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GST: Cross-border services, intangibles and goods
C/- Deputy Commissioner Policy and Strategy
Inland Revenue Department
P O Box 2198
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Our ref 6847475_1.docx

25 September 2015

Dear Sir

KPMG Submission
GST: Cross-border services, intangibles and goods

We appreciate the opportunity to provide our comments on the Government Discussion Document, *GST: Cross-border services, intangibles and goods*.

Our general comments on the proposed new rules and on issues not addressed through the questions in the Discussion Document are outlined below. Please also refer to the attached Appendix in which we address the questions in the Discussion Document.

General comments

We support the proposed new rules to impose GST on cross-border services and intangibles[1] from a policy perspective. However, our main concern, which is addressed further in the Appendix, relates to the practical application and enforcement of the rules.

New Zealand consumers will have a reasonable expectation that the implementation of new rules would not curtail or impede the flow of goods and services into New Zealand or global choice. The new rules must be made as simple and easy to apply as possible to allow for this.

Realistically, this means that New Zealand should not be looking to introduce rules that capture every dollar of GST on supplies to New Zealand consumers. Rather, the rules should be practical and take into account the compliance costs of collecting GST and complying with the new rules. It may also mean that Government will need to acknowledge and accept that the proxies used to identify New Zealand consumers will not always identify such consumers.

Summary of submission

Chapter 3	The low-value threshold should not be removed or reduced until such time as the cost of collecting GST at the border can be reduced.

[1] We have simply referred to services throughout this document.

	Foreign suppliers should be allowed to register for GST so that GST does not need to be collected at the border.
Chapter 4	We support the proposal to tax supplies of cross-border services. The new rules should apply to a "New Zealand consumer" rather than a New Zealand tax resident. We would define a New Zealand consumer as a person whose "usual residence" is in New Zealand, which would be determined using the proxies agreed upon. The new rules should be limited to "remote services".
Chapter 5	We support a broad definition of services. (We understand this would exclude services that are exempt under existing rules). However, if there is international agreement on which services should be taxed, New Zealand should consider aligning with that definition. The new rules should apply to business-to-consumer supplies only.
Chapter 6	New Zealand should set its registration threshold, whether based on New Zealand or worldwide supplies, at a level where it is reasonable to expect that the foreign supplier will have the systems and processes to collect and comply with the new rules.
Chapter 7	The proxies relied upon to determine the "usual residency" of the consumer should be consistent with those applied internationally. Foreign suppliers should be able to confirm the usual residency of the consumer by placing reliance on two or more non-conflicting proxies which it can be expected to have in its normal course of business. Inland Revenue must be clear as to what is required and any requirements should be balanced against compliance costs. Sanctions should not be imposed if proxies have been reasonably relied upon. Consumers should only be liable (under the GST and Tax Administration Acts) for statements made to avoid GST rather than those which allow them to access services.
Chapter 8	The new rules should allow for all three of the proposed registration systems.
Issues not addressed	The zero-rating rules for remote services supplied by New Zealand registered persons to non-residents should be aligned with the proposed New Zealand place of performance rules (so that double taxation is limited). A foreign supplier should be automatically entitled to keep records offshore and for those records to be in the language of the supplier.

The new rules should not apply before 1 July 2017.

The new rules should be in a separate part of the GST Act so that compliance is easier and to reduce the risk of inadvertent amendments to current rules.

A transitional rule to preserve positions taken under the current place of supply rules should be implemented.

Non-tax issues not addressed through the Discussion Document

The Discussion Document raises a number of non-tax policy questions.

Fair Trading Act 1986

While we have not considered the application of the Fair Trading Act in detail, we understand it applies to a person "carrying on business in New Zealand to the extent that such conduct relates to ***the supply of goods or services…within New Zealand***". Accordingly, consideration should be given to whether the supply of cross-border services to New Zealand consumers under the new rules would fall, or is intended to fall, within the ambit of this legislation.

We understand the Fair Trading Act requires that prices include or be clear about the GST payable. We are not clear whether online sales by foreign suppliers, where the consumer's New Zealand GST is not likely to be known until the online checkout, would meet this requirement. If the Fair Trading Act does apply to such supplies, this should be considered.

