply should be treated for GST purposes.



Narrow interpretation

Under the narrow interpretation the supply satisfies the requirements of s 8(4B), so is a taxable supply deemed to take place in New Zealand:

- the services are supplied by a non-resident supplier (Autumn Co) to a recipient in New Zealand (Rain Co);
- the recipient does not intend to use the services more than 95% in their taxable activity to make taxable supplies (Rain Co is a financial services company so makes mainly exempt supplies); and
- the supply of services would be a taxable supply if it were made in New Zealand by a registered person in the course or furtherance of their taxable activity (s 8(4B)).

Section 55(7B) means the intra-group taxable supply of imported services is not disregarded and must be included in the group GST return. The single taxable entity approach is not applied and each company in the group is recognised as a separate entity for the purposes of the reverse charge rules.

Wide interpretation

Under the wide interpretation the grouping rules are considered first before the general provisions of the Act. Section 55(7B) is part of the grouping rules and requires the grouping rules to be effectively switched off in cases where there is a reverse charge. Section 8(4B) would then apply as above under the narrow interpretation and the outcome is the same.

Remote services

4.38 If the recipient of the supply of imported services does not satisfy s 8(4B), for example, if the recipient intends to use the services 95% or more in their taxable activity, then the reverse charge will not apply. However, if the supply is a supply of remote services, the supply is treated as being supplied in New Zealand under s 8(3)(c) and will still be subject to GST, provided s 8(4D) does not apply.

4.39 "Remote services" are defined in s 2 as services where, at the time of performance of the service, no necessary connection exists between the physical location of the customer and the place where the services are performed. Therefore, remote services could include services such as the supply of digital content and the online supply of games and publishing services.

4.40 Under s 8(4D), if a non-resident company makes a supply of remote services to a registered person in New Zealand for the purposes of carrying on their taxable activity, then the services can be treated as supplied outside New Zealand. This means the non-resident company will not have to charge GST on that supply of remote services.

4.41 However, under s 8(4D) the supplier can choose to treat the supply as made in New Zealand. This means there are two potential outcomes when dealing with supplies of remote services:

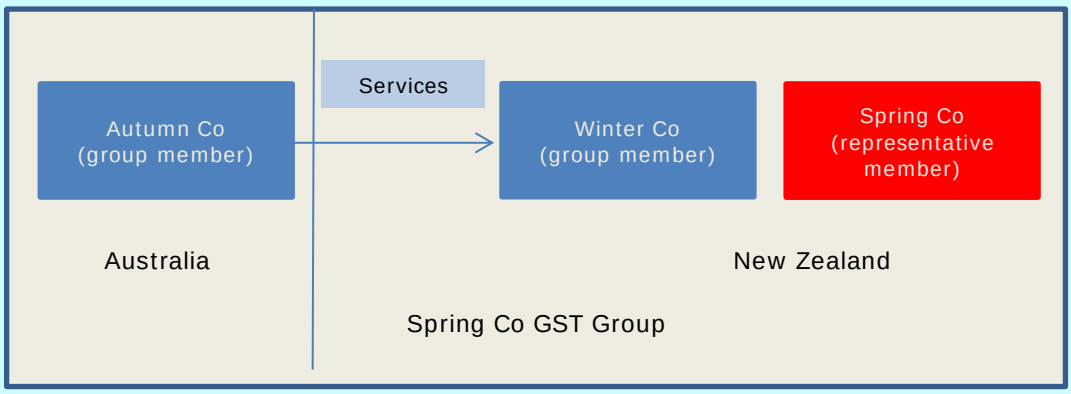
- The non-resident company makes a supply of remote services to a New Zealand company for the purposes of carrying on its taxable activity. The services are treated as being supplied outside New Zealand. No GST is charged on that supply, and no input tax deduction can be claimed.
- The supplier could choose to treat the supply as being made in New Zealand. The supply would then be zero-rated under s 11A(1)(x).

4.42 How the remote services rules apply in a grouping context will depend on which interpretation is applied. This is illustrated in Example 23.

Example 23

Cross-border intra-group supply of imported services – remote services

Autumn Co provides software to Winter Co. The supply does not satisfy s 8(4B) because Winter Co intends to use the services 95% or more in its taxable activity to make taxable supplies. Therefore, the reverse charge does not apply.



Spring Co GST Group would like to know how this supply should be treated for GST purposes.

Narrow interpretation

4.43 In Example 23, under the narrow interpretation the supply of software services by Autumn Co to Winter Co would be classified as remote services. This is because no necessary connection exists between the physical location of the recipient and the place where the services are performed. Under s 8(3)(c), the supply is, therefore, deemed to take place in New Zealand.

4.44 However, s 8(4D) states that if the supply of remote services is made to a registered person for the purposes of carrying on their taxable activity, the services will be treated as supplied outside New Zealand and will not be subject to GST. Winter Co is a registered person, and the supply was made for the purposes of carrying on Winter Co's taxable activity. In these circumstances, the supply is deemed to take place outside New Zealand and no GST is charged. This means there is no GST output tax liability for Autumn Co, and no GST input tax for Winter Co to deduct.

4.45 Alternatively, Autumn Co could choose to treat the supply as made in New Zealand (s 8(4D)). The supply would then be a zero-rated supply (under s 11A(1)(x)). As the companies are grouped and the supply is a taxable supply between group members, the supply could be disregarded under para (c). This would mean no GST is charged on this supply, and an input tax deduction could not be claimed. This ultimately gives the same result as in [4.44].

