

PUBLIC RULING

Goods and Services Tax – Directors’ fees

Issued: 22 February 2023

BR Pub 23/01

This public ruling considers the application of GST in relation to the payment of fees to a director of a company.

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

REPLACES

This is a reissue of [Public Ruling BR Pub 15/10](#): “Goods and services tax – directors’ fees”, *Tax Information Bulletin* Vol 27, No 7 (August 2015): 3. For more information about earlier publications of this public ruling, see the commentary to this ruling.

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Public Ruling BR Pub 23/01: Goods and Services Tax – Directors’ fees

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation laws

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

This Ruling applies in respect of sections 6(3)(b), 6(4), 6(5), 8, 20, and 57(2)(b).

The arrangement to which this Ruling applies

The arrangement is the engagement, occupation, or employment of a person as a director (the Director) of a company (the Company). The engagement may be by direct contract between the Director and the Company. Alternatively, the Director may be engaged as a director of the Company under an agreement between the Company and:

- a third party (the Third Party);
- the Director’s employer (the Employer); or
- a partnership of which the Director is a partner (the Partnership).

How the taxation laws apply to the Arrangement

The Director contracts directly with the Company

If the Director has not accepted the office in carrying on the Director’s taxable activity, then the:

- engagement is excluded from the term “taxable activity” under section 6(3)(b), and section 6(5) does not apply because the Director did not accept the office in carrying on the Director’s taxable activity; and
- Company cannot claim an input tax deduction for any directors’ fees paid to the Director because GST will not be charged on the supply of the Director’s services to the Company.

If the Director has accepted the office in carrying on the Director’s taxable activity, then the following is the case:

- The engagement is excluded from the term “taxable activity” under section 6(3)(b). However, section 6(5) will apply and the services will be deemed to be supplied in the course or furtherance of the Director’s taxable activity. If the Director is registered or liable to be registered for GST, the Director will be required to account for GST on the fees received for the supply of the directorship services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the directorship services by the Director, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Director’s services are contracted by the Third Party to the Company

If the Third Party contracts with the Company to provide the Director’s services as a director of the Company and the Director has accepted the office, but not as part of carrying on a taxable activity, then the following is the case:

- The Director’s engagement as director of the Company is excluded from the term “taxable activity” under section 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director’s taxable activity.
- Section 6(3)(b) does not apply to the Third Party’s provision of the Director’s services to the Company because the Third Party is not engaged as a director of the Company. If the Third Party is registered or liable to be registered for GST, the Third Party will be required to account for GST charged under section 8 on the supply of the Director’s services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the Director’s services by the Third Party, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

If the Third Party contracts with the Company to provide the Director’s services to the Company and the Director accepts the office in carrying on the Director’s taxable activity, then the following is the case:

- The Director’s engagement as a director of the Company is excluded from the term “taxable activity” under section 6(3)(b). However, because the Director accepted the office in carrying on their taxable activity, section 6(5) applies and any directorship services provided by the Director are deemed to be supplied in the course or furtherance of the Director’s taxable activity.

- Two supplies are relevant for GST purposes: first, the Director providing their services to the Third Party and, secondly, the Third Party providing the Director's services to the Company.
- For the first supply:
 - the Director is required to account for GST charged under section 8 on the supply of their services to the Third Party; and
 - if the Third Party is carrying on a taxable activity and is registered for GST, the Third Party may claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Director's services by the Director, provided the other requirements in the Act, such as those in section 20(2), are satisfied.
- For the second supply, the following is the case:
 - Section 6(3)(b) does not apply to the Third Party's supply of the Director's services to the Company because the Third Party is not engaged as a director of the Company. If the Third Party is registered or liable to be registered for GST, the Third Party is required to account for GST charged under section 8 on the supply of the Director's services.
 - If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the Director's services by the Third Party, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Director's services (as employee) are contracted by the Employer to the Company

If the Director, as part of their employment, is engaged as a director of the Company under a contract between the Employer and the Company, the following is the case:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under section 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director's taxable activity. The office was accepted as part of the Director's employment with the Employer.
- Section 6(3)(b) does not apply to the Employer's supply of the Director's services to the Company because the Employer is not engaged as a director of the Company. If the Employer is registered or liable to be registered for GST, the Employer is required to account for GST charged under section 8 on the supply of the Director's services to the Company.

- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the Director's services by the Employer, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Director contracts their services directly to the Company and the Director is an employee who is obliged to account to their Employer for the director's fees received

The Director may be engaged by the Company to be a director of that company, where:

- the Director is an employee who is required to account to their Employer for the director's fees received;
- there is no contract between the Company and the Employer; and
- the Director has not accepted the office in carrying on their own taxable activity.

In this situation the following is the case:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under section 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director's taxable activity.
- Under section 6(4), any fees paid by the Company to the Director (and accounted for to the Employer) are treated as consideration for a supply of services by the Employer to the Company. If the Employer is registered or liable to be registered for GST, then the Employer is required to account for GST charged under section 8 on this deemed supply.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under section 20(3) for any GST charged on the deemed supply by the Employer, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Director's services are contracted to the Company, and the Director is a partner in a partnership who is obliged to account to the Partnership for the director's fees received

If the Director is a partner in a partnership and accepts an office as a director of the Company as part of the Partnership's business, then the Director is obliged to account to the Partnership for the director's fees received:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under section 6(3)(b). Section 6(5) does not apply because,

although the Director may be carrying on the taxable activity of the Partnership, the services are deemed to be supplied by the Partnership under section 57(2)(b).

- Section 6(3)(b) does not apply to the Partnership's provision of the Director's services to the Company because the Partnership is not engaged as a director of the Company. If the Partnership is registered or liable to be registered for GST the Partnership is required to account for GST charged under section 8 on the supply of the Director's services.
- If the Company is carrying on a taxable activity and is registered for GST the Company may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the Director's services by the Partnership provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 1 April 2023.

This Ruling is signed by me on 22 February 2023.

Susan Price

Group Leader, Public Advice and Guidance, Tax Counsel Office

PUBLIC RULING

Goods and Services Tax – Fees of Board Members not appointed by the Governor-General or Governor-General in Council

Issued: 22 February 2023

BR Pub 23/02

This public ruling considers the application of GST in relation to the payment of fees to a board member of an organisation where the board member is not appointed by the Governor-General or the Governor-General in Council.

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

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Public Ruling BR Pub 23/02: Goods and Services Tax – Fees of Board Members not appointed by the Governor-General or Governor-General in Council

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation laws

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

This Ruling applies in respect of sections 6(3)(c)(iii), 6(4), 6(5), 8, 20, and 57(2)(b).

The arrangement to which this Ruling applies

The Arrangement is the engagement, occupation, or employment of a person as a chairman or member (the Board Member) of a local authority, board, council, committee, or other body (the Organisation). The engagement may be by direct contract between the Board Member and the Organisation. Alternatively, the Board Member may be engaged as a Board Member of the Organisation under an agreement between the Organisation and:

- a third party (the Third Party);
- the Board Member's employer (the Employer); or
- a partnership of which the Board Member is a partner (the Partnership).

The Arrangement does not include the appointment of a person as a Board Member of an Organisation by the Governor-General or the Governor-General in Council.

How the taxation laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

The Board Member contracts directly with the Organisation

If the Board Member has not accepted the office in carrying on the Board Member's taxable activity, then the following is the case:

- The engagement is excluded from the term "taxable activity" under section 6(3)(c)(iii). Section 6(5) does not apply because the Board Member did not accept the office in carrying on the Board Member's taxable activity.