Enforcement of trade rules

The introduction of new rules could highlight issues with regards to copyright rules and distribution rights. For example, if the use of proxies requires an acknowledgement that New Zealand consumers are accessing overseas content, this could be in breach of trade rules. This could make foreign suppliers reluctant to register for New Zealand GST. A consequences of this could also be that foreign suppliers cease to provide services to New Zealand consumers.

The impact of the GST proposal on trade should, therefore, be considered.

Further information

Please do not hesitate to contact us, John Cantin on (04) 816 4518 or Peter Scott on (09) 367 5852, if you would like to discuss this submission in greater detail.

Yours sincerely

John Cantin
Partner

Peter Scott
Partner

Appendix: Response to questions in the Discussion Document

Coherence and further consultation

The Discussion Document is necessarily broad and has left open a number of design features. This means it is difficult to confirm that the policy resulting from submissions is coherent.

The propositions we have sought to apply when answering the questions are:

- The remote services rule should apply to New Zealand consumers and not to New Zealand businesses;
- A foreign supplier should be able to apply readily determinable indicia as a proxy for New Zealand status;
- A foreign supplier should be able to rely on a GST registration number and relevant commercially collected information to determine business status;
- A foreign supplier should as far as possible be in the same position as a New Zealand supplier;
- If GST registration is used as an indicator, the reverse charge rules should, as already enacted, apply to require GST to be accounted for by the recipient if the supply is not acquired to make taxable supplies;
- Definitions and requirements should, as far as possible, be internationally aligned. This may justify the rules being less comprehensive than New Zealand's broad-base approach to GST would imply; and
- New Zealand GST should not be a cost to a foreign business supplier.

Chapter 3: Low-value imported goods

GST should be collected on all imported goods from a pure tax policy perspective (on the basis that the goods are consumed in New Zealand). However, we consider that care must be taken before any changes are introduced to reduce or remove the existing low-value threshold for imported goods.

Under New Zealand's existing collection mechanisms, we consider that the cost of collecting GST at the border would exceed the revenue gathered. On a per-capita basis, we consider that the cost of processing additional imports, if the threshold is reduced or removed, is also likely to be high compared with other jurisdictions.

New Zealand's size and location also make it somewhat unique, which may be reflected in the fact that the current low-value threshold is generally higher than in other jurisdictions. It potentially limits the range of goods available to New Zealand consumers and access to markets in general. Additional barriers would be unwelcome.

The Discussion Document notes that there is a need to strengthen and streamline the current collection mechanism and develop new ones. We agree. However, until such time as this is addressed, which we believe is a key impediment to reducing or removing the low-value threshold, we would not be favour changes to the existing settings.

If the low-value threshold were removed or reduced, this should be accompanied with changes to allow:

- Foreign suppliers to register for GST in New Zealand; or
- Foreign suppliers to account for GST on behalf of the New Zealand consumer.

In effect, both of these would facilitate the collection of GST at the border without necessarily imposing that requirement on the foreign supplier. This would alleviate the need to collect GST at the border, so that GST collection costs are reduced, and allow customs and other tax collecting intermediaries to focus on their primary roles.

However, we also note that Australia has announced an intention to reduce its threshold. It is not clear how this will be achieved. Consistent with a number of our submissions, we would support alignment with Australia's rules, if they are practical. This would allow foreign suppliers to apply the same rule for Australia and New Zealand supplies.

Chapter 4: A new place of supply rule

Do you agree with the proposed approach for taxing cross-border services and intangibles?

We support the proposed approach of taxing cross-border services consumed in New Zealand.

Broad definition

This is consistent with ensuring New Zealand's GST rules are consistent with the destination approach in the OECD draft guidelines, growing international practice, and New Zealand's policy of maintaining a broad-base GST system. This should also, in our view, to the best extent possible, align with the wider principle of neutrality in international trade.

Narrower definition

We acknowledge, however, that there is a case for a narrower definition to be applied. The two particular features which would justify a narrower approach are:

- Any developing international norm which restricts the application of foreign supplier rules to a narrower range of services; and
- The compliance cost savings and the likely greater compliance of having a single standard applied.