4.46 Under the narrow interpretation, the character of the supply is still respected post-grouping; it is simply that Spring Co is deemed to make the supply of remote services as if it were a non-resident company. The character of the supply does not change.

4.47 An argument in support of the narrow interpretation is that it is consistent with the scheme of the Act. Section 8 is the charging provision and determines the place of supply. Section 8 is drafted very specifically. Subsections (2)–(4), (4B), (4C) and (4D) all prescribe specific rules for determining whether a supply occurs in New Zealand. Several other subsections in s 8 deal with the place of supply for inbound tour operations and telecommunications services. It seems unlikely that, after prescribing detailed place of supply rules, Parliament intended those rules to be ignored or circumvented by group registration.

4.48 The narrow interpretation is also consistent with one of the purposes of the grouping rules – to reduce compliance costs. In Example 23, the supply is either not subject to GST or is ignored for GST purposes and does not have to be accounted for in the GST return. This is also true of the wide interpretation. In terms of reducing distortions, both interpretations produce the same result as would be expected under a branch structure.

Wide interpretation

4.49 In Example 23, under the wide interpretation the supply of remote services from Autumn Co to Winter Co is deemed to be made by Spring Co. Because Spring Co is a New Zealand–resident company, the supply is deemed to be made in New Zealand (s 8(2)). This means the supply is treated as an ordinary standard-rated taxable supply made in New Zealand rather than a supply of remote services. For GST purposes, the supply then becomes a taxable supply between group members, which may be disregarded under para (c). Section 11A(1)(x) does not apply as the services are not remote services under this interpretation.

4.50 Therefore, under the wide interpretation, the same result is achieved as under the narrow interpretation, but by different analysis. If the supply is disregarded, that is equivalent to GST not being charged on the supply. In both cases, no GST input tax deduction will be available.

Making elections and notifying the Commissioner when part of a GST group

4.51 The Act contains several election and notification provisions. Under these provisions, entities must make an election or notify the Commissioner of certain facts. We understand uncertainty exists about who should make the election or notify the Commissioner when an entity is part of a GST group. Depending on the interpretive approach adopted, these elections and notifications can be made in different ways.

Narrow interpretation

4.52 Under the narrow interpretation, each group member would continue to make its own elections and notifications to the Commissioner, and the representative member would be deemed to make those elections and notifications under para (a) of s 55(7).

Wide interpretation

4.53 Under the wide interpretation, because the representative member is treated as carrying on the taxable activity of the group member (para (a)), the representative member has authority to make an election or notify the Commissioner on behalf of a group member. This interpretation is consistent with the intention of the grouping rules, which is to have the group operate as a single taxable entity in its transactions with third parties.

4.54 Under the wide interpretation, any election or notification made by a representative member on behalf of a group member should specify the group member to which the election or notification relates. This will ensure that if a representative member leaves the group, the election or notification remains linked to the relevant group member.

4.55 The wide interpretation would be acceptable for elections required under:

- s 3(3B) – election that arrangement be treated as not being a credit contract;
- s 3(3C) – election that arrangement be treated as being a credit contract;
- s 10(5B) – election that arrangement be treated as not being a credit contract;
- s 10(5C) – election that arrangement be treated as being a credit contract;
- s 11(5) – extension of 28-day period for exported goods;
- s 20F(1) – electing into the business-to-business regime; and
- s 77(2) – election by a non-resident supplier of remote services to express the amount of consideration for their supplies in a foreign currency.

4.56 We are interested in hearing about any practical issues that might arise in a grouping context with notifications and elections. We want to know what preferences groups have for notifying the Commissioner or making elections, and how we can make this process easier for groups.

Availability of input tax deductions

Input tax deductions and direct attribution

4.57 Example 6 at [3.51] illustrates how an intra-group taxable supply is disregarded. In that example, goods acquired by Spring Co from outside the GST group were used to make an intra-group taxable supply to Winter Co (a group member). Winter Co then used those goods to make taxable supplies to third parties outside the GST group. Spring Co, as the representative member, was able to claim an input tax deduction because Winter Co intended to use the goods to make taxable supplies to third parties.

4.58 To determine the extent to which goods or services are used for making taxable supplies, a group must estimate at the time the goods or services are acquired, how they intend to use them. A full input tax deduction is allowed for

goods or services that are intended to be used solely for making taxable supplies.

4.59 An input tax deduction would not be available if Winter Co intended to use the goods to make exempt supplies. This is because under s 20(3C) input tax may be deducted only to the extent to which the goods and services are used for or are available for use in making taxable supplies. The amount of input tax is calculated under s 20(3H). The formula is:

Full input tax deduction x percentage intended use

4.60 "Full input tax deduction" is defined in s 20(3I) as the total amount of input tax on the supply. "Percentage intended use" is defined in s 20(3I) (with reference to the definition in s 21G(1)(b)) to mean the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition and expressed as a percentage.

4.61 When goods and services are acquired from outside the group, sometimes there will be a clear intention as to the extent to which the goods and services are to be used for making taxable supplies. For example, a group manufacturing furniture might acquire timber for making tables. As the sales of the tables will be taxable supplies, the timber acquired will be intended to be fully used in making taxable supplies. However, in other situations, estimating the intended use of the goods and services acquired may be more difficult. This typically occurs when goods and services comprising "overheads" are acquired. For example, it might be difficult to determine the extent to which electricity acquired to power an office building will be used to make taxable supplies where both taxable and exempt supplies are made.