- The Organisation cannot claim an input tax deduction for any fees paid to the Board Member because GST will not be charged on the supply of the Board Member's services to the Organisation.

If the Board Member has accepted the office in carrying on the Board Member's taxable activity, then the following is the case:

- The engagement is excluded from the term "taxable activity" under section 6(3)(c)(iii). However, section 6(5) will apply and the services will be deemed to be supplied in the course or furtherance of the Board Member's taxable activity. If the Board Member is registered or liable to be registered for GST, then the Board Member is required to account for GST on the fees received for the supply of board member services.
- If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation may claim a deduction for input tax under section 20(3) for any GST charged on the supply of board member services by the Board Member, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Board Member's services are contracted by the Third Party to the Organisation

If the Third Party contracts with the Organisation to provide the Board Member's services to the Organisation and the Board Member has accepted the office, but not as part of carrying on a taxable activity, then the following is the case:

- The Board Member's engagement as a board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iii). Section 6(5) does not apply because the Board Member did not accept the office in carrying on the Board Member's taxable activity.
- Section 6(3)(c)(iii) does not apply to the Third Party's provision of the Board Member's services to the Organisation because the Third Party is not engaged as a board member of the Organisation. If the Third Party is registered or liable to be registered for GST, the Third Party is required to account for GST charged under section 8 on the supply of the Board Member's services to the Organisation.
- If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation may claim a deduction for input tax under section 20(3) for any GST charged on the supply of the Board Member's services by the Third Party, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

If the Third Party contracts with the Organisation to provide the Board Member's services as a board member of the Organisation and the Board Member accepts the office in carrying on the Board Member's taxable activity, then the following is the case:

- The Board Member's engagement as board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iii). However, because the Board Member accepted the office in carrying on their taxable activity, section 6(5) applies and any services provided by the Board Member are deemed to be supplied in the course or furtherance of the Board Member's taxable activity.
- Two supplies are relevant for GST purposes: first, the Board Member providing their services to the Third Party, and secondly, the Third Party providing the Board Member's services to the Organisation.
- For the first supply:
 - the Board Member is required to account for GST charged under section 8 on the supply of their services to the Third Party; and
 - if the Third Party is carrying on a taxable activity and is registered for GST, the Third Party may claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Board Member's services by the Board Member, provided the other requirements in the Act, such as those in section 20(2), are satisfied.
- For the second supply, the following is the case:
 - Section 6(3)(c)(iii) does not apply to the Third Party's provision of the Board Member's services to the Organisation because the Third Party is not engaged as a board member of the Organisation. If the Third Party is registered or liable to be registered for GST, the Third Party is required to account for GST charged under section 8 on the supply of the Board Member's services to the Organisation.
 - If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation may claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Board Member's services by the Third Party, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Board Member's services (as employee) are contracted by the Employer to the Organisation

If the Board Member, as part of their employment, is engaged as a board member of the Organisation under a contract between the Employer and the Organisation, then the following is the case:

- The Board Member's engagement as board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iii). Section 6(5) does not apply because the Board Member did not accept the office in carrying on the Board Member's taxable activity. The office was accepted as part of the Board Member's employment with the Employer.
- Section 6(3)(c)(iii) does not apply to the Employer's provision of the Board Member's services to the Organisation because the Employer is not engaged as a board member of the Organisation. If the Employer is registered or liable to be registered for GST, the Employer is required to account for GST charged under section 8 on the supply of the Board Member's services to the Organisation.
- If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation will be able to claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Board Member's services by the Employer, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Board Member contracts their services directly to the Organisation and the Board Member is an employee obliged to account to their Employer for the fees received

The Board Member may be engaged by the Organisation to be a board member where:

- the Board Member is an employee who is required to account to their Employer for the board member fees received;
- there is no contract between the Organisation and the Employer; and
- the Board Member has not accepted the office in carrying on their own taxable activity.

In this situation, the following is the case:

- The Board Member's engagement as board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iii). Section 6(5) does not apply because the Board Member did not accept the office in carrying on the Board Member's taxable activity, it was accepted in the course of their employment with their Employer.
- Under section 6(4), any fees paid by the Organisation to the Board Member (and accounted for to the Employer) are treated as consideration for a supply of services by the Employer to the Organisation. If the Employer is registered or liable to be registered for GST, the Employer is required to account for GST charged under section 8 on this supply.

- If the Organisation is carrying on a taxable activity and is registered for GST the Organisation may claim a deduction for input tax under section 20(3) for any GST charged on the deemed supply by the Employer provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The Board Member's services are contracted to the Organisation and the Board Member is a partner in a partnership who is obliged to account to the Partnership for the fees received

If the Board Member is a partner in a partnership and accepts an office as a board member of the Organisation as part of the Partnership's business and is obliged to account to the Partnership for the Board Member's fees received, then the following is the case:

- The Board Member's engagement as board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iii). Section 6(5) does not apply because although the Board Member may be carrying on the taxable activity of the Partnership, the services are deemed to be supplied by the Partnership under section 57(2)(b) and not by the individual partner.
- Section 6(3)(c)(iii) does not apply to the Partnership's supply of the Board Member's services to the Organisation because the Partnership is not engaged as a board member of the Organisation. If the Partnership is registered or liable to be registered for GST, the Partnership is required to account for GST charged under section 8 on the supply of the Board Member's services to the Organisation.
- If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation may claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Board Member's services by the Partnership, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 1 April 2023.

This Ruling is signed by me on 22 February 2023.

Susan Price

Group Leader, Public Advice and Guidance, Tax Counsel Office

PUBLIC RULING

Goods and Services Tax – Fees of Board Members appointed by the Governor-General or Governor-General in Council

Issued: 22 February 2023

BR Pub 23/03

This public ruling considers the application of GST in relation to the payment of fees to a board member appointed by the Governor-General or Governor-General in Council.

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

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Public Ruling BR Pub 23/03 Goods and Services Tax – Fees of Board Members appointed by the Governor-General or Governor-General in Council

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation laws

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

This Ruling applies in respect of sections 6(3)(c)(iia), 6(4), 6(5), 8, 20, and 57(2)(b).

The arrangement to which this Ruling applies

The Arrangement is an engagement, occupation, or employment as a chairman or member (the Board Member) of an organisation (the Organisation) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant, an Order in Council or a notice published in the *New Zealand Gazette*.

How the taxation laws apply to the Arrangement

The Arrangement is the engagement, occupation, or employment of a person as a chairperson or member (the Board Member) of a local authority, board, council, committee, or other body (the Organisation). The engagement may be by direct contract between the Board Member and the Organisation. Alternatively, the Board Member may be engaged as a Board Member of the Organisation under an agreement between the Organisation and:

- a third party (the Third Party);
- the Board Member's employer (the Employer); or
- a partnership of which the Board Member is a partner (the Partnership).

Board Member supplies their services to the Organisation following appointment by the Governor-General or the Governor-General in Council

If the Board Member is appointed as a board member of the Organisation by the Governor-General or the Governor-General in Council, then the following is the case:

- The Board Member's engagement as board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iia). Section 6(5) does not apply to engagements under section 6(3)(c)(iia).
- Even if the Organisation is carrying on a taxable activity and is registered for GST, the Organisation cannot claim a deduction for input tax under section 20(3) on the supply of the Board Member's services because GST will not be charged on that supply.

