DOMESTIC AIR TRAVEL – ZERO-RATING FOR GST PURPOSES

PUBLIC RULING - BR Pub 98/3

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

Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 ("the GST Act") unless otherwise indicated.

This Ruling applies in respect of section 11(2)(aa).

The Arrangement to which this Ruling applies

The Arrangement is the supply of air travel in the following circumstances:

- The travel involves the transport of passengers by aircraft (any other mode of transport will not qualify, e.g. transport by road, sea, or rail); and

- The transport is a direct flight from a place in New Zealand to another place in New Zealand (referred to in this Ruling as "domestic air travel"); and

- The domestic air travel is part of a wider agreement or contract for air carriage in respect of which **all** the parties to the wider agreement or contract (and in particular the party providing the domestic air travel services) contemplate that either:

    - The place of departure is within the territory of one country and the place of destination is within the territory of another country, not being travel where New Zealand is the place of:

        - Departure, and the Cook Islands, or Niue, or the Tokelau Islands is the place of destination; or

        - Destination, and the Cook Islands, or Niue, or the Tokelau Islands is the place of departure; or

    - The place of departure and the place of destination are both within the territory of a single country, but there is an agreed stopping place in another country. The term "agreed stopping place" refers to any place that the aircraft intends to land in accordance with the travel contract, not being travel that has a place of departure and destination both located in the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue, or the Tokelau Islands.

- **All** the parties to the wider agreement or contract for air carriage (i.e. all the carriers and the passenger or other party to the contract or agreement), and in particular the supplier of the domestic air travel, regard the domestic air travel to

be supplied as part of the wider agreement or contract for air carriage and as a single operation of international carriage.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The supply of the domestic air travel by any supplier will constitute "international carriage" for the purposes of the Carriage By Air Act 1967 ("the CBA Act") and so will be zero-rated under section 11(2)(aa). This Ruling is based on the state of the Carriage By Air Act 1967 (and the treaties to which that Act gives effect) as at the date this Ruling is made.

The period for which this Ruling applies

This Ruling will apply to the supply of domestic air travel to the extent that that supply occurs during the period from 1 July 1998 to 30 June 2001.

For the purposes of determining the period for which this Ruling applies, the time of supply of air travel is the earlier of the time an invoice is issued or payment is received by the supplier in respect of that supply.

This Ruling is signed by me on the 8th day of May 1998.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 98/3

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 98/3 ("the Ruling").

In this commentary:

- references to the "GST Act" are to the Goods and Services Tax Act 1985;
- references to the "CBA Act" are to the Carriage By Air Act 1967;
- references to the "Warsaw Convention" are to the "Convention for the Unification of Certain Rules Relating to International Carriage By Air" opened for signature at Warsaw on 12 October 1929 – for a list of states that are party to the Warsaw Convention, see Appendix 1; and
- references to the "Hague Protocol" are to the Warsaw Convention as amended by the Hague Protocol of 1955 and supplemented by the Guadalajara Convention of 1961 – for a list of states that are party to the Hague Protocol, see Appendix 2.

Background

Domestic air travel within New Zealand will often be part of an international travel package which involves travel to, or from, New Zealand. Generally, domestic air travel within New Zealand is standard rated for GST purposes because the travel is considered to be a service which is supplied in New Zealand. However, the GST Act provides for domestic air travel to be zero-rated in certain circumstances when international travel is involved, and the domestic air travel constitutes "international carriage" for the purposes of the CBA Act.

According to the Ruling, it applies to the supply of air travel in the following circumstances:

- The travel involves the transport of passengers by aircraft (any other mode of transport will not qualify, e.g. transport by road, sea, or rail); and

- The transport is a direct flight from a place in New Zealand to another place in New Zealand (referred to in this Ruling as "domestic air travel"); and

- The domestic air travel is part of a wider agreement or contract for air carriage in respect of which **all** the parties to the wider agreement or contract (and in particular the party providing the domestic air travel services) contemplate that either:

    - The place of departure is within the territory of one country and the place of destination is within the territory of another country, not being travel where New Zealand is the place of:

        - Departure, and the Cook Islands, or Niue, or the Tokelau Islands is the place of destination; or

    - Destination, and the Cook Islands, or Niue, or the Tokelau Islands is the place of departure; or

- The place of departure and the place of destination are both within the territory of a single country, but there is an agreed stopping place in another country. The term "agreed stopping place" refers to any place that the aircraft intends to land in accordance with the travel contract, not being travel that has a place of departure and destination both located in the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue, or the Tokelau Islands.