4.62 Because of this, the Commissioner considers that the approach to determining the "percentage intended use" is first to attribute those goods and services to making taxable or exempt supplies where there is a clear intention of the extent to which the goods and services will be used. Then, where attribution is not possible, the extent to which the goods and services will be used to make taxable supplies compared to non-taxable supplies can be estimated by apportioning on a reasonable basis.

4.63 Example 24 illustrates how to calculate an input tax deduction where the goods or services acquired from outside the group are directly attributable to a taxable supply:

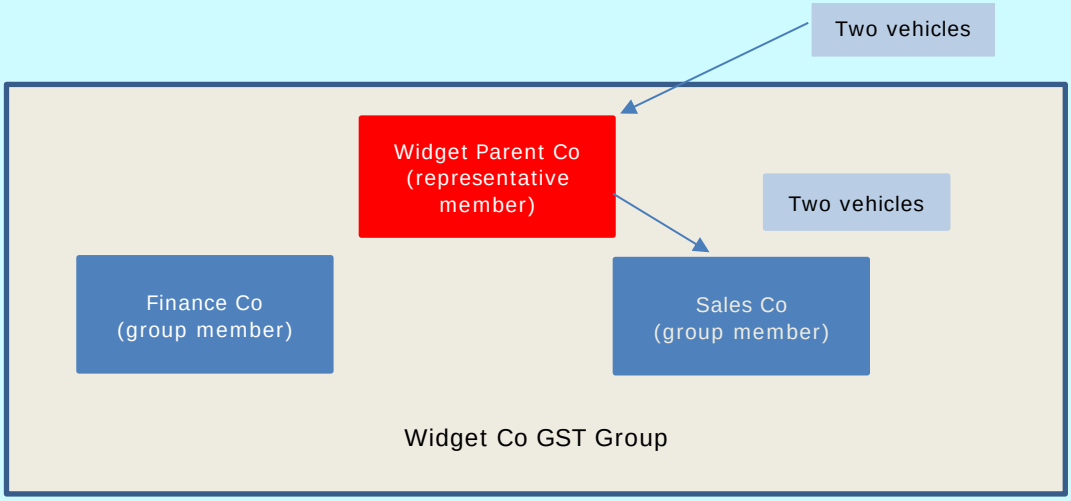
Example 24

Input tax deduction where goods or services are used to make taxable supplies

Widget Parent Co is the representative member of the Widget Co GST group. Sales Co makes taxable supplies of widgets to third parties. Finance Co makes exempt supplies of financial services to third parties.

Widget Parent Co purchases two vehicles. The vehicles cost $11,500 each, including GST. It supplies those vehicles to Sales Co for business use. The supply is an intra-group taxable supply and is therefore disregarded.

Sales Co intends to use the vehicles in its business.



Widget Parent Co can claim a full input tax deduction in the group GST return on the purchase of the vehicles as the vehicles are intended to be wholly used by Sales Co to make taxable supplies. We consider that the outcome is the same under both the narrow and wide interpretations.

Input tax deductions where goods or services are used to make both taxable and exempt supplies

4.64 It may not always be possible to directly attribute goods or services acquired from outside the group to a subsequent taxable supply. Where goods or services cannot be directly attributed to a taxable supply, the GST group must apportion the amount of input tax based on the group's estimate of the extent to which those goods or services are intended to be used for making taxable supplies. Section 20(3G) states:

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

4.65 The group must choose a determination method that provides a fair and reasonable result.

4.66 Example 25 illustrates how to calculate an input tax deduction where the goods or services acquired from outside the group cannot be directly attributed to a taxable supply:

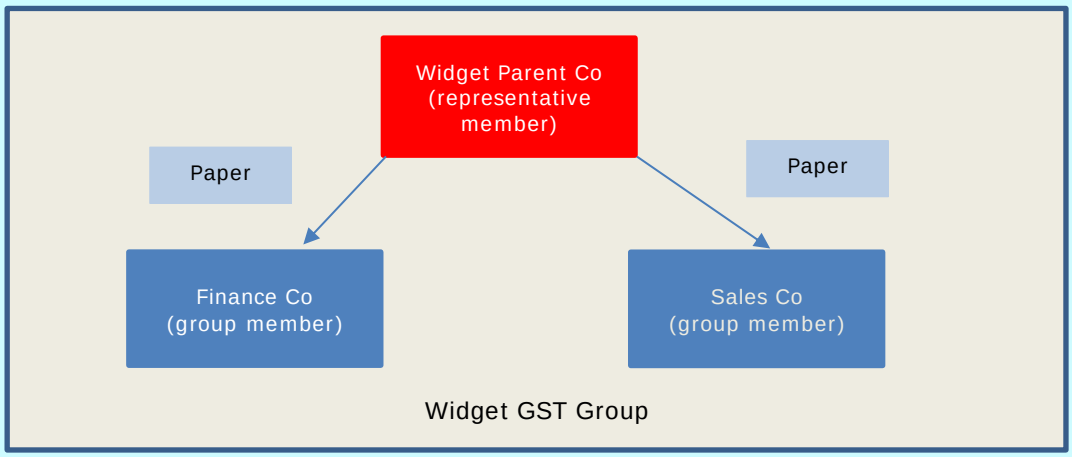
Example 25

Input tax deductions where a group makes both taxable and exempt supplies

Widget Parent Co is the representative member of Widget GST Group. Sales Co makes taxable supplies of widgets to third parties. Finance Co makes exempt supplies of financial services to third parties.