The Board Member contracts their services directly to the Organisation following their appointment and the Board Member is an employee obliged to account to their Employer for fees received

If the Board Member is appointed as a board member of the Organisation by the Governor-General or the Governor-General in Council in circumstances in which :

- the Board Member is an employee who is required to account to their Employer for the board member fees received; and
- there is no contract between the Organisation and the Employer;

then, the following is the case:

- The Board Member's engagement as a board member of the Organisation is excluded from the term "taxable activity" under section 6(3)(c)(iia). Section 6(5) does not apply as that provision does not apply to engagements under section 6(3)(c)(iia).
- Section 6(4) does not apply to deem the Employer to be making a supply of services as section 6(4) does not apply to engagements under section 6(3)(c)(iia).
- Even if the Organisation was carrying on a taxable activity and was registered for GST, the Organisation cannot claim a deduction for input tax under section 20(3) on the supply of the Board Member's services because GST will not be charged on that supply.

The Board Member's services are provided to the Organisation following appointment by the Governor-General or by the Governor-General in Council, and the Board Member is a partner obliged to account to the Partnership for the fees received

If the Board Member is a partner in a partnership and is appointed to the Organisation by the Governor-General or by the Governor-General in Council and the appointment is accepted as part of the Partnership's business (such that the Board Member is obliged to account to the Partnership for the Board Member's fees received), then the following is the case:

- The Board Member’s engagement as a board member of the Organisation is excluded from the term “taxable activity” under section 6(3)(c)(ia). Section 6(5) does not apply because section 6(5) applies only for the purposes of sections 6(3)(b) and 6(3)(c)(iii). In addition, the Board Member services are deemed to be supplied by the Partnership under section 57(2)(b) and not by the individual partner.
- Section 6(3)(c)(ia) does not apply to the Partnership’s provision of the Board Member’s services to the Organisation because the Partnership is not engaged as a board member of the Organisation. If the Partnership is registered or liable to be registered for GST, the Partnership is required to account for GST output tax charged under section 8 on the supply of the Board Member’s services to the Organisation. This is because the Board Member’s services are deemed to be supplied by the Partnership under section 57(2)(b).
- If the Organisation is carrying on a taxable activity and is registered for GST, the Organisation may claim a deduction for input tax under section 20(3) for the GST charged on the supply of the Board Member’s services by the Partnership, provided the other requirements in the Act, such as those in section 20(2), are satisfied.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 1 April 2023.

This Ruling is signed by me on 22 February 2023.

Susan Price

Group Leader, Public Advice and Guidance, Tax Counsel Office

Commentary on Public Rulings BR Pub 23/01-03

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Rulings BR Pub 23/01-03 (“the Rulings”).

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

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Summary

1. The Rulings and Commentary explain whether directors' fees and board members' fees are subject to GST. The Rulings and Commentary also consider whether a company engaging a director or an organisation engaging a board member is entitled to claim input tax deductions for fees paid to that director or board member.
2. The Rulings and Commentary set out the GST treatment for fees paid to a director or board member in two broad categories. The first category is where the director or board member contracts either directly with a company or through a third party. The second category is where a director or board member is either an employee of a third party or a partner in a partnership. The GST treatment of board members appointed by the Governor-General or the Governor-General in Council is different to the GST treatment for other board members (as explained from [47]). Until that part of this Commentary, the discussion of board members is generally about board members not appointed by the Governor-General or the Governor-General in Council.
3. A director or board member must charge GST on their supply of services when the director or board member:
 - is registered or liable to be registered in respect of a taxable activity that they undertake; and
 - accepts the office in carrying on that taxable activity.
4. A director or board member is not required to charge GST on their supply of services where they are engaged:
 - as a director or board member in their capacity as an employee of a third-party employer; or
 - in their capacity as a partner in a partnership.
5. Essentially, if a registered person accepts an office as a director or board member in carrying on their taxable activity, the fees that person receives for providing their services are subject to GST.
6. A flowchart that illustrates the GST treatment of directors' or board members' fees from a director's or board member's perspective is in Appendix 1.
7. Where the director or board member has been engaged in their capacity as an employee, they may be required to account for their fees to their employer. In this situation, the payment received by the employer is treated as consideration for a supply of services by the employer to the person who made the payment to the director or board member (section 6(4)). If the employer is registered or liable to be

registered for GST, the employer is required to account for GST on this deemed supply to the company.

8. Where the director or board member has been engaged in their capacity as a partner in a partnership, the partnership is deemed to make the supply of services, rather than the director. If the partnership is registered or liable to be registered for GST, the partnership is required to account for GST on the supply of the director's services.
9. If a board member is appointed by the Governor-General or the Governor-General in Council, the services that board member provides will always be excluded from the definition of "taxable activity".
10. From the perspective of a company or an organisation that engages a director or board member, the company or organisation may claim an input tax deduction for the fees it pays, if:
 - the company or organisation is GST registered; and
 - GST was charged on the directors' or board members' fees (or there was a deemed supply by an employer under section 6(4)) and the company or organisation holds a tax invoice for those fees.
11. Other requirements of the Act may also need to be satisfied, depending on individual circumstances.

Background

12. The Rulings set out the Commissioner's views on the GST treatment of directors' fees and board members' fees. This Commentary explains the reasoning adopted.
13. The previous ruling for directors' fees, BR Pub 15/10, was issued on 29 June 2015 for an indefinite period with effect from 30 June 2014.¹ However, with the addition of the two rulings relating to board members' fees and the expansion of this Commentary to cover both directors' fees and board members' fees, it has been decided to withdraw BR Pub 15/10 on 31 March 2023 and reissue the public ruling on GST and directors' fees as BR Pub 23/01 with effect from 1 April 2023.

¹ "Goods and services tax – directors' fees": Public Ruling [BR Pub 15/10](#); *Tax Information Bulletin* Vol 27, No 7 (August 2015): 3.

14. BR Pub 15/10 replaced BR Pub 05/13 from 30 June 2014 for an indefinite period.² BR Pub 05/13 itself replaced BR Pub 00/11 from 1 April 2005 for an indefinite period.³ BR Pub 00/11 applied from 26 October 2000 to 31 March 2005. BR Pub 00/11 replaced BR Pub 00/09, which contained an application period that was seen to be retrospective.⁴ BR Pub 00/09 replaced policy items published in the *Public Information Bulletin* in 1987 and 1988.⁵

Summary of the legislation

15. This part of the Commentary summarises the legislation relevant to whether:
- directors' fees and board members' fees are subject to GST; and
 - a company or an organisation is entitled to claim input tax deductions for fees paid to a director or board member who is also an employee of a third-party employer.

Scheme of the Act

16. Section 8(1) provides that GST is charged on the supply (but not an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person. GST is regarded as a transactions tax because it is imposed on supplies of goods and services. On this basis, it is the contractual relationship between the parties (founded on a genuine basis) that determines the GST treatment of the relevant transactions (*Wilson & Horton v CIR* (1995) 17 NZTC 12,325 (CA)).
17. GST is imposed on supplies made by registered persons. A "registered person" is a person who is registered or liable to be registered for GST (section 2). A person may be liable to be registered for GST, if the value of their total supplies in New Zealand in a 12-month period exceeds the threshold amount in section 51. However, to be liable to account for GST, a registered person must carry on a "taxable activity".

² "Directors' fees and GST": Public Ruling – [BR Pub 05/13](#), *Tax Information Bulletin* Vol 17, No 7 (September 2005): 9.

³ "Directors' fees and GST": Public Ruling – [BR Pub 00/11](#), *Tax Information Bulletin* Vol 12, No 11 (November 2000): 3.