- **All** the parties to the wider agreement or contract for air carriage (i.e. all the carriers and the passenger or other party to the contract or agreement), and in particular the supplier of the domestic air travel, regard the domestic air travel to be supplied as part of the wider agreement or contract for air carriage and as a single operation of international carriage.

As long as these requirements are fulfilled, the Ruling will apply irrespective of whether:

- The wider air carriage agreement is in the form of one contract or a series of contracts; or

- The carriage is all with one carrier or with a series of carriers; or

- Any of the air carriage contracts which form part of the wider air carriage agreement or contract consist purely of domestic travel; or

- There are breaks between each flight; or

- The domestic air travel is a connecting flight which takes a person out of New Zealand or to another place in New Zealand.

The Ruling will be of primary interest and application to the airlines that supply domestic air travel services in New Zealand. If the Ruling applies, and the air travel services supplied to the passenger constitute "international carriage" for the purposes of the CBA Act, the airline must zero-rate the domestic air travel services.

Authority to make the Ruling

One purpose of the binding rulings regime is to provide taxpayers with certainty about the way that the Commissioner will apply the taxation laws. In pursuance of this aim, sections 91A, 91D, and 91E of the Tax Administration Act 1994 provide that the Commissioner may issue binding rulings that set out how a taxation law will apply to any person and to any arrangement.

Section 91C(1)(c) provides that the Commissioner may make a binding ruling on any provision of the GST Act (except sections 12 and 13 of that Act). Section 11(2)(aa) is a provision of the GST Act. The Commissioner is authorised to make a binding ruling on how this section will apply to any person and any arrangement.

To determine whether section 11(2)(aa) applies to any person and any arrangement, the Commissioner must be satisfied that the services supplied comprise the transport of passengers within New Zealand by aircraft and that the transport constitutes "international carriage" for the purposes of the CBA Act.

It will be impossible for the Commissioner to administer and apply section 11(2)(aa) unless he first determines whether the supply constitutes "international carriage" under the CBA Act. To determine whether a supply constitutes international carriage under the CBA Act, the Commissioner must be able to determine the meaning of that term for the purposes of that Act. The Commissioner considers that he can issue a ruling which involves interpreting the meaning of a term contained in a non-Revenue Act if the application of a provision of a Revenue Act is dependent on the meaning of that term.

Legislation

The Goods and Services Tax 1985

Under section 11(2)(aa) of the GST Act, where a supply of services would otherwise be charged with GST under section 8 of that Act, that supply shall be charged at the rate of zero percent if:

> (aa) The services comprise the transport of passengers from a place in New Zealand to another place in New Zealand to the extent that the transport is by aircraft and constitutes "international carriage" for the purposes of the Carriage By Air Act 1967 ...

The Carriage By Air Act 1967

Section 11(2)(aa) of the GST Act applies to air carriage which constitutes "international carriage" for the purposes of the CBA Act. There are three possible ways that air carriage can constitute "international carriage" for the purposes of the CBA Act. Firstly, under the Hague Protocol; secondly, under the Warsaw Convention; and thirdly, under section 18 of the CBA Act.

The Hague Protocol

Part I of the CBA Act gives effect to the provisions of the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955, and supplemented by the Guadalajara Convention of 1961. The Convention is a multi-lateral treaty, intended to unify international law as it relates to carriers' rights, obligations and liabilities and to override member nations' differing domestic laws. In this Commentary, the amended and supplemented Convention is referred to as "the Hague Protocol".

Section 7 of the CBA Act states that the Hague Protocol has the force of law in New Zealand. The Hague Protocol is set out in the Schedule to the Act. Parties to the Hague Protocol are referred to in it as "High Contracting Parties".