Widget Parent Co purchases a pallet of photocopy paper. Widget Parent Co supplies Sales Co and Finance Co with paper as required. These supplies are disregarded intra-group taxable supplies.

Widget Parent Co (as the representative member) wants to know if it can claim back the input tax on the purchase of the paper in the next Widget GST group return. Widget Parent Co has no record of how much paper was used by Finance Co and how much paper was used by Sales Co.



4.67 In Example 25, to determine the "percentage intended use" of the paper, it is not possible or realistic given the nature of Widget GST Group's business to directly attribute the paper to the making of taxable and exempt supplies. The paper is like the electricity referred to at [4.61]. This means that the extent to which the paper is intended to be used to make taxable supplies must be determined in another way. This generally involves determining that the paper is intended to be used to make taxable supplies based on the levels of supplies made by the group or some other reasonable basis and apportioning the input tax accordingly.

4.68 Therefore, the levels of taxable versus non-taxable supplies made outside the group would need to be measured in an appropriate way. This might be by using a turnover method or a profit-based method or another method that more fairly reflects the proportion of taxable supplies to total supplies. The method used would need to consider the nature of the businesses carried on by the group and the contribution of each group member. The "percentage intended use" would then be applied to the full input tax deduction to determine the amount of tax claimable.

4.69 We consider that the outcome is the same under both the narrow and wide interpretations.

Input tax adjustments

4.70 An input tax adjustment must be made if the actual use of goods or services acquired from outside the group differs from the intended use. In these circumstances, the GST group would need to make an adjustment under s 21A in a subsequent group return.

4.71 Example 26 illustrates how an adjustment is made where the intended use of the goods or services differs from the actual use. This example is a continuation of Example 24.

Example 26

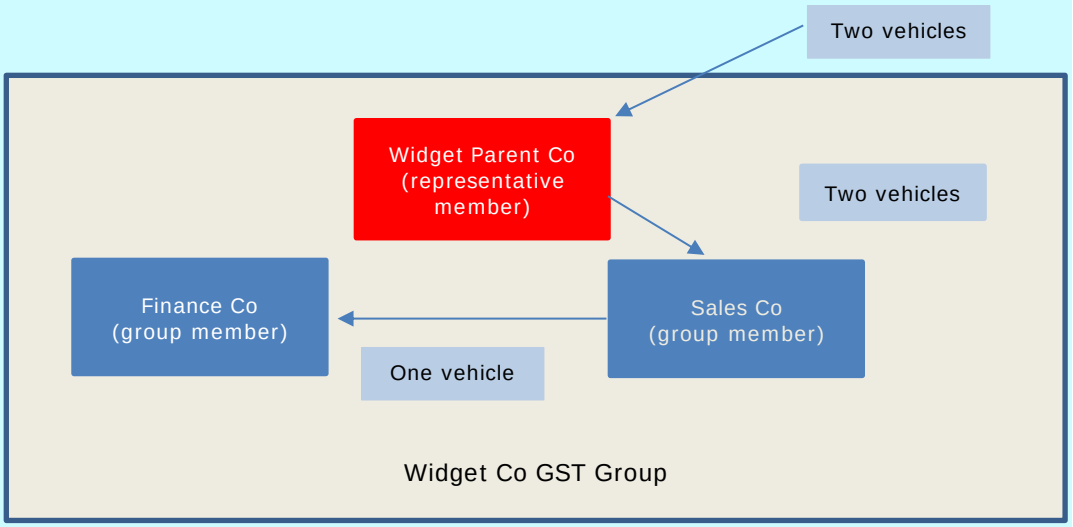
Input tax adjustments where intended use differs from actual use

Widget Parent Co is the representative member of the Widget Co GST group. Sales Co makes taxable supplies of widgets to third parties. Finance Co makes exempt supplies of financial services to third parties.

Widget Parent Co purchases two vehicles. It supplies those vehicles to Sales Co for business use. The supply is an intra-group taxable supply and is therefore disregarded.

Sales Co intends to use the vehicles in its business and it does so for the first year. Following the first year, Sales Co sells one vehicle to Finance Co for $10,000. The supply is an intra-group taxable supply, so is disregarded for GST purposes. No output tax is charged on this supply. Finance Co uses the vehicle 100% to make exempt supplies.

Widget Co GST Group wants to know whether it needs to make an adjustment.



4.72 In Example 26, Widget Parent Co would have claimed a full input tax deduction in the GST group return on the purchase of the vehicles as the vehicles were intended to be wholly used to make taxable supplies.

4.73 An adjustment needs to be made to take account of the change in use of one of the vehicles (s 21A). Section 21G(2) defines "adjustment periods". Under this provision, the first adjustment period is a period that starts on the date of acquisition and ends on either the group's first balance date that falls after the date of acquisition, or the person's first balance date that falls at least 12 months after the date of acquisition. In Example 26, the vehicle is sold to Finance Co after the first adjustment period. This means a subsequent adjustment will need to be made at the end of a subsequent adjustment period. "A subsequent adjustment period" starts on the day after the end of the first adjustment period and ends on the last day of the equivalent taxable period in which the first adjustment period ended. In a grouping context, the acquisition date is the date the vehicle was acquired by Widget Parent Co and not the date the vehicle was acquired by Finance Co. This is because of the single taxable entity approach.