⁴ "Directors' fees and GST": Public Ruling – [BR Pub 00/09](#), *Tax Information Bulletin* Vol 12, No 9 (September 2000): 9.

⁵ "GST on directors' fees", *Public Information Bulletin* 164 (August 1987); "GST on directors' fees", *Public Information Bulletin* 175 (July 1988).

Requirements of a “taxable activity”

18. Section 6 defines the term “taxable activity” for the purposes of the Act. Section 6(1) defines a taxable activity as an activity that is carried on continuously or regularly and involves or is intended to involve the supply of goods and services to another person for a consideration. Therefore, a person conducts a taxable activity when all of the following characteristics are present:
- There is some form of activity.
 - The activity is carried on continuously or regularly.
 - The activity involves, or is intended to involve, the supply of goods and services to another person for a consideration.
19. The section also includes within the term “taxable activity” the activities of any public or local authority.
20. Under section 6(2) anything done in connection with the commencement or termination of a taxable activity is deemed to be carried out in the course or furtherance of that taxable activity.

Exclusions from the definition of “taxable activity”

21. Section 6(3) provides certain exclusions from the term “taxable activity”. Relevantly, for the purposes of the Rulings and this Commentary, excluded from the definition of “taxable activity” are any engagement, occupation, or employment:
- of a person as a director (section 6(3)(b));
 - under an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant, an Order in Council or a notice published in the *New Zealand Gazette* (section 6(3)(c)(iia)); or
 - as a Chairman or member of any local authority or any statutory board, council, committee, or other body (section 6(3)(c)(iii)) (and note, for ease of reference, this Commentary uses the term “board member” to apply to all the situations that fall within section 6(3)(c)(iii)).⁶

Section 6(5) and limitations on the section 6(3) exclusions

22. However, in certain circumstances a director or board member can be deemed to provide their services as part of a taxable activity under section 6(5). Section 6(5)

⁶ This Commentary also refers to “board members” in respect of Governor-General and Governor-General in Council appointments as that is the relevant subset of appointments of relevance for BR Pub ZZ/zz and this Commentary.

applies where a person, in carrying on a taxable activity, accepts an office as director or board member. Section 6(5) applies to a person appointed as a director who would otherwise be excluded under section 6(3)(b) and to a person appointed as a board member who would otherwise be excluded under section 6(3)(c)(iii). In these situations, any services provided by the director or board member are deemed to be supplied in the course or furtherance of the person's taxable activity. Therefore, if a GST-registered sole trader accepts a directorship or board membership in carrying on their taxable activity, section 6(5) applies and the sole trader is liable to return GST on any director's fees or board member's fees received. Section 6(5) does not apply to appointments by the Governor-General or the Governor-General in Council that are excluded from the definition of "taxable activity" under section 6(3)(c)(iia).

23. If the person holds several offices (as director or board member), those offices, on their own and even when combined, are not a taxable activity. Each individual office is excluded from the meaning of "taxable activity" under sections 6(3)(b) and/or 6(3)(c)(iii). Section 6(5) cannot apply in this situation unless the office holder accepts the office in carrying on some other taxable activity separate to the holding of directorships or board memberships. For example, if a person held multiple directorships (such that they could be described as a "professional director"), and also had a legal or accounting or consulting practice in relation to which the opportunity for those directorships arose, then section 6(5) could apply. (Just to be clear, section 6(5) can apply whether there is one office or multiple offices accepted.) Where the separate taxable activity ceases to exist, and the person currently only holds a number of offices (directorships or board memberships), then section 6(5) would not apply. That is, it is not enough that the office was originally accepted in carrying on a taxable activity, that taxable activity must continue.
24. Examples 1 and 2 below illustrate circumstances in which section 6(5) may or may not apply because the directorship (or board membership) was or was not accepted in carrying on a taxable activity.

Example 1 - Is an office accepted in carrying on a taxable activity?**Variation 1 - Directorship accepted in carrying on a taxable activity**

Eriksen has a shop (“Danes-R-U’s”) selling sporting gear, including supporters merchandise (replica shirts, scarves and so on) for Elsinore FC, the local football club. Danes-R-U’s is a great supporter of Elsinore FC and supports many initiatives of the club to increase support at the games and for youth player participation at the club. These include giving away free tickets to matches as part of in-store promotions, providing free transport for youth players to get to out-of-town matches and so on. In recognition of the support of Eriksen and Danes-R-U’s the club asks Eriksen to join the board of directors of Elsinore FC and he agrees to do so.

Although section 6(3)(b) applies to exclude the directorship from the definition of “taxable activity”, section 6(5) brings the directorship back into the definition of “taxable activity” as it was accepted by Eriksen in carrying on a taxable activity (Danes-R-U’s). The directorship was offered because of the activities Eriksen and Danes-R-U’s undertook to benefit the club in the course of carrying on the taxable activity of selling sporting gear.

Variation 2 - Directorship not accepted in carrying on a taxable activity

Assume Danes-R-U’s has the same taxable activity. However, Danes-R-U’s does not support any initiatives of Elsinore FC. Instead, Eriksen, in his own time and at his own expense, supports the club by assisting with fundraising for junior teams, providing free transport to practices and games for youth players, and organising supporters’ club functions. In recognition of the support of Eriksen the club asks him to join the board of directors of Elsinore FC and he agrees to do so.

Section 6(3)(b) applies to exclude the directorship from the definition of “taxable activity”. Section 6(5) does not apply to bring the directorship back into the definition of “taxable activity” as it was not accepted by Eriksen in carrying on a taxable activity (Danes-R-U’s). Instead, the directorship was offered in recognition of his efforts outside of the taxable activity.

In light of the particular activity of Danes-R-U’s (sporting gear sales including Elsinore FC merchandise) a careful consideration of the facts would be critical.

Example 2 - Is an office accepted in carrying on a taxable activity?**Variation 1 - Directorship not accepted in carrying on a taxable activity**

Cornelius is a butcher in Elsinore and a good friend of Eriksen. She is also a great supporter of Elsinore FC. She spends many hours of her own time coaching the club's women's team, running a branch of the supporters' club, and lobbying the local council to provide enhanced sporting facilities for young girls and women who wish to play football. Elsinore FC asks Cornelius to become a director of the club in recognition of her efforts, and she agrees to do so.

Section 6(3)(b) applies to exclude the directorship from the definition of "taxable activity". Section 6(5) does not apply to bring the directorship back into the definition of "taxable activity" as it was not accepted in carrying on her taxable activity as a butcher. Instead, the directorship was offered in recognition of her efforts outside of her taxable activity as a butcher..

Variation 2 - Directorship accepted in carrying on a taxable activity

As above, Cornelius is a butcher in Elsinore but she is not a football fan or supporter of Elsinore FC. However, she recognises the club's popularity in the local community and wants to tap into that to promote her business, Ham-4-All. As a result Ham-4-All finances the club's junior teams, participates in free ticket giveaways at the store, and contributes to the cost of redeveloping the club's ground. Elsinore FC asks Cornelius to become a director of the club in recognition of Ham-4-All's support and she agrees to do so.

Although section 6(3)(b) applies to exclude the directorship from the definition of "taxable activity", section 6(5) brings the directorship back into the definition of "taxable activity" as it was accepted by Cornelius in carrying on the taxable activity of Ham-4-All. The directorship was offered because of the activities the business undertook to benefit the club.