"International carriage" is defined in Article 1(2) of the Hague Protocol (as set out in the Schedule to the CBA Act) as follows:

For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State: even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

Sub-Article 1(3) states:

Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

The Warsaw Convention

A number of countries, including the United States, are signatories to the Warsaw Convention, but not to the Hague Protocol. The Hague Protocol does not apply to one way carriage between a Hague Protocol High Contracting Party (such as New Zealand) and a country which is not a signatory to the Hague Protocol. This is because that other country will not be a "High Contracting Party" to the Hague Protocol.

In cases where the travel is between New Zealand and a country which is only a party to the Warsaw Convention, the Warsaw Convention will apply to the carriage. This is by virtue of the fact that section 15 of the CBA Act keeps alive the provisions of the old Carriage By Air Act 1940, which gave the Warsaw Convention the force of law in New Zealand.

In some cases a country may be a High Contracting Party to the Hague Protocol, but not to the original Warsaw Convention. Articles XXI and XXIII of the Hague Protocol provide that where a country adheres to the Hague Protocol, but is not a signatory to the original Warsaw Convention, that country automatically becomes an adherent of the Warsaw Convention. Thus, if travel is between a country that is only a signatory to the Hague Protocol and a country that is only a signatory to the Warsaw Convention, the Warsaw Convention will apply because the Hague Protocol country is automatically an adherent to the Warsaw Convention.

In cases where the Warsaw Convention applies, the definition of "international carriage" in Article 1(2) of that Convention is applicable. The definition of "international carriage" in the Warsaw Convention is very similar to the definition of "international carriage" in the Hague Protocol.

Section 18 of the CBA Act

Part II of the CBA Act provides rules for carriage by air that is *not* international carriage (international carriage is dealt with in Part I and by the Conventions, as discussed above). Section 18 of the CBA Act defines "international carriage", for the

purposes of Part II of the CBA Act (i.e. for the purposes of working out what is **not** international carriage), as :

"International carriage", in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are within the territories of two countries or within the territory of a single country if there is an agreed stopping place within the territory of another country:

Section 19 of the CBA Act provides for the application of Part II of the Act and states:

(1) This Part of the Act applies to any carriage by air (not being international carriage) performed by a carrier as part of an air transport service in which, according to the contract between the parties, the place of departure and the place of destination are both situated in New Zealand and there is no agreed stopping place outside New Zealand; notwithstanding that the aircraft in which the carriage takes place is at the same time engaged in international carriage and notwithstanding that the contract for the carriage of any passenger is made without consideration.

(2) For the purposes of determining whether or not any carriage is international carriage, every island in the Cook Islands, Niue, and every island in Tokelau shall be deemed part of New Zealand and any carriage between such islands or between New Zealand (as defined in section 4 of the Acts Interpretation Act 1924) and any such island shall be deemed to be carriage within New Zealand and shall not (unless there is an agreed stopping place outside any such place) be international carriage for the purposes of this Part of the Act.

Application of the Legislation

Section 11(2)(aa) of the GST Act allows zero-rating of services where the services comprise the transport of passengers by aircraft from one place in New Zealand to another place in New Zealand to the extent that the transport constitutes "international carriage" for the purposes of the CBA Act 1967.

It can be seen from the above extracts from the CBA Act, that the term "international carriage" has the following meanings in the CBA Act:

- The definition contained in Article 1(2) of the Hague Protocol (which is given the force of law in New Zealand by section 7 of the CBA Act), as modified by Article 1(3) of the Hague Protocol (which relates to undivided carriage by successive carriers).

- The definition contained in Article 1(2) of the original Warsaw Convention, as modified by Article 1(3) of that Convention (these sub-articles are substantially the same as Article 1(2) and (3) of the Hague Protocol), as kept alive by section 15(2) of the CBA Act.

- The definition contained in section 18 of the CBA Act which only applies to Part II of the CBA Act and defines the type of carriage to which Part II does not apply.