4.74 The amount of the adjustment is calculated under s 21D(1):

Full input tax deduction x percentage difference

4.75 "Full input tax deduction" is defined as the total amount of input tax on the supply. "Percentage difference" is defined in s 21G(1)(c) to mean the difference between the percentage actual use and the percentage intended use.

4.76 The full input tax deduction for the vehicle is $1,500 and the percentage difference is 100%, giving an adjustment of $1,500 ($1,500 x 100%). Therefore, $1,500 is the amount Widget Parent Co must return when filing the group GST return.

4.77 The outcome is the same under both the narrow and wide interpretations.

Financial services supplied to or between group members under the business-to-business regime

4.78 Special GST rules exist for entities that elect into the business-to-business regime. The rules permit entities that have elected into the regime under s 20F to zero-rate supplies of financial services to other financial services suppliers. The rules also permit those financial services providers to deduct input tax on those supplies.

4.79 These rules can create issues for companies that are group registered for GST purposes.

Application of section 11A(1)(q) and (r)

4.80 Entities that elect into the business-to-business regime under s 20F can zero-rate supplies of financial services to other GST-registered financial services suppliers. Section 11A(1)(q) and (r) sets out the requirements for zero-rating:

> (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

4.81 Under s 11A(1)(q), zero-rating is permitted if the level of taxable supplies made by the recipient in a 12-month period is equal to or exceeds 75% of their total taxable supplies for the period. Section 11A(1)(r) allows zero-rating in these circumstances, even if the 75% threshold is not met, provided the recipient is part of a group that meets the threshold in a 12-month period. It is important to note that s 11A(1)(r) applies only to recipients that are a group of companies under s IA 6 of the Income Tax Act 2007, not specifically GST groups (although there may be some overlap). If a GST group includes other entities, such as a partnership, then s 11A(1)(r) does not apply.

GST group is a group of companies under s IA 6 of the Income Tax Act 2007

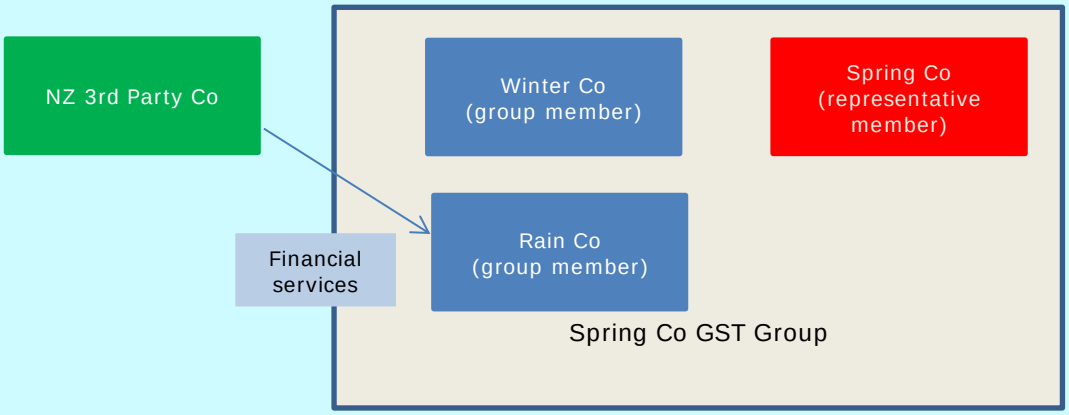
4.82 If the GST group is also a group of companies under s IA 6 of the Income Tax Act 2007, then the relevant provision is s 11A(1)(r). This is illustrated in Example 27.

Example 27

Financial services supplied to group members under the business-to-business regime

NZ 3rd Party Co is a financial services provider that has elected into the business–to-business regime under s 20F. NZ 3rd Party Co wants to supply financial services to Rain Co.

Rain Co is registered for GST but does not, on its own, meet the 75% threshold required under s 11A(1)(r). However, Rain Co is part of Spring Co GST Group, which as a whole does meet the 75% threshold. (Spring Co GST Group is also a group for income tax purposes under s IA 6 of the Income Tax Act 2007.)



Under s 11A(1)(r), NZ 3rd Party Co can zero-rate the supply of financial services made to Rain Co. This is because Spring Co GST Group is also a group for income tax purposes. That supply is then treated as having been made to Spring Co, as the representative member.