Alignment with an international norm is in our view acceptable.

New Zealand consumption

However, we consider that the test, or term used to describe or define the place of consumption, ***should not be "tax residency"***. While this may give effect to the policy intent in most circumstances, we are concerned that:

- It would import the practical difficulties and uncertainties that exist in determining whether a person is a New Zealand tax resident;
- It could extend the scope of GST to supplies that are not actually consumed in New Zealand; and
- It would be inconsistent with international practice.

We refer to the recent *Diamond*[2] case as an example of an individual being tax resident in New Zealand due to having a permanent place of abode in New Zealand despite not having lived in New Zealand for a number of years. In our view, it would not be appropriate to treat New Zealand as the place of consumption for any cross-border services in these circumstances.

We believe it would be more appropriate to use a term such as "New Zealand consumer" to describe the recipient. This could be defined as a person whose "usual residence" is in New

[2] *Diamond v Commissioner of Inland Revenue* (2014) 26 NZTC 21,093

Zealand, which would be determined by reference to the proxies decided upon (including those for businesses, partnerships and trusts).

We note the OECD guidelines use the term "usual residence"[3] and we understand this test is also used in the European Union. Therefore, our suggested approach should reduce the risk of double taxation / non-taxation in relation to cross-border supplies.

We discuss the use of proxies to determine a person's usual residence below but note that we agree with the proposal to align these proxies with international practice.

For the purposes of this document, we have simply referred to a "New Zealand consumer".

Do you think an approach that distinguishes between "remote" and "on-the-spot" services will produce the right outcomes and do you consider there will be problems in practice in making this distinction?

We believe the distinction outlined in the Discussion Document should generally produce the right outcomes.

However, care should be taken to ensure services purchased from foreign suppliers that are ultimately consumed in the country in which the supplier is resident (or at least not in New Zealand) are excluded from the definition of remote services. This may include but is not limited to; vouchers, insurance and loyalty schemes. These remote services could be purchased and ultimately consumed in a foreign jurisdiction but subject to GST in New Zealand based on the definition of remote services.

Vouchers

For example, the Discussion Document uses the example of a New Zealand consumer visiting an Australian theme park as an on-the-spot supply. In reality, the New Zealand consumer could purchase a voucher online prior to leaving New Zealand. Under the existing voucher rules, the time of supply is generally when the voucher is issued. This may bring the voucher within the definition of remote services as the New Zealand consumer and foreign supplier are not in the same location at the time of supply. These services should, in principle, be on-the-spot services as suggested in the Discussion Document.

We note that the voucher rules are relatively complex. They should, therefore, be reviewed in light of any new rules. If modifications to the existing voucher rules are required, this could include excluding foreign suppliers from the voucher rules or deeming the time of supply to be on redemption.

Overseas loyalty programs

Another example of this is an overseas airpoints loyalty scheme. It may be that these services are being consumed overseas, yet will attract GST due to the recipient being a New Zealand consumer. Again, if there is no consumption of the services in New Zealand, New Zealand

[3] http://www.oecd.org/ctp/consumption/discussion-draft-oecd-international-vat-gst-guidelines.pdf, paragraph 3.12

GST should not apply. This would consistent be with the current zero-rating rules in relation to the transport of passengers.

Reasonable to assume non-New Zealand consumption

We are mindful of the OECD guidelines, which recommend that any rules are simple and that there should be clarity and certainty for businesses, and of maintaining New Zealand's broad-base GST system. However, to ensure any new rules address the policy intent of taxing services in the jurisdiction of consumption, the definition of "remote services" should exclude services where it is reasonably foreseeable that the services will be consumed outside New Zealand. We would see this rule as being along similar lines to that in section 11A(2) of the GST Act to allow zero-rating.

Do you prefer an approach that excludes on-the-spot services so they are outside New Zealand's tax net, or an approach that treats all supplies as being subject to GST, but then excludes on-the-spot services by making them zero-rated?

(We note that the question is not consistent with the options in the Discussion Document as it reverses their order. Our response refers to the options in the Discussion Document).