While each of the meanings of "international carriage" in the CBA Act have some of the same components, they are not identical. The main differences are:

1. "International carriage" under the Hague Protocol must involve places of departure and destination that are within countries which are both High

Contracting Parties to the Hague Protocol. Similarly, "international carriage" under the Warsaw Convention must involve places of departure and destination that are within countries which are both High Contracting Parties (or deemed High Contracting Parties) to that Convention. The section 18 definition is not limited to travel between particular countries, and potentially applies to carriage involving places of departure or destination in any country.

2. The Warsaw Convention and the Hague Protocol contain Article 1(3), which deems carriage performed by successive carriers to be one undivided carriage if that carriage has been regarded by the parties to it as a single operation. There is no equivalent of this provision in section 18.

3. Article 1(2) in the Hague Protocol speaks of "the agreement between the parties". By contrast, section 18 refers to "the contract between the parties".

4. For the purposes of applying Part II of the CBA Act, section 19(2) states that "international carriage" does not include any travel between New Zealand and the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in another country. This is because these islands are deemed to be part of New Zealand for the purposes of Part II of the CBA Act. These islands are not deemed to be part of New Zealand for the purposes of Part I of the CBA Act or the conventions.

In many cases, the question of whether a domestic flight within New Zealand comprises "international carriage" for the purposes of the CBA Act can be answered by reference to the definitions in the Conventions, since most carriage involving two or more countries will be convention carriage under either the Hague Protocol or the Warsaw Convention.

In some cases, however, the carriage may involve a place of departure or destination in a country that is not a Convention country. The Commissioner's view is that the words *'constitutes "international carriage" for the purposes of the Carriage By Air Act 1967'* in section 11(2)(aa) of the GST Act mean: constitutes "international carriage" for **any** of the purposes of the Carriage By Air Act 1967. Thus, in cases where the travel involves a place of departure or destination which is not a Convention country, the Commissioner considers that the question of whether a domestic flight within New Zealand comprises part of a contract of "international carriage" for the purposes of the CBA Act can be decided by reference to the section 18 definition.

The requirements of "international carriage" under the Conventions and under section 18 are discussed below. Whether or not carriage constitutes "international carriage" for the purposes of the Warsaw Convention or the Hague Protocol or section 18 will depend fundamentally on whether, according to the agreement or contract between the parties, the parties agree that the places of departure and destination are in two different countries or are in a single country if there is an agreed stopping place in another country. It is, therefore, necessary to ascertain who the "parties" to the agreement are, what the "agreement" between them is, and where the places of departure, destination, and any agreed stopping place are.

The parties to the agreement

In applying section 11(2)(aa) of the GST Act and determining whether domestic air travel constitutes "international carriage" for the purposes of the CBA Act, the Commissioner considers that the parties to the agreement or contract for carriage for the purposes of section 18 of the CBA Act and for the purposes of Article 1(2) of each Convention, are:

- The passenger where that passenger (or his or her agent) has arranged the carriage; and

- **All** the carriers that are to provide carriage under the agreement or contract; and where applicable

- A person or organisation (not being the passenger or an agent of the passenger) will be a party to the agreement or contract for international carriage where that person or organisation enters into contractual relationships concerning the international carriage of the passenger, e.g. an employer of a passenger where the employer has arranged the carriage. Such a carriage will not be prevented from being "international carriage" simply because the passenger is not a party to the contract: *Ross v Pan American Airways* 85 NE 2d 880 (1949); *Block v Compagnie Nationale Air France* 386 F 2d 323 (1967); *Bafana & Anor v Commercial Airways (Pty) Limited* (1990)(1)(SA)368.

The agreement between the parties

When determining whether carriage is "international carriage", it appears that the important factor is what was the contemplation of all the parties who made the agreement or contract for carriage at the time the agreement or contract was made. Layovers and stops, even for extended periods of time, are unimportant if what was originally contemplated by the parties meets the descriptions in Article 1(2) or section 18 – i.e. if the parties originally contemplated that the places of departure and destination would be in different countries or if they originally contemplated that the places of departure and destination would be in the same country but with an agreed stopping place in another country. Carriage which may, from the passenger's perspective, be part of his or her journey, but which is arranged subsequently will not have been the contemplation of all the parties at the time the original agreement was made, and so may not form part of the original agreement or contract for "international carriage". (However, depending on whether the subsequent carriage meets the criteria of Article 1(2) or section 18, that subsequent carriage may constitute a new and separate agreement or contract for international carriage.)