GST group is not a group of companies under s IA 6 of the Income Tax Act 2007

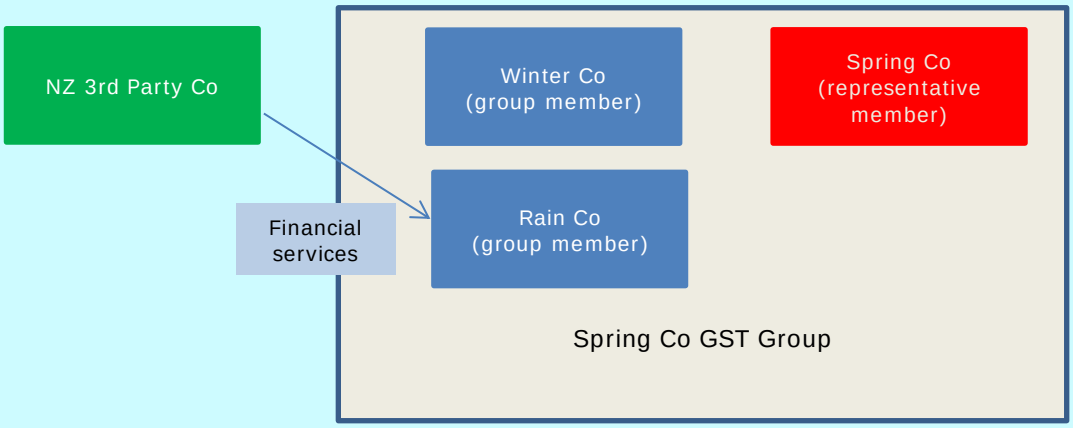
4.83 If the GST group is not a group of companies under s IA 6 of the Income Tax Act 2007 (for example, a group member is a partnership), then s 11A(1)(r) cannot apply. However, s 11A(1)(q) might apply instead. Whether it applies will depend on which interpretive approach is applied. This is illustrated in Example 27.

Example 28

Financial services supplied to group members under the business-to-business regime

The facts are the same as in Example 26 except Spring Co GST Group is not a group for income tax purposes. This is because Winter Co is a limited partnership. Limited Partnerships are defined as "companies" under s 2 of the Act and so are eligible to form a GST group. However, limited partnerships are specifically excluded from an income tax group. NZ 3rd Party Co is a financial services provider that has elected into the business–to-business regime under s 20F. NZ 3rd Party Co wants to supply financial services to Rain Co.

Rain Co is registered for GST but does not, on its own, meet the 75% threshold required under s 11A(1)(r). However, Rain Co is part of Spring Co GST Group, which meets the 75% threshold.



Narrow interpretation

4.84 In Example 28, under the narrow interpretation, s 11A(1)(q) is applied to only the recipient of the supply of financial services and not to the group as a whole. If the recipient makes taxable supplies in a 12-month period equal to or in excess of 75% of its total taxable supplies for that period, then the supplier can zero-rate the supply of financial services to the recipient.

4.85 However, as Rain Co does not make taxable supplies in a 12-month period equal to or in excess of 75% of its total taxable supplies for that period, then NZ 3rd Party Co cannot zero-rate the supply of financial services to Rain Co.

Wide interpretation

4.86 In Example 28, the outcome is more favourable under the wide interpretation. Under the wide interpretation, the "registered person" in s 11A(1)(q) is interpreted as the group as a whole, effectively as if the grouping provisions had been applied first, before s 11A(1)(q). This outcome is consistent with the single taxable entity approach. Therefore, under s 11A(1)(q) the supply can be zero-rated even if the 75% threshold is not met by Rain Co, because Rain Co is part of Spring Co GST Group, which meets the threshold in a 12-month period.

4.87 The wide interpretation also seems to facilitate the purpose of the business-to-business provisions concerning financial services. When para (r) was enacted, GST grouping was limited to groups of companies that were also groups under the Income Tax Act 1994. However, the GST grouping rules have subsequently been extended to include other corporate entities. While no subsequent amendment has been made to also expand the scope of s 11A(1)(r), the wide interpretation seems to allow the intended policy position.

Business-to-business supplies between group members

4.88 We consider that the consequences under this example are the same under either interpretive approach.

4.89 Section 20C provides that a financial services supplier can deduct input tax where it supplies financial services to another financial services supplier. The amount of that deduction is determined by the ratio of taxable to non-taxable supplies made by the recipient financial services supplier:

> 20C Goods and services tax incurred in making certain supplies of financial services
>
> Subject to this section, a registered person who has made an election under section 20F and who in respect of a taxable period supplies financial services to another supplier of financial services (called in this section a direct supplier) may make for each direct supplier a deduction under section 20(3)(h) of an amount given by the following formula:
>
> $$a \times (b \div c) \times (d \div e)$$
>
> where—
>
> a is the total amount in respect of the taxable period that the registered person—
>
> (a) would not be able to deduct under section 20(3) in the absence of this section; and
>
> (b) would be able to deduct under section 20(3), other than under section 20(3)(h), if all supplies of financial services by the registered person were taxable supplies
>
> b is the total value of exempt supplies of financial services by the registered person to the direct supplier in respect of the taxable period
>
> c is the total value of exempt supplies of financial services by the registered person in respect of the taxable period
>
> d is the total value of taxable supplies by the direct supplier in respect of the taxable period, determined under section 20D
>
> e is the total value of supplies by the direct supplier in respect of the taxable period, determined under section 20D.

4.90 Where the first supplier and the direct supplier are members of a GST group, it has been suggested that the deeming provisions in the grouping rules prevent a s 20C deduction.