Deemed supplies by employers

25. A company may engage a person as a director or board member who is an employee of a third-party employer. An employer may agree to an employee being engaged as a director of a company or a board member of an organisation on the condition that the employee accounts to the employer for any directors' fees or board members' fees received. In this situation, the company or organisation would ordinarily be precluded from claiming any GST input tax deductions on director's fees or board member's fees

paid to the employee of a third-party employer. The reason for this is that, generally, the employee would not be carrying on a taxable activity. This is because the term “taxable activity” excludes any engagement, occupation, or employment under any contract of service: section 6(3)(b).

26. Section 6(4) was introduced to allow a company or organisation to claim input tax deductions for fees paid to a director or board member who is an employee of a third-party employer. Section 6(4) provides that when an employee of a third-party employer is engaged by a company or an organisation to be a director or board member and the employee is required to account for any fees received to their employer, the employer is deemed to make a supply of services to the company or organisation. Section 6(4) applies to genuine employment relationships where the employee has a fiduciary obligation to account to their employer for any fees from an office. Therefore, a GST registered employer is liable for GST output tax on the supply of the services and the company or organisation can claim input tax on the payment for those services if they are also GST registered. For more information on the introduction of this subsection, see “Directors’ fees” in the August 2014 *Tax Information Bulletin*.⁷

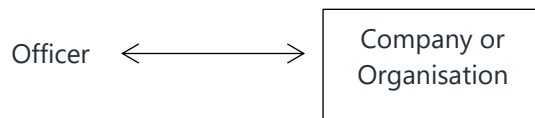
Application of the legislation

27. These Rulings consider the GST treatment of the supply of services as a director or board member. Except where a board member is appointed by the Governor-General or Governor-General in Council, the tests for determining whether a director or board member is carrying on a taxable activity, and their subsequent tax treatment, are the same.
28. The following analysis explains the GST treatment of supplies of services provided by a director or board member when
- a person (with or without a taxable activity) is engaged in their personal capacity as a director of a company or a board member of an organisation;
 - a person (with or without a taxable activity) is contracted as a director of a company or a board member of an organisation by a third party;
 - an employee of a third-party employer is engaged as a director of a company or a board member of an organisation; and

⁷ “Directors’ fees”, *Tax Information Bulletin* Vol 26, No 7 (August 2014): 96.

- a partner in a partnership is engaged as a director of a company or a board member of an organisation.
29. In analysing any office holder appointment it will be critical to understand the legal effect of the arrangements entered into. Careful consideration will need to be given to the capacity in which an office is accepted and whether the office holder is legally obliged to account to another party for the fees received. It is important that in each situation there is clarity as to which of the categories listed in paragraph [28] apply.

Director or board member⁸ engaged in their personal capacity



30. A person may accept an office as a director or board member in their personal capacity and not as part of carrying on any taxable activity. Alternatively, a person may accept an office as a director or board member as part of carrying on their taxable activity.
31. If the person accepts an office in their personal capacity and not as part of carrying on a taxable activity, then the activity of supplying services as a director or board member falls within the exclusion in section 6(3)(b) or section 6(3)(c)(iii). Section 6(5) does not apply because the person has not accepted the office as part of carrying on a taxable activity. See Example 3.
32. However, if the director or board member has accepted the office as part of carrying on a taxable activity, section 6(5) overrides the exclusions in section 6(3)(b) and section 6(3)(c)(iii) and deems the services to be supplied in the course or furtherance of that taxable activity. If the director or board member is registered or liable to be registered for GST, the director or board member will be required to account for GST output tax on the fees received for the services they supply. See Example 4.

⁸ In the diagrams the term "officer" is used to refer to either a director or a board member.

Example 3: Director engaged in their personal capacity and does not have taxable activity

Claudius, who is not registered for GST, is an employee of a marketing agency. Fortinbras Ltd engages Claudius as a director and pays him fees for his services. The appointment of Claudius as a director is not connected with his employment, nor has he accepted the directorship as part of carrying on a taxable activity. He retains the fees, having received them in his personal capacity.

Claudius is engaged as a director of a company, an activity that is excluded from the term “taxable activity” by section 6(3)(b). Section 6(5) does not apply, because Claudius did not accept the directorship as part of carrying on a taxable activity. Claudius is not required to account for GST on the fees received for directorship services.

Fortinbras Ltd cannot claim input tax deductions on the fees paid to Claudius because no GST was charged on those fees.

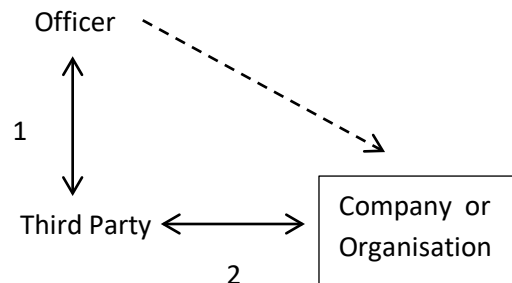
Example 4: Board member engaged in their personal capacity and has a taxable activity

Ophelia is a human resources consultant in business on her own. She is registered for GST. Ophelia accepts a position as a member of the Elsinore Employment Equality Council (“the EEEEC”) as part of carrying on her taxable activity. She receives fees for her services.

Because Ophelia has accepted the office as part of carrying on her taxable activity, section 6(5) deems her services to be supplied in the course or furtherance of her taxable activity. Therefore, Ophelia should provide the EEEEC with a tax invoice and account for GST output tax on the fees she is paid.

The EEEEC may claim input tax deductions for the fees paid to Ophelia, provided the requirements of the Act, such as those in section 20(2), are met.

Director or board member contracted to company or organisation by third party



33. A third party may agree to provide the services of a director or board member to a company or an organisation. In this situation, two supplies are relevant for GST purposes. The first supply is the director or board member providing their services to the third party. The second supply is the third party providing the director's or board member's services to the company or organisation.
34. In relation to the first supply, the director or board member may accept the office in the course or furtherance of a taxable activity. If the office is not accepted in the course or furtherance of a taxable activity, the director's or board member's engagement is excluded from the term "taxable activity" under section 6(3)(b) or section 6(3)(c)(iii). Section 6(5) would not apply because the director's or board member's services are not supplied as part of carrying on a taxable activity. Therefore, there can be no supply for GST purposes between the director or board member and the third party. See Example 5.
35. However, if the director or board member accepts the office in carrying on a taxable activity, section 6(5) deems the director's or board member's services to be supplied in the course or furtherance of their taxable activity. In this situation, the director or board member will invoice the third party for providing the director's or board member's services. Therefore, the director or board member is required to account for GST output tax on the fees they receive for these services. See Example 6.
36. In relation to the second supply, the third party invoices the company or organisation for the third party's services in providing the director's or board member's services. If the third party is registered or liable to be registered for GST, they are required to account for GST output tax on the fees received for the supply of the director's or board member's services. Section 6(3)(b) will not apply because the third party is not engaged as a director of a company or as a board member of an organisation.

Example 5: Director contracted to company by third party and does not have taxable activity

A GST-registered financial management company, Polonius Ltd, agrees to supply Osric Ltd with the services of a director. Polonius Ltd supplies the services of Marcellus, one of its specialist employees, to Osric Ltd. Directors' fees are paid by Osric Ltd to Polonius Ltd for the services provided by Marcellus.

The engagement of Marcellus as a director is excluded from the term "taxable activity" under section 6(3)(b). Section 6(5) does not apply as Marcellus has not accepted the office as part of carrying on a taxable activity. Marcellus has accepted the office as part of his employment with Polonius Ltd. Therefore, Marcellus is not required to account for GST on the supply of his directorship services.