We agree that option two is preferable: only remote services are subject to GST. In our view, this is the simpler of the two options. Option one would likely give rise to increased compliance costs for foreign suppliers with little benefit.

For on-the-spot services, as noted in the Discussion Document, these are subject to GST under existing rules if the services are performed in New Zealand. We believe these services should remain outside of the GST net to the extent that the taxable activity does not trigger a requirement to register for GST for the supplier. This is consistent with a New Zealand supplier with the same level of supplies.

We acknowledge that the introduction of rules that apply to remote services only could create some difficulties in terms of how the registration threshold is determined. For example, should on-the-spot services count towards the value of supplies? Further, if business-to-business supplies are excluded from the new rules (see below), should these also be taken into account? We discuss this further below in relation to the registration threshold.

Chapter 5: Services included and excluded

Do you consider that a rule that covers a wide range of services is appropriate for New Zealand, and do you foresee any problems with such a broad approach in practice?

We support a broad definition of services in order to give effect to the objective of international neutrality, and can see no basis from a policy perspective to limit the rule to say electronic services. However, as above, we acknowledge that applying the rule to an internationally accepted narrower range of services is acceptable. The case for alignment should be documented should a narrower range be confirmed.

Consistent with our other comments, our expectation is that further work would be done to ensure that the definition of "remote services" excludes services that are ultimately consumed outside of New Zealand. We note our understanding is that exempt supplies under existing rules, such as life insurance, would not be taxable supplies under the proposed remote services rule.

Do you prefer an approach that only taxes business-to-consumer supplies or an approach that taxes both business-to-consumer and business-to-business supplies?

We consider that the new rules should apply to business-to-consumer supplies only, and generally agree with the advantages that have been listed in the Discussion Document in this regard. In particular:

- That there would be little value from applying the rules to business-to-business supplies from a revenue perspective; and
- The imposition of invoice requirements could create undue and unnecessary compliance costs for foreign suppliers, which could ultimately affect the supply of services to New Zealand.

Further, to the extent that such services are not applied to carrying on a taxable activity, the existing reverse charge rules should apply to ensure that GST is appropriately returned for New Zealand GST purposes. Therefore, technically, any GST leakage should be minimal. Practically, Inland Revenue may want to consider the extent to which the reverse charge rules are currently complied with and whether any education in relation to the reverse charge rules is required.

In relation to the comment on consistency with Australia in the Discussion Document, while New Zealand should not blindly follow Australia (and in fact there are a number of reasons not to do so), we consider this is a case where consistency of the regimes (including with the European Union) is desirable and that this is a genuine advantage. This is important to avoid double taxation or non-taxation globally but should also keep open the possibility of an Australasian registration at some time in the future.

We do not see any significant disadvantages from excluding business-to-business supplies.

It is noted in the Discussion Document that the identification of business customers could be difficult and may impose compliance costs on foreign suppliers. Practically, we do not see this as being an issue, and the impact of New Zealand introducing such rules would be marginal.

The global movement to taxing cross-border services means that foreign suppliers are already required to identify where a consumer is located and whether they are registered for GST in their home jurisdiction, including documentation of a tax registration number as suggested in the OECD guidelines. For example, we understand there is an onus on the purchaser to provide a tax registration number in the European Union. Therefore, foreign suppliers should, in principle, have the systems and capability to capture the information required.

We discuss issues of compliance and enforcement below.

Zero-rating business-to-business supplies

The Discussion Document comments that business-to-business supplies may need to be zero-rated to ensure foreign suppliers can claim back GST on costs incurred in New Zealand. In our view, zero-rating supplies may not achieve that objective. Zero-rated supplies would be part of a taxable activity carried on in New Zealand for the purposes of section 54B. This means that the non-resident would not be able to use section 54B to claim input tax.

Amendments to section 54B

Further, section 54B should be reviewed as part of this process. Section 54B should operate to allow a non-resident to claim input taxes which do not relate to, otherwise taxable, supplies to New Zealand consumers, including in the circumstances outlined above.