Multiple airlines

There is no requirement in section 11(2)(aa) of the GST Act that the air carriage services must be supplied by one supplier. For the purposes of that section, as long as the services supplied constitute "international carriage" for the purposes of the CBA Act, those services are entitled to be zero-rated.

Article 1(3) of the Warsaw Convention and the Hague Protocol specifically provides for carriage with successive carriers to be treated as international carriage for the

purposes of the convention **where the parties have regarded the carriages as one undivided operation.** Further, this sub-article provides that the fact that one carrier performs carriage totally within one country does not mean that the wider carriage loses its international character.

There is no deeming provision which is similar to Article 1(3) for the purposes of the definition of "international carriage" in section 18. However, in determining whether section 11(2)(aa) applies to domestic air travel, the Commissioner considers that the same treatment will apply to carriage with successive carriers for the purposes of section 18 of the CBA Act as applies for the purposes of Article 1(3). In other words, for the purposes of applying section 11(2)(aa) of the GST Act and determining whether domestic air carriage is "international carriage" for the purposes of the CBA Act, carriage which is performed by successive carriers will be regarded as one undivided carriage if it is regarded by all the parties, and in particular the supplier of the domestic air travel services, as part of a single operation for international carriage.

In order for successive carriage to be regarded as one undivided carriage, **all** the carriers must have regarded the flights as a single operation at the time the agreement or contract was made. It is clear from the authorities that if a series of flights was contemplated by one party, but not another, at the time the agreement or contract for carriage was made, the flights with successive carriers could not be viewed as a "single operation": *Karfunkel v Compagnie Nationale Air France* 427 F Supp. 971 (1977); *Lemley v TWA Inc* 807 F 2d 26 (1986).

In particular, if a second carrier is organised by the main carrier, or any other person, and the second carrier does not know that its services are part of a larger operation of carriage, its services may not be part of an "undivided carriage": *Stratton v Trans Canada Airlines* (1962) 32 DLR 2d. 736. If the second carrier is operating a domestic flight in New Zealand, and does not know any details of the wider air travel arrangements, so that it cannot be said to regard the domestic flight services that it is providing as being part of a "single operation" with the wider arrangements, the domestic flight services will not be part of the "international carriage".

Re-ticketing

Re-ticketing can amount either to a variation to the original contract, or to the formation of a new contract. If the re-ticketing merely changes the time or date of the original flight, or the airline with which the passenger is flying, the re-ticketing is likely to be a variation of the original contract. However, when a passenger alters a destination or adds a side-trip, the re-ticketing will amount to a new contract. For example, in *Stratton v Trans Canada Airlines* (1962) 32 DLR 2d. 736 the passenger booked flights from Seattle to Calgary, via Victoria and Vancouver. The passenger later decided to take a more direct route to Calgary, and booked a direct flight from Seattle to Vancouver (he intended to buy a ticket to Calgary when he arrived in Vancouver). This re-ticketing was a new contract that was not in the parties' original contemplation at the time that the original arrangements were made.

If the re-ticketing amounts to a new contract, rather than a mere variation of the original contract, the new contract will not be part of a "single operation" that the parties contemplated at the start of the agreement.

The new contract will need to be examined to determine whether travel pursuant to it constitutes "international carriage" for the purposes of the CBA Act. If this is the case, the domestic flights which form part of the new contract will be able to be zero-rated under section 11(2)(aa). Otherwise, the domestic flights under the new contract should be standard rated.

If a side-trip which is not part of the original contract is wholly domestic, it will be a separate contract from the original and will not be "international carriage" for the purposes of the CBA Act. The side-trip should be standard rated.