Section 6(3)(b) does not apply to the activity of Polonius Ltd because that company is not engaged as a company director. The fees are paid in consideration of Polonius Ltd providing the services of Marcellus to Osric Ltd. This is a supply in the course or furtherance of Polonius Ltd's taxable activity and that company will be required to account for GST output tax on the fees received for this supply.

If Osric Ltd is registered for GST, it may claim input tax deductions for the fees paid to Polonius Ltd, provided the requirements of the Act, such as those in section 20(2), are met.

Example 6: Board member contracted to organisation by third party and has taxable activity

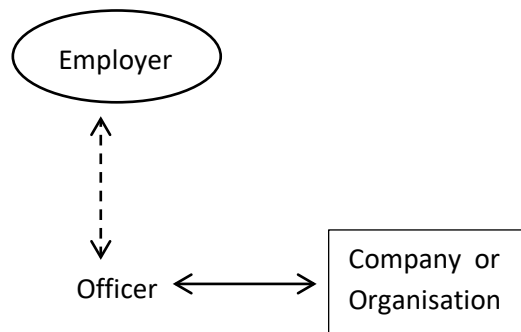
Horatio is a GST-registered accountant in business on his own. A consulting firm, Voltimand Ltd, agrees to supply the EEEC (from Example 4) with the services of a board member to monitor the EEEC’s financial systems. Horatio agrees with Voltimand Ltd to provide his services as a board member of the EEEC. Two supplies are involved in this arrangement. First, Horatio provides his services to Voltimand Ltd. Secondly, Voltimand Ltd supplies the services of Horatio to the EEEC.

Horatio’s engagement as a board member of the EEEC is excluded from the term “taxable activity” under section 6(3)(c)(iii). However, as Horatio has accepted the office as part of carrying on his taxable activity as an accountant, section 6(5) deems his services as a board member to be supplied in the course or furtherance of his taxable activity. In relation to the first supply, Horatio is, therefore, required to account for GST output tax on the fees he receives from Voltimand Ltd for these services.

In relation to the second supply, Voltimand Ltd’s supply of Horatio’s services to the EEEC does not fall within section 6(3)(c)(iii) because Voltimand Ltd is not engaged as a board member of an organisation. Provided Voltimand Ltd is registered or liable to be registered for GST, it will be required to account for GST output tax on the fees received for the supply of Horatio’s services.

If the EEEC is registered for GST, it may claim input tax deductions for the fees paid to Voltimand Ltd, provided the requirements of the Act, such as those in section 20(2), are met.

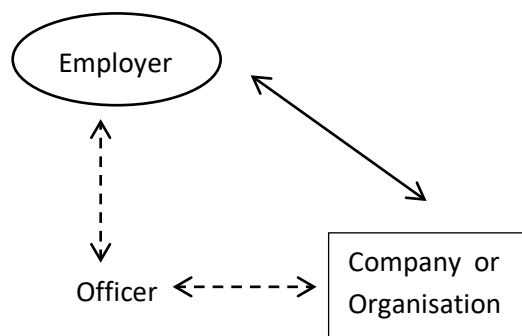
Employee engaged as a director or board member



- 37. A company or an organisation may engage a person as director or board member who is also an employee of a third-party employer. In this situation, either the employee

holds the office as part of their employment duties or the employee holds the office outside their employment. In this situation, no contract exists between the employer and the company or organisation.

38. If the employee holds the office outside their employment (the office does not arise from carrying on their employment), they are a director or board member in their personal capacity (see Examples 3 and 4). Because the director or board member is also an employee, it is unlikely they will have a taxable activity, but this will depend on the circumstances of each case.
39. Sometimes an employer will permit an employee to accept an office, provided the employee accounts to the employer for the fees received. If the employee has accepted the office in the course of their employment, the engagement of the employee as a director or board member is excluded from the term “taxable activity” under section 6(3)(b) or section 6(3)(c)(iii). Section 6(5) does not apply as the director or board member has not accepted the office as part of carrying on a taxable activity—the director or board member is merely carrying out his or her employment duties.
40. Section 6(4) provides that when an employee is engaged as a director of a company or a board member of an organisation and the employee is required to account for any fees received to their employer, the payment is treated as consideration for a supply of services by the employer to the company or organisation. This is illustrated by the following diagram:



41. The employer (provided it is registered or liable to be registered for GST) will, therefore, return GST output tax on the deemed supply of services and provide a tax invoice to the company or organisation. The company or organisation will then be able to claim input tax on the payment for these services. See Example 7.

Example 7: Employee engaged as a director

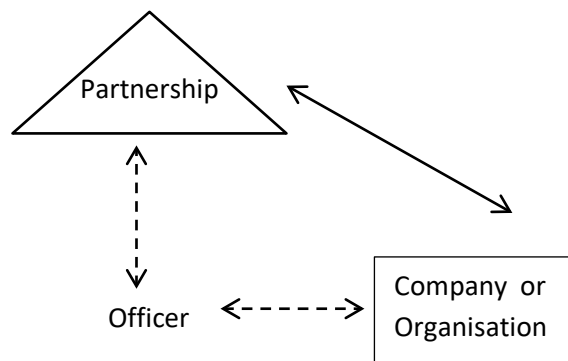
Guildenstern Ltd agrees to one of its employees, Laertes, taking up a directorship with Thebard Ltd on the proviso that Laertes accounts for the fees he receives to Guildenstern Ltd. No contract exists between Guildenstern Ltd and Thebard Ltd. Thebard Ltd is GST registered.

The engagement of Laertes as a director is excluded from the term “taxable activity” under section 6(3)(b). Section 6(5) does not apply as Laertes has not accepted the office as part of carrying on a taxable activity. Therefore, Laertes is not required to account for GST on the supply of the directorship services.

Guildenstern Ltd is treated as making a supply of services to Thebard Limited under section 6(4). If Guildenstern Ltd is registered or liable to be registered for GST it is required to account for GST on the supply of the services and provide a tax invoice to Thebard Limited.

Because it is GST registered Thebard Ltd can claim an input tax deduction on the deemed supply from Guildenstern Limited.

Partner in a partnership engaged as a director or board member



- 42. A partner in a partnership may be engaged as a director of a company or a board member of an organisation as part of the partnership’s business.
- 43. Section 2(1) defines “unincorporated body” to include a partnership. Section 57(2)(b) provides that where an unincorporated body carries on a taxable activity, any supply of goods and services made as part of carrying on that taxable activity is deemed to be supplied by the unincorporated body. If the unincorporated body is a partnership, any supply of goods and services made as part of carrying on its taxable activity is deemed to be supplied by the partnership and not by any of the partners.

44. The engagement of the partner as a director or board member is excluded from the term “taxable activity” under section 6(3)(b) or section 6(3)(c)(iii). Section 6(5) does not apply because, although the partner may be carrying on the taxable activity of the partnership, the services are deemed to be supplied by the partnership, not the partner, under section 57(2)(b). Therefore, the partner is not required to account for GST on the supply of their services.
45. Section 6(3)(b) and section 6(3)(c)(iii) do not apply in the case of the partnership as the partnership is not engaged as a director or board member. The partnership supplies the services of one of its partners to another person as part of its taxable activity. Therefore, the partnership will be required to account for GST on the fees received for the supply of the partner’s services as a director or board member. The partnership should also provide the company or organisation with a tax invoice.
46. While section 6(4) does not apply in this situation, the company or organisation will still be able to claim input tax on the payment for the director’s or board member’s services. This is because the partnership is deemed to supply the partner’s services under section 57(2)(b) with a similar effect to section 6(4). See Example 8.