As an aside, we support the non-resident registration rules but have found the process of registration difficult and costly in practice. There are also uncertainties in the application of the rules. For example, a foreign supplier who has a New Zealand GST registered branch acquires a taxable supply in New Zealand, which is unrelated to the New Zealand's branch's taxable activities. It is not clear that the foreign supplier is able to register for GST in New Zealand under section 54B. From a policy perspective, there is no reason to deny the input tax.

Do you consider that the other proposed exclusions for services and intangibles supplied by a non-resident should ensure that non-residents and resident suppliers received comparable treatment?

Consistent with our comments above, we consider that supplies by resident and non-resident suppliers should receive comparable treatment. However, while we are not in favour of specific exemptions for certain industries, we acknowledge that this may be required, particularly for industries such as gambling and insurance as noted in the Discussion Document.

Gambling Services

Putting aside the legality of offering gambling services in New Zealand, we agree that the treatment of gambling supplies should be specifically considered. Firstly, it is not clear to us whether foreign suppliers would be regarded as providing services under the Gambling Act

2003 in order for there to be a supply of gambling services for the purposes of the GST Act. Accordingly, amendments may be required to the existing rules relating to gambling.

In principle, we cannot see any policy reason for moving away from the "net approach" that currently applies to the supply of gambling services. That is, foreign suppliers should only be taxable on the net of prizes paid. However, depending on the quantum of the supplies being made to New Zealand consumers, the net approach may mean that a foreign supplier will have a net negative supplies in a period (i.e. prizes paid to New Zealand consumers exceed bets made by New Zealand consumers). (This would not ordinarily be the case for gambling services provided New Zealand resident suppliers.)

The specific issues that need to be considered are:

- The ability for the foreign supplier to deduct the negative supply to receive a refund or to carry forward the negative supply;
- The ability to deduct prizes paid to New Zealand consumers only when the service can be expected to be positive when total supplies are considered. This may require an apportionment of the net value (all bets less all prizes) between New Zealand and other consumers; and
- The ability for the foreign supplier to exclude those who may be in the business of gambling and are, therefore, the recipient of a business-to-business supply.

If foreign gambling services are to be brought within the GST net, Inland Revenue's ability to provide information to law enforcement agencies in respect of illegal gambling in New Zealand should be made clear.

These issues suggest that gambling services may need to be excluded from the initial rules.

Insurance

For foreign insurers, the key issue (assuming they make business-to-consumer supplies, which is likely to be the exception) is the ability to deduct cash payments as well as actual input tax paid. The insurance rules achieve neutrality between an insurer reinstating at its cost or cash settling – either provides an input tax deduction. If an insurer is charging GST then we consider that it should be able to deduct cash settlements as well as actual GST paid.

This does raise the question of whether to bring foreign insurance suppliers fully in to the GST net (i.e., on a location of risk basis) so that there is no distinction between business-to-business and business-to-consumer supplies. This would give rise to the potential for an input tax deduction (refund) without a corresponding output tax for claims received by New Zealand consumers. However, this is the same position as for a resident supplier of insurance. The New Zealand consumer does not account for output tax but it is assumed that they will acquire further supplies which are subject to GST.

In our view, this is a complex area that will require further consideration. This being the case, it may be prudent to exclude insurance from the initial rules until this work can be completed.

Chapter 6: Requirement for suppliers to register

What do you consider is an appropriate registration threshold for offshore suppliers?

Existing threshold

We consider that, at a minimum, the existing New Zealand threshold of $60,000 should apply to foreign suppliers. We also consider the threshold should be based on supplies made in New Zealand.

This would place resident and non-resident suppliers in the same GST position within the New Zealand market. It would also mean that resident acquirers are in the same position – the threshold for GST to apply would be the same.

In addition, given New Zealand's relatively small size, we are concerned that a lower threshold could impose barriers to entry for foreign, and particularly smaller suppliers.

Alternative approach

An alternative is to apply a global supplies threshold. This approach would require the threshold to be set at a level where it would be reasonable to expect that the foreign supplier would have systems to cater for foreign GSTs. We acknowledge that it may be more difficult to monitor and enforce a threshold based on worldwide supplies. However, we note that the OECD BEPS project has a number of recommendations which apply based on global turnover.