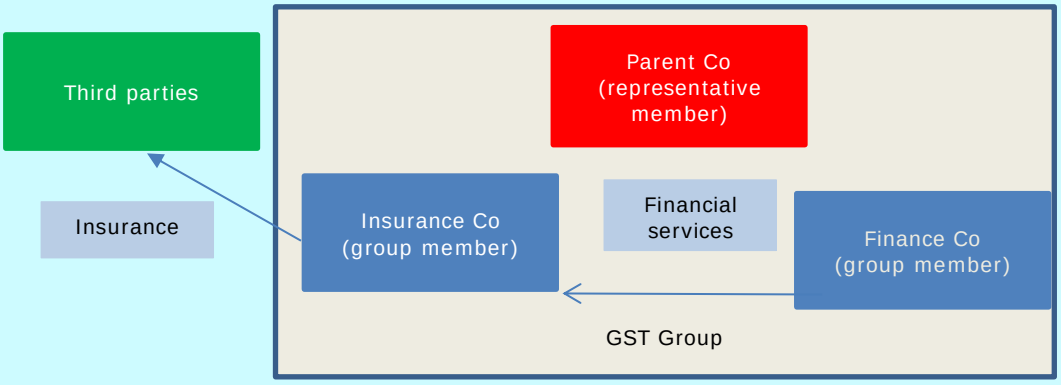
4.91 This is because paras (da) and (dab) of s 55(7) together provide that any exempt supply made by a member of the group is deemed to be made by the representative member and, in turn, any supplies made to a member of the group are deemed to be received by the representative member. This circularity where the representative member is deemed to both make and receive the supply appears to prevent the application of s 20C, which is predicated on one financial services provider supplying financial services to another supplier.

4.92 We disagree with this conclusion that a deduction for input tax is not available. However, how the deduction is available depends on whether the narrow interpretation or the wide interpretation is adopted. This is illustrated in Example 29.

Example 29

Business-to-business supplies between group members

Finance Co supplies financial services to Insurance Co. Insurance Co then supplies general insurance (40%) and life insurance (60%) to third parties based on the value of supplies made. Both entities have elected into the business-to-business regime under s 20F.



GST Group wants to know whether Parent Co, as representative member, can deduct input tax on the supply of financial services by Finance Co to Insurance Co.

Narrow interpretation

4.93 In Example 29, under the narrow interpretation s 20C is applied to each group member and any right to a deduction for input tax is then attributed to the representative member. This means Finance Co can deduct input tax incurred on goods and services used in making the supply of financial services to Insurance Co based on the formula in s 20C. If Finance Co makes supplies only to Insurance Co, it should be eligible to deduct 40% of the GST input tax it incurs on goods and services used in making the supplies. That supply and the right to make the deduction is then attributed to Parent Co as the representative member.

4.94 This outcome is consistent with the policy position of preventing the cascade that would otherwise occur on the supply of general insurance by Insurance Co.

Wide interpretation

4.95 In Example 29, the analysis is different under the wide interpretation. Because the group is treated as a single taxable entity under the wide interpretation, all goods and services acquired by Finance Co that are used to supply financial services to Insurance Co are deemed to be acquired by Parent Co as representative member. Similarly, all supplies made by Insurance Co outside of the group are deemed to be made by Parent Co as representative member. Therefore, Parent Co can deduct a portion of the input tax paid on goods and services acquired using an appropriate method, which in this case may be the 60:40 split between life and general insurance made by Insurance Co. This would mean Parent Co can claim input tax deductions of 40% of the input tax paid as those goods and services are being used to make taxable supplies. This is on the same basis as in Example 25 and does not require using s 20C.

The wide interpretation also seems consistent with the policy of preventing a cascade of GST.

GST on capital-raising costs

4.96 Section 20H permits a deduction of input tax on capital-raising costs where the capital raised is used to fund the registered person's taxable activity. The provision applies only to taxpayers who principally make taxable supplies:

> 20H Goods and services tax incurred in making financial services for raising funds
>
> (1) A registered person who principally makes taxable supplies and who makes supplies of financial services in the course of an activity of raising funds that are intended for use by the registered person for expenditure in a taxable activity has a deduction under section 20(3)(hd) of input tax for the supplies of financial services, if the financial services—
>
> (a) are not referred to in section 11A(1)(q) and (r); and
>
> (b) do not give rise to a deduction under section 20(3) for the registered person in the absence of this section; and
>
> (c) are the issue or allotment of a debt security or equity security, the renewal of a debt security or equity security, the payment of an amount of interest, principal, or dividend for a debt security or equity security, or the provision or variation of a guarantee of the performance of obligations in the issue, allotment, or renewal, of a debt security or equity security; and
>
> (d) fail to raise the funds or do raise funds that are used by the registered person for expenditure in the taxable activity.
>
> (2) A non-resident person who is registered under section 54B does not have a deduction of input tax under subsection (1).

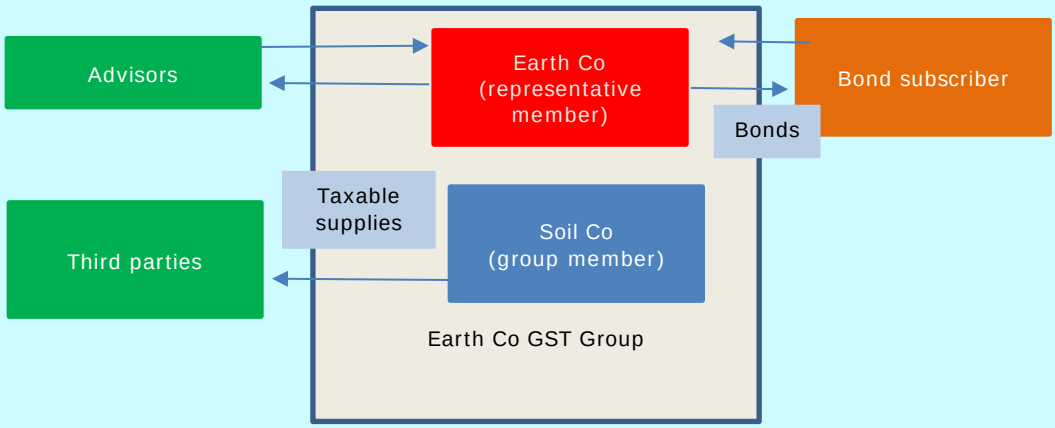
4.97 In a grouping context, where a parent or holding company is tasked with raising finance for the benefit of the group, a question arises as to whether a s 20H deduction is available. Example 30 considers this scenario.