Example 8: Partner in a partnership engaged as board member of an organisation

A GST-registered legal partnership provides legal advice to the Rosencrantz Memorial Board (“the RMB”). A partner in the partnership, Gertrude, is elected on to the board of the RMB as a representative of the partnership. The RMB is GST registered.

The engagement of Gertrude as a board member of an organisation falls within section 6(3)(c)(iii), so is excluded from the term “taxable activity”. Section 6(5) does not apply as, although Gertrude may be providing the board member services, the services are deemed to be supplied by the partnership under section 57(2)(b). Therefore, Gertrude is not required to account for GST on the supply of the board member services.

The provisions of section 6(3)(c)(iii) do not apply to the partnership as it is not engaged as a board member of an organisation. Therefore, the partnership will be required to account for GST output tax on the fees it receives from the organisation.

The RMB may claim an input tax deduction on Gertrude’s board member services that the partnership invoices it for, provided the requirements of the Act, such as those in section 20(2), are met.

Board members appointed by the Governor-General or the Governor-General in Council

47. Appointments made by the Governor-General are generally personal in nature. For example, board members may be appointed by the Governor-General to statutory entities. This means some of the situations described above will not arise where the Governor-General appoints a board member. For example, the following situations will not arise in the context of a Governor-General appointment:
- a third party contracts with a board member to provide board member services to an organisation; and
 - an employee of an employer is engaged as a board member of a third-party organisation in their capacity as an employee (although an employee may be appointed as a board member and be obliged to account to their employer for any board member's fees they receive).
48. Section 6(5) does not apply to the appointment of a person as a board member by the Governor-General. This means that any activities relating to the services provided by a board member appointed by the Governor-General are always excluded from the definition of "taxable activity" (section 6(3)(c)(iia)). See Example 9.
49. Where the Governor-General appoints a board member who is a partner in a partnership and the person supplies their services in the course of carrying on the partnership's taxable activity, the services are deemed to be supplied by the partnership under section 57(2)(b). The partnership's provision of the board member's services does not fall within section 6(3)(c)(iia) because the partnership is not engaged as a board member. If the partnership is registered or liable to be registered for GST, it will be required to account for GST output tax charged under section 8 on the supply of the board member's services to the organisation.

Example 9 – Board member appointed by the Governor-General

The empowering legislation for the Elsinore Preservation Association provides that appointments to the Association must be made by the Governor-General. The Governor-General appoints Francisco and Reynaldo to the Association. Both appointees accept the appointment and undertake services for the Association for which they are paid fees.

The engagement of Francisco and Reynaldo as board members falls within section 6(3)(c)(iia), so is excluded from the term “taxable activity”. Section 6(5) does not apply as that provision does not apply to appointments covered by section 6(3)(c)(iia). Accordingly, neither Francisco nor Reynaldo should charge GST on their supply of services.

The Association may not claim an input tax deduction on Francisco’s and Reynaldo’s board member services as there is no output tax charged on the fees for those services.

When the company or organisation may claim an input tax deduction for fees it pays

50. As seen, a person may accept an office of director or board member in different capacities. Depending on the capacity in which the director or board member accepts the office, the company or organisation may receive a tax invoice from the director or board member, the director’s or board member’s employer, the director’s or board member’s partnership, or a third party. It is not up to the company or organisation to determine the capacity in which the director or board member accepted the office.
51. Section 6(4) applies where a director of a company or board member of an organisation is also employed by a third-party employer and the director or board member must account for their fees to that employer. In this situation, section 6(4) provides that the payment to the employer is treated as consideration for a supply of services by the employer to the company or organisation paying the director or board member. If the director’s or board member’s employer is registered for GST, they will be able to provide a tax invoice to the company or organisation for the deemed supply of services.
52. Essentially, the company or organisation may claim an input tax deduction for the fees it pays if the:
 - company or organisation is GST registered; and

- company or organisation holds a tax invoice for the directors' fees or board members' fees (or an invoice for a deemed supply by an employer under section 6(4)).

Other requirements of the Act may also need to be satisfied, depending on individual circumstances.

References

Expired or withdrawn rulings

"Directors' fees and GST": Public Ruling – BR Pub 00/09, *Tax Information Bulletin* Vol 12, No 9 (September 2000): 9. www.taxtechnical.ird.govt.nz/tib/volume-12---2000/tib-vol12-no9

"Directors' fees and GST": Public Ruling – BR Pub 00/11, *Tax Information Bulletin* Vol 12, No 11 (November 2000): 3. www.taxtechnical.ird.govt.nz/tib/volume-12---2000/tib-vol12-no11

"Directors' fees and GST": Public Ruling – BR Pub 05/13, *Tax Information Bulletin* Vol 17, No 7 (September 2005): 9. www.taxtechnical.ird.govt.nz/tib/volume-17---2005/tib-vol17-no7

"Goods and services tax – directors' fees": Public Ruling BR Pub 15/10, *Tax Information Bulletin* Vol 27, No 7 (August 2015): 3. www.taxtechnical.ird.govt.nz/tib/volume-27---2015/tib-vol27-no7

Case references

Wilson & Horton v CIR (1995) 17 NZTC 12,325 (CA)

Legislative references

Goods and Services Tax Act 1985, ss 2 ("registered person", "unincorporated body"), 6, 8, 20, 51, 57

Other related public items

IS 17/06 ("Income tax – application of schedular payment rules to directors' fees", 18 July 2017)

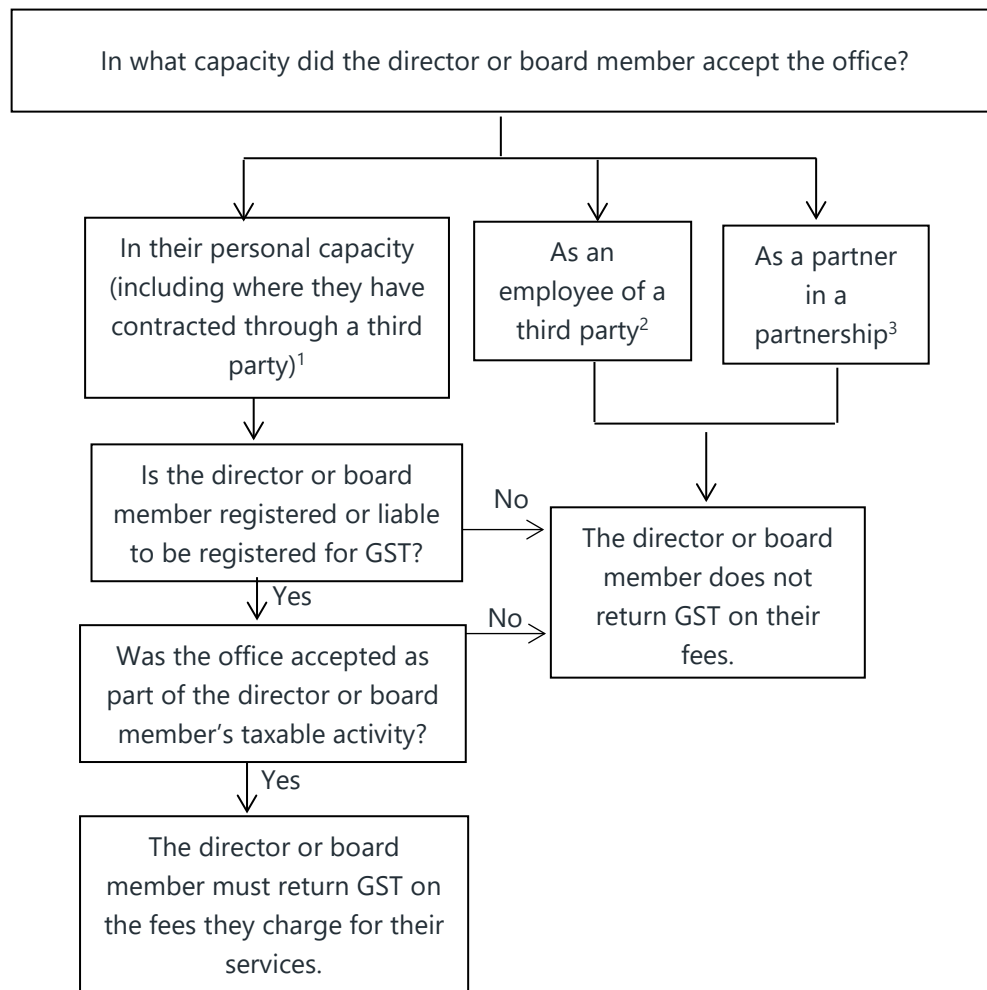
IS 19/01 ("Income tax – application of schedular payment rules to non-resident directors' fees", 28 February 2019)