Ultimately we believe that the threshold, whether it be based on New Zealand or worldwide supplies, should not be set too low. As there will be compliance costs associated with collection and compliance with the New Zealand rules, the threshold should be set at an amount where it is reasonably foreseeable that the foreign supplier will have the systems and processes to comply. By setting a low threshold, New Zealand risks forcing small foreign suppliers out of the New Zealand market.

Should business-to-business supplies count towards the registration threshold?

We consider that business-to-business supplies should not count towards the registration threshold. If these supplies did count, a foreign supplier making only such supplies would be filing nil returns.

If there are audit and enforcement concerns (i.e. the foreign supplier may not be charging supplies to consumers), consideration could be given to whether notification of business-to-business supplies is required. This might be required if the foreign supplier has evidence of actually making supplies to a New Zealand business.

Should electronic marketplaces be required to register in certain situations instead of the principal supplier?

We believe that electronic marketplaces should be able to register and also be able to act "as agent" for their foreign suppliers. However, the ultimate liability should be on the foreign supplier to comply with New Zealand GST rules.

The risk we see is that a requirement for the electronic marketplace to register could result in them ceasing to make supplies to New Zealand consumers. This would limit access to an entire electronic marketplace as opposed to a single seller not wishing to register. We, therefore, prefer a regime that is consistent with New Zealand supplier norms (the supplier has the liability).

We note that clear and simple rules which allow an electronic marketplace or other supplier to act as a GST intermediary would be useful. These rules should be designed to minimise registration and compliance costs and checks. This would encourage foreign supplier compliance.

What factors do you think are important when determining whether an electronic marketplace should be required to register?

We support the use of the contractual arrangements between the parties to determine whether there is an electronic marketplace.

Broadly, and without having discussed the position with organisations that would generally be regarded as meeting this definition, an electronic marketplace is an arrangement where the person provides facilities or a platform that allows a consumer to enter a transaction to acquire goods and/or services from a third party.

We do not consider that facilitating payments should be included in the definition.

Chapter 7: Information, compliance and enforcement under the proposed rules

What proxies do you consider would be appropriate to use in order for offshore suppliers to determine the residency of their customers?

We believe the types of proxies recommended by the OECD will generally be appropriate:

- Billing address of the customer;
- Home address of the customer (to which we would add the business address for businesses, including partnerships and trusts);
- Internet Protocol (IP) address of the device used by the customer;
- Customer's bank details; and
- Location of the originating payment for the service.

Using the location of the customer's fixed landline through which the service is supplied means that mobile devices will not be captured. Instead, the country code of the consumer's device (be it from their landline or mobile device) may be a more appropriate indicator of residence.

In our view, it is important that New Zealand is consistent with international practice to avoid as much as possible the risk of double taxation or non-taxation.

What proxies are likely to be most accessible in practice?

We consider that this will depend on the nature of the supply.

The issue, however, is likely be that none of these proxies individually is going to be sufficient to determine the usual residency of a consumer. For example, it not uncommon for consumers to change or mask their IP address to access content in foreign jurisdictions. An example of this is New Zealand consumers using a US account or, for individuals moving jurisdictions, a foreign account. Similarly, the use of payment providers such as PayPal may mean that payment details are not sufficient to determine usual residency either. Even in relation to our suggestion to use the country code of a landline or mobile device, individuals may have foreign sim cards to reduce data-roaming and other charges that can apply.

For this reason, we do not favour a single proxy, or limiting the nature of the proxies that a foreign supplier uses, to determine whether a person is a New Zealand consumer.

To what extent should offshore suppliers be required to accurately determine the residency of its customers and how much evidence should suppliers be required to obtain?

Ultimately, foreign suppliers will be required to rely on information and statements provided to them by the consumer. Therefore, while foreign suppliers can be expected to take reasonable care, the threshold imposed on foreign suppliers should not be set too high.

We believe there is a trade-off between compliance costs and catching all transactions that attract GST. In this regard, we agree with the European Union's approach that the supplier is required to have two non-conflicting pieces of evidence to determine the residency of the

consumer. This approach should keep compliance costs down and should capture a majority of supplies.