Place of departure and place of destination

Both the conventions and section 18 require the places of departure and destination to be within the territories of two different countries, or within a single country as long as there is an agreed stopping place outside that country. In *Grein v Imperial Airways Ltd* [1936] 2 All ER 1258, Greene LJ discussed the nature of the places of departure and destination. At page 1280 he said:

... every contract of carriage has one place of departure and one place of destination. An intermediate place at which the carriage may be broken is not regarded as a "place of destination".
... If the contract is for a circular voyage, starting at Berlin, visiting various European capitals, and ending at Berlin, the contractual carriage begins at Berlin and ends at Berlin.

And at page 1282 he said:

... the contract by reference to which the place of departure and the place of destination are to be ascertained may be any contract of carriage whether for a single journey, for a circular journey, or for a return journey; that the place of departure the place of destination means the places at which under the particular contract in question the contractual carriage begins and ends.

If more than one carrier is involved, the "place of destination" is not the destination of each successive carrier, but is the place where the carriage finally ends according to the intention of the parties.

As a final point, it should be noted that travel solely between New Zealand and the Cook Islands, Niue, or the Tokelau Islands is considered to be "domestic travel" within New Zealand for the purposes of Part II of the CBA Act 1967. Accordingly, such travel cannot be considered to be "international carriage" under section 18 of that Act. As a result, any air travel within New Zealand that is associated with travel to or from the Cook Islands, Niue, or the Tokelau Islands cannot be zero-rated under section 11(2)(aa) of the GST Act by virtue of section 18 of the CBA Act.

In addition, these Islands are not signatories in their own right to the Conventions. Accordingly, **one way travel** between New Zealand and these Islands is not "international carriage" for the purposes of the Conventions because the places of departure and destination are not both within the territories of parties to Conventions. As a result, any air travel within New Zealand that is associated with one way travel to or from the Cook Islands, Niue, or the Tokelau Islands cannot be zero-rated under section 11(2)(aa) of the GST Act. As an example, a flight from Wellington to Auckland cannot be zero-rated even where there is a single contract of carriage which involves taking the passenger to one of the Islands.

The exception to this is where there is an agreed stopping place located in a country other than New Zealand, Cook Islands, Niue, and the Tokelau Islands. In this case, although this is non-Convention carriage, section 18 of the CBA Act can be applied. Under this section travel from New Zealand to the Islands is considered to be travel within New Zealand. However, if there is an agreed stopping place other than in New Zealand or the Islands, e.g. Australia, this will satisfy the definition of "international carriage" for the purposes of Part II of the CBA Act.

However, in the case of **circular flights**, it is necessary to determine where the places of departure and destination are located. If a circular flight involving travel to the Islands commences and ends in New Zealand, any domestic flight included in the contract of carriage will be "international carriage" for the purposes of the Conventions. This is because New Zealand is a party to the Conventions and the travel is from New Zealand to New Zealand with agreed stopping places outside New Zealand. In this case it does not matter that the agreed stopping place is located in a country that is not a party to the Conventions.

If, on the other hand, the circular flight commences and ends in one of the Islands, any domestic flight cannot be considered for zero-rating under section 11(2)(aa) as such travel will not be "international carriage" for any of the purposes of the CBA Act. However, the exception will be where a flight commences from one of the Islands and returns to that Island but there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue and the Tokelau Islands. In this situation the travel can be "international carriage" under section 18 for the purposes of Part II of the CBA Act. This will satisfy the zero-rating requirements under section 11(2)(aa).

The above comments are only applicable in respect of air travel involving the Islands mentioned. If section 19 of the CBA Act had not deemed these Islands to be part of New Zealand, travel that cannot be zero-rated as described above could have been considered to be "international carriage" for the purposes of the CBA Act by virtue of section 18 of that Act. This is the only reason why the Commissioner considers that travel involving these countries is treated differently from travel involving other non-Convention countries.

Section 19 of the CBA Act only deems travel to these Islands to be travel within New Zealand "for the purposes of Part II of that Act". These Islands are not part of New Zealand for the purposes of the definitions contained in the Conventions, nor are these Islands part of New Zealand for the purposes of any other provision in the GST Act. This also means that the actual flight to these Islands can be zero-rated under section 11(2)(a). This is irrespective of the treatment applicable to the domestic flights associated with such travel. The treatment of the domestic flights is linked to the CBA Act and must be considered separately from the actual flight to these Islands.