Example 30

GST and capital-raising costs

Earth Co and Soil Co are members of Earth Co GST Group. Soil Co is the operating company and carries on the taxable activity of earthworks. Earth Co is the holding company and representative member. Earth Co does not make many taxable supplies and effectively operates in a holding and financing role.

Earth Co GST Group needs to raise capital to finance the purchase of new machinery. Earth Co issues a bond and incurs legal and advisory fees.



The GST group wants to know whether it can claim a deduction under s 20H for these costs.

Narrow interpretation

4.98 Under the narrow interpretation, group members are considered individually and then the GST results are attributed to the representative member. Earth Co cannot claim a s 20H deduction as it does not "principally make taxable supplies". While Soil Co does principally make taxable supplies, those supplies are simply attributed to Earth Co but are not merged with Earth Co's supplies.

Wide interpretation

4.99 Under the wide interpretation, as Earth Co is grouped with Soil Co (who makes taxable supplies) a full s 20H input tax deduction is available. This is because Earth Co, as representative member, is treated as making Soil Co's taxable supplies under para (d) and issuing the bonds.

4.100 Therefore, by treating the group as if it were a single taxable entity, Earth Co is able to claim the s 20H(1) input tax deduction in respect of capital-raising costs because the group as a whole principally makes taxable supplies.

4.101 The wide interpretation seems more consistent with the single taxable entity approach. It also aligns group treatment with the treatment that would occur under a branch structure.

Sale of a business by a GST group

4.102 We consider that the consequences under this example are the same under either interpretive approach.

4.103 We have been asked what the GST treatment should be where members of a GST group sell their respective parts of a business to a single GST-registered purchaser and one of those parts includes land. This is illustrated in Example 31.

Example 31

Sale of a business

Three members of a GST group enter into an agreement to dispose of business assets to a GST-registered purchaser. Property Co is selling an interest in land, IP Co is selling intellectual property and Trading Co is selling stock and plant.

Under the grouping rules, all taxable supplies made by group members are deemed to be made by the representative member (para (da)). GST Group wants to know whether this means there is a single supply by the representative member that includes land, so the entire transaction must be zero-rated.

Narrow interpretation

4.104 Under the narrow interpretation, each group member is considered individually and then the supplies are attributed to the representative member. This means Property Co is supplying land, IP Co is supplying intellectual property and Trading Co is supplying stock and plant. While the separate supplies are all then attributed to Trading Co as the representative member, they are not merged into a single, zero-rated, composite supply. Each supply retains its character – the supply of land is zero-rated and the supplies of intellectual property, stock and plant are standard-rated.

Wide interpretation

4.105 Under the wide interpretation, the outcome is the same as under the narrow interpretation. The separate supplies are all deemed to be made by Trading Co but they are not merged into a single, zero-rated, composite supply.

4.106 The GST treatment will depend on the terms of the contract and the true and substantial nature of what is being supplied. This issue is considered in more detail in the Interpretation Statement "IS 18/04: Goods and Services Tax – single supply or multiple supply", *Tax Information Bulletin* Vol 30, No 10 (November 2018): 5. In Example 30, it seems likely that the transaction would be viewed as separate supplies so the zero-rated sale of land by Property Co would not affect the GST treatment of the supply of the other assets.

5. Conclusion

5.1 In most cases, the consequences of GST grouping will be straightforward and it will not matter which interpretive approach is applied. However, in some situations, different consequences may arise depending on the approach applied.

5.2 This issues paper has attempted to identify those cases where the application of different interpretive approaches to the GST grouping rules gives a different GST outcome.

5.3 In some cases, the wide interpretation provides an outcome that is more consistent with the purposes of the grouping rules. For example, we think that on balance, the wide interpretation is more likely to reduce distortions that might arise between a New Zealand-resident single entity, a New Zealand-resident entity with an offshore branch; and a group structure with a New Zealand-resident representative member. However, in some cases the wide interpretation is less consistent with the purposes of the grouping rules. For example, in some cases the wide interpretation may increase compliance costs because some supplies will need to be recharacterised.

5.4 The narrow interpretation is more likely to result in reduced compliance costs, which is consistent with one of the purposes of the grouping rules. However, in some cross-border scenarios, the narrow interpretation gives an outcome which is different to the outcome for branches or single entities. This could result in distortions.

5.5 We therefore seek your views on the issues raised in this issues paper. As mentioned previously, this issues paper represents our initial views only. We welcome your feedback on the matters discussed.

References

Legislation

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Goods and Services Tax Act 1985, ss 2 ("remote services"), 3(3B) and (3C), 5B, 6(1)–(3), 8, 10(5B) and (5C), 11, 11A, 12, 15, 16, 19, 19A(1), 20, 20(3C), (3H) and (3I), 20C, 20F, 20H, 21A, 21B(2), 21D(1), 21G(1)(b) and (c), 24, 24BA, 51–54C (Part 8), 55(1), (4), (7), (7B) and (8), 56, 75, 77(2) and 78F

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