It is important that Inland Revenue is clear on the requirements to allow foreign suppliers to establish systems and processes to comply with New Zealand rules.

We are aware that taking this approach could inadvertently create some tax leakage. It is possible that a foreign supplier could be provided with information that does not reflect the actual location of the consumer. Again, an example of this could be to access a US rather than New Zealand site. The content that the US version provides could be substantially different to the New Zealand version. Therefore, the New Zealand consumer could use a VPN (or other technology to obtain a US IP address) and US billing address to access this content. These proxies would suggest that the service is being provided to a US resident and not subject to GST in New Zealand.

By relying on these proxies, the US supplier could reasonably assume that the consumer is based in the United States, or at least they may have no indication that the person is a New Zealand consumer. From the perspective of the New Zealand consumer, the proxies being relied on are not provided for the purposes of avoiding GST but to access digital content from non-resident suppliers.

In these types of circumstances, where there is no wilful misrepresentation of the place of consumption to avert New Zealand GST (and in fact there is likely no misrepresentation at all), we believe it is important that any new rules do not penalise either the foreign suppliers or the New Zealand consumers.

If business-to-business supplies are excluded, will offshore suppliers be able to easily distinguish between individuals and GST-registered businesses in practice and what compliance costs would this impose on them?

As discussed above, the global movement to taxing cross-border services means that foreign suppliers are already required to identify where a consumer is located and whether they are registered for GST in their home jurisdiction, including documentation of a tax registration number as suggested in the OECD guidelines.

In these circumstances, the foreign supplier must be able to rely on statements from the recipient. In the absence of proxies or indicia to the contrary, we believe that the foreign supplier should be allowed to rely on such statements. In our view, the cost of requiring the foreign supplier to verify that a business is registered could be very high and, in some cases, could make it practically impossible to undertake business in New Zealand.

The Discussion Document notes the risk of revenue foregone from individuals who represent themselves as a registered business. We consider this type of risk exists to some extent already under New Zealand's self-assessment regime. However, to reduce the risk, we consider the ability to impose GST on the consumer should be a feature of the rules.

This would need to be buttressed by an increase in Inland Revenue's investigation activity and the use of existing penalty and interest regimes. We understand that Inland Revenue's preference is not to introduce new penalties in relation to these rules.

The OECD guidelines note that, under a consumer reverse charge, the cost of collecting GST from consumers would outweigh the revenue involved. We acknowledge this as a concern but believe that the compliance costs associated with including business-to-business supplies in the rules would likely outweigh any foregone revenue. Whether the cost associated with this could be reduced through the use of data analytics, such as through the use of information from banks / credit card / payment providers on payments to foreign suppliers, should be considered. We recommend that Inland Revenue confirm with financial service providers what would be possible in this regard.

We have briefly considered alternative means of enabling foreign suppliers to confirm that a New Zealand consumer is registered for GST in New Zealand. In our view, requiring additional indicia, such as a business name, is unlikely to be sufficient and could be subject to the same possibility of misrepresentation.

We possible way that a foreign supplier could verify that a New Zealand consumer is registered for GST in New Zealand would be if Inland Revenue provides a database of registered persons. The practicality of maintaining the database, with persons being added and removed on a regular basis, and of foreign suppliers being able to check against the register on a real time basis, as the transaction is concluded, is not clear.

The costs associated with this should be considered in light of the foregone revenue. However, we consider it likely that the costs of maintaining such a system would outweigh any benefit.

We understand that international practice generally requires foreign sellers to take reasonable steps to identify whether a consumer is GST registered. We believe it is important that New Zealand takes a similar approach so as not to require foreign suppliers to register for GST in New Zealand simply because of misrepresentations of New Zealand consumers. This is important as foreign suppliers could make the decision only to supply to business-to-business consumers to avoid the requirement to register. Again, we believe that in such circumstances the ability to impose the GST cost on consumers should be a feature of the rules.

In our view, reliance on an IRD number provided to foreign suppliers and accepted in good faith should satisfy this requirement. Inland Revenue guidelines will be required to confirm this position and to ensure clarity in relation to foreign suppliers' obligations in New Zealand.

Do you agree with the sanctions proposed for incorrect representations by consumers?