However, this Ruling is concerned with the application of section 11(2)(aa) (not section 11(2)(a)) which involves the zero-rating flight services between two points in New Zealand and whether the "domestic flights" can be considered to be "international carriage" for the purposes of the CBA Act.

Comments on technical submissions received

The principal submissions received on the first exposure draft focused on travel involving the Cook Islands, Niue, and the Tokelau Islands. However, as discussed in the above commentary, the unique GST treatment arises as a result of provisions contained in the CBA Act.

Examples

The following examples are for illustrative purposes only and are not intended to cater for all circumstances that may arise.

Example 1

Passenger A is intending on travelling to Australia to attend a wedding. The travel agent arranges air travel from Wellington to Auckland to Sydney. No return flights have been arranged. The tickets are provided to Passenger A in a single book of tickets. Passenger A pays for them in advance. The tickets show that the flights are from Wellington to Auckland to Sydney. Only one airline carrier will undertake to carry Passenger A to Sydney. The airline acknowledges that the flight is an international flight with a connection in Auckland.

With respect to the Arrangement contained in the Ruling, it can be determined that:

- The travel is by air;
- It does involve travel from one place in New Zealand to another place in New Zealand, i.e. from Wellington to Auckland;
- The places of departure and destination are within the territories of two countries, i.e. New Zealand and Australia respectively;
- The factors that indicate that the two flights may be part of a single operation to transport Passenger A from Wellington to Sydney include:
    - The fact that the flights are arranged together by the travel agent;
    - The flights are ticketed together and provided in a book of tickets;
    - The passenger contemplates going to Sydney and not to Auckland.

  However, all factors surrounding the circumstances of particular passengers must be taken into consideration in forming a view as to what was contemplated by the parties to the contract or agreement. For the purposes of this example, it is assumed that all parties contemplate that the travel is to be performed as a single operation.

The domestic leg of the journey can be zero-rated under section 11(2)(aa). Both New Zealand and Australia are parties to the Warsaw Convention and the Hague Protocol and the journey can be regarded as Convention carriage. In addition, this travel would also satisfy the definition of "international carriage" in section 18 of the CBA Act. Accordingly, the domestic leg of the travel to Australia is "international carriage" for the purposes of the CBA Act and, therefore, the requirements of section 11(2)(aa) are satisfied.

Example 2

Passenger B arranges air travel from Christchurch to Auckland to attend a conference. This is arranged through a travel agent one week prior to the conference. The ticket is booked and paid for. One day before this travel, Passenger B contacts the travel agent again to arrange an additional flight from Auckland to India with a stopover in Singapore. Passenger B believes that the additional flight may as well be taken advantage of as Passenger B will be in Auckland. The second flight is booked by the travel agent and a separate ticket is provided to Passenger B for this flight.

The circumstances of Passenger B would suggest that **not all the parties** have contemplated all the flights to be performed as a single operation. Consequently, these facts do not fall within the Arrangement to which the Ruling applies. There are, prima facie, two separate contracts or agreements that are to be performed independently of each other. Given that all the requirements of the Arrangement contained in the Ruling are not satisfied, the flight from Christchurch to Auckland cannot be zero-rated under section 11(2)(aa).

Example 3

Passenger C wishes to arrange a holiday tour package involving a return journey from Tokyo, Japan. The tour is to include various New Zealand destinations. Passenger C contacts a local travel agent in Tokyo to arrange the tour package. The Japanese travel agent contacts a New Zealand travel agent to arrange the New Zealand portion of the tour. The tour involves the following:

- Flight from Tokyo to Christchurch;
- Hotel accommodation in Christchurch for two nights and a sightseeing bus tour around Christchurch;
- Flight from Christchurch to Wellington;
- Sightseeing tour around Wellington;
- Same day flight from Wellington to Hamilton;
- Four days of accommodation and sightseeing around the Waikato arranged;
- A bus trip to Auckland from Hamilton and a five day stopover there;
- Flight from Auckland to Tokyo.