GA 21/01 ("Tax on any fees paid to a member of a board, committee, panel, review group or task force", 7 December 2021)

Appendix 1 – Flow chart to determine whether a director or board member needs to return GST on their fees

This flow chart covers directors and only those board members not appointed by the Governor-General or the Governor-General in Council.

Does a director or board member need to return GST on their fees?



¹ Where the director or board member is contracted through a third party, the third party may need to return GST on the fees they receive for providing the services of the director or board member to the company or organisation. See the Commentary at [33]–[36].

² The employer may be required to return GST on the director's or board member's fees where the director or board member must account for their fees to their employer. See the commentary at [37]–[41].

³ The partnership may be required to return GST on the director's or board member's fees in this situation. See the Commentary at [42]–[46].

Appendix 2 – Legislation

Goods and Services Tax Act 1985

53. The term “unincorporated body” is defined in section 2 as:

unincorporated body means an unincorporated body of persons, including a partnership, a joint venture, and the trustees of a trust.

54. Section 6 provides:

6 Meaning of term taxable activity

- (1) For the purposes of this Act, the term **taxable activity** means—
 - (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club;
 - (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority or public purpose Crown-controlled company.
- (2) Anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity.
- (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—
 - (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
 - (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; or
 - (b) any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4); or
 - (c) any engagement, occupation, or employment—
 - (i) pursuant to the Members of Parliament (Remuneration and Services) Act 2013 or the Governor-General Act 2010;

- (ii) as a Judge, Solicitor-General, Controller and Auditor-General, or Ombudsman:
 - (iia) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant or by an Order in Council or by a notice published in the *Gazette* in accordance with section 2(2) of the Official Appointments and Documents Act 1919:
 - (iii) as a Chairman or member of any local authority or any board, council, committee, or other body, subject to subsection (4); or
 - (d) any activity to the extent to which the activity involves the making of exempt supplies.
- (4) Despite subsection (3)(b) and (c)(iii), if a director, member, or other person referred to in those paragraphs is paid a fee or another amount in relation to their engagement, occupation, or employment in circumstances in which they are required to account for the payment to their employer, the payment is treated as consideration for a supply of services by the employer to the person who made the payment to the director, member, or other person.
- (5) For the purposes of subsection (3)(b) and (c)(iii), if a person in carrying on a taxable activity, accepts an office, any services supplied by that person as holder of that office are deemed to be supplied in the course or furtherance of that taxable activity.

55. Section 20 provides:

20 Calculation of tax payable

- (1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this section.
- (2) Notwithstanding any other provision in this Act, no deduction of input tax and no deduction calculated under section 25(2)(b) or (5) shall be made in respect of a supply, unless—
- (a) a tax invoice or debit note or credit note, in relation to that supply, has been provided in accordance with sections 24, 24BA, and 25 and is held by the registered person making that deduction at the time that any return in respect of that supply is furnished; or
 - (b) a tax invoice is not required to be issued pursuant to section 24(5) or section 24(6), or a debit note or credit note is not required to be issued pursuant to section 25; or

- (c) sufficient records are maintained as required pursuant to section 24(7) where the supply is a supply of secondhand goods to which that section relates; or
- (d) the supply is a supply of goods or services that is treated by section 5B as being made by the recipient and the recipient has accounted for the output tax charged in respect of the supply; or
- (e) the supply is a supply of goods and services that is treated as made under section 60B to a nominated person and that person maintains sufficient records as required by section 24(7B):

provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, the Commissioner may determine that no deduction for input tax in relation to that supply shall be made unless that tax invoice or debit note or credit note is retained in accordance with the provisions of section 75.

- (3) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—
 - (a) in the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19, the amount of the following:
 - (i) input tax in relation to the supply of goods and services (not being a supply of secondhand goods to which section 3A(1)(c) of the input tax definition applies), made to that registered person during that taxable period:
 - (ia) input tax in relation to the supply of secondhand goods to which section 3A(1)(c) of the input tax definition applies, to the extent that a payment in respect of that supply has been made during that taxable period:
 - (ii) input tax invoiced or paid, whichever is the earlier, pursuant to section 12 during that taxable period:
 - (iii) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b); and
 - (b) in the case of a registered person who is required to account for tax payable on a payments basis or a hybrid basis pursuant to section 19, the amount of the following:
 - (i) input tax in relation to the supply of goods and services made to that registered person, being a supply of goods and services which is deemed to take place pursuant to section 9(1) or section 9(3)(a) or section 9(3)(aa) or section 9(6), to the extent that a payment in respect of that supply has been made during the taxable period:

- (ii) input tax paid pursuant to section 12 during that taxable period:
- (iii) input tax in relation to the supply of goods and services made during that taxable period to that registered person, not being a supply of goods and services to which subparagraph (i) applies:
- (iv) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b), to the extent that a payment has been made in respect of that amount;
- ...

56. Section 57(2) provides:

- (2) Where an unincorporated body that carries on any taxable activity is registered pursuant to this Act,—
 - (a) the members of that body shall not themselves be registered or liable to be registered under this Act in relation to the carrying on of that taxable activity; and
 - (b) any supply of goods and services made in the course of carrying on that taxable activity shall be deemed for the purposes of this Act to be supplied by that body, and shall be deemed not to be made by any member of that body; and
 - (c) any supply of goods and services to, or acquisition of goods by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) applies, shall be deemed for the purposes of this Act to be supplied to or acquired by that body, and shall be deemed not to be supplied to or acquired by that member; and
 - (d) that registration shall be in the name of the body, or where that body is the trustees of a trust, in the name of the trust; and
 - (e) subject to subsections (3) to (3B), any change of members of that body shall have no effect for the purposes of this Act.

About this document

Public Rulings are issued by the Tax Counsel Office. Public Rulings set out the Commissioner's view on how tax laws apply to a specific set of facts – called an arrangement. Taxpayers whose circumstances match the arrangement described in a Public Ruling may apply the ruling but are not obliged to do so. Public Rulings are binding on the Commissioner. This means that if you are entitled to apply a Public Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Public Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general

similarity between a taxpayer's circumstances and the arrangement covered by a Public Ruling will not necessarily lead to the same tax result.