All this is arranged as a single package for Passenger C. Several different books of tickets and information are provided to Passenger C, and the flights also involve several airlines. Some airline tickets are issued on domestic ticket stock while others are issued on international stock. However, the domestic tickets are noted that they are issued in conjunction with the international tickets.

In respect of the Arrangement contained in the Ruling, the following can be determined from the above:

- The package involves more than just airline travel. The bus travel, accommodation and sightseeing services must be ignored when considering zero-rating under section 11(2)(aa). Only the air travel is relevant.

- The package does contain domestic air travel, i.e. from Christchurch to Wellington to Hamilton.

- The place of departure and destination can be said to be Tokyo. The carriage commences and ends in Japan.

- The package is arranged as a return journey. It is assumed that all the parties, being all the carriers and Passenger C, regard all the air travel as a single operation. The whole operation is arranged as a package and the domestic tickets note that they are issued in conjunction with the international tickets. It is assumed that the international carriers are aware of these domestic flights and consider these flights to be part of the international carriage. These factors are indicative of all the flights being performed as a single operation. However, it is also necessary to be satisfied that **all** the carriers regard the flights as part of a wider contract or agreement involving international travel, especially given that more than one carrier is involved. For the purposes of this example, it is assumed that this is the case.

The domestic flights can be zero-rated under section 11(2)(aa). Japan, like New Zealand, is a signatory to both the Warsaw Convention and the Hague Protocol. In addition, section 18 could also be applied to treat the carriage as "international carriage". Accordingly, the domestic leg of the overall travel is "international carriage" for the purposes of the CBA Act and, therefore, the requirements of section 11(2)(aa) are satisfied.

Example 4

While in Auckland, Passenger C, in Example 3 above, decides to add a trip from Auckland to Queenstown return before returning to Japan. The travel agent arranges this additional trip and adds it to the tour package. The domestic ticket is noted as being issued in conjunction with the international tickets.

This additional trip was not contemplated by all the parties at the time the original package was put together. This additional trip is a separate contract or agreement from the international carriage contract or agreement. Consequently, these facts do not fall within the Arrangement to which the Ruling applies. As this additional trip is purely domestic, it cannot be zero-rated under section 11(2)(aa).

APPENDIX 1 Schedule

States that are party to the Warsaw Convention

Afghanistan
Algeria
Argentina
Australia
Austria
Bahamas
Bangladesh
Barbados
Belarus
Belgium
Benin
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Cameroon
Canada
Chile
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
Equatorial Guinea
Ethiopia
Federal Republic of Yugoslavia (Serbia and Montenegro)
Fiji
Finland
France
Gabon
Germany
Greece
Guinea
Hungary
Iceland
India
Indonesia
Iran, Islamic Republic of
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kenya
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Libyan Arab Jamahirrya
Liechtenstein
Luxembourg
Madagascar
Malaysia
Mali
Maita
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Myanmar
Nauru
Nepal
Netherlands, Kingdom of the
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Samoa
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Syrian Arab Republic
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
United Republic of Tanzania
United States
Uruguay
Vanuatu
Venezuela
Viet Nam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

APPENDIX 2

States that are party to the Hague Protocol

Afghanistan
Algeria
Argentina
Australia
Austria
Bahamas
Bangladesh
Belarus
Belgium
Benin
Brazil
Bulgaria
Cameroon
Canada
Chile
Colombia
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Federal Republic of Yugoslavia (Serbia and Montenegro)
Fiji
Finland
France
Gabon
Germany
Greece
Grenada
Guatemala
Guinea
Hungary
Iceland
India
Iran, Islamic Republic of
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Libyan Arab Jamahirrya
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Mali
Mauritius
Mexico
Monaco
Morocco
Nauru
Nepal
Netherlands, Kingdom of the
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Rwanda
Samoa
Saudi Arabia
Senegal
Seychelles
Singapore
Solomon Islands
South Africa
Spain
Sudan
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
Vanuatu
Venezuela
Viet Nam
Yemen
Yugoslavia
Zambia
Zimbabwe