We agree with the sanctions proposed for ***misrepresentation*** by consumers.

However, as above, reliance on proxies that do not reflect the usual residence of the consumer should not automatically be regarded as a misrepresentation. We refer again to the US supplier example above, where the use of a US IP address should not be regarded as a representation that is subject to sanctions for either the foreign supplier or the New Zealand consumer.

If business-to-business supplies are excluded, do you agree with the application of the reverse charge as suggested?

We agree with the application of the reverse charge as suggested.

If business-to-business supplies are excluded, New Zealand businesses will be required to recover any inadvertently charged GST from the offshore supplier. Do you agree with this approach?

We disagree with this approach.

We assume that, if GST has been charged, it will have been returned to Inland Revenue by the foreign supplier. In this instance, we believe it would be administratively simpler for the New Zealand business to obtain the refund from Inland Revenue through filing of its GST returns.

We consider that the New Zealand business should reasonably be able to rely on evidence provided by the foreign suppliers that GST has been charged. We expect this would be the same evidence that Inland Revenue would rely on when reviewing the GST returned by the foreign supplier.

If our submission is not accepted, the foreign supplier's entitlement to a refund should be clear in the legislation. Further, Inland Revenue should ensure that its administration does not obstruct refunds due. (We note for example the difficulties with section 54B registration). We consider that this is necessary because the foreign supplier will need to be confident of a refund from Inland Revenue before the supplier refunds the New Zealand business.

Chapter 8: Registration and return filing

Of the three options discussed, which registration system do you prefer?

In our view, new rules should allow for all three of the proposed registration systems.

In our experience, there is likely to be a mixture of foreign suppliers incurring GST in New Zealand and those who are not. Therefore, it is important that the new rules allow for this.

What compliance costs would be imposed on offshore suppliers if they were required to register under the domestic registration system?

We are not convinced that there would be a significant increase in compliance costs for foreign suppliers if they are required to register under the domestic registration system, other than the compulsory filing of nil returns, which we believe could be managed under the new rules.

Do you consider there would be significant benefits in developing a "pay-only" registration system?

A simplified pay-only registration is likely to be preferable for foreign suppliers that are not incurring GST in New Zealand. However, we are not sure that such benefits would be "significant". We note that New Zealand's GST return is not extensive. A "pay only" registered person would be able to ignore the relevant input tax boxes.

Do you consider there would be significant benefits in pursuing a regional "one-stop-shop" registration system?

Yes. In our view, a one-stop-shop with say Australia would encourage voluntary compliance and may reduce compliance costs.

We suggest having the function of a sponsoring entity which can undertake all New Zealand GST obligations of the foreign suppliers through a deed of accession or something of the same effect. This would provide confidence to the foreign supplier that they are correctly adhering to New Zealand GST rules.

Do you prefer a fixed filing time for offshore suppliers or variable filing times that depend upon the offshore supplier's turnover?

The global normal is quarterly filing. Therefore, it would be preferable to allow this filing basis to align with existing GST filing obligations.

We understand that the Inland Revenue cannot currently process returns on this basis so should take this into account when updating its system. In the meantime, consideration could be given to whether the existing monthly settings could be modified so as to automatically process nil GST returns for the two month period in which no GST returns are required.

Other matters not considered in the issues paper

Zero-rating remote services by New Zealand suppliers

We have not considered the rules in detail but we consider that section 11A should be aligned with the remote services rule so that a New Zealand supplier is clearly able to zero-rate services which are not received by a New Zealand consumer.

In other words, in circumstances which are the equivalent of those which New Zealand would seek to tax, New Zealand should not tax those services. This assumes that the foreign jurisdiction would apply its GST to those services. New Zealand allowing such services to be zero-rated would ensure there is no double taxation.

Ability to keep records offshore

GST records must be kept in New Zealand and be in English. The nature of the businesses carried on by foreign suppliers means that this may not be satisfied, particularly in relation to the former. As a matter of compliance and convenience, foreign suppliers should be excluded from these requirements.

Application date

There is no mention of an application date for the proposed new rules for taxing cross-border supplies of services. In our view, any changes should apply from 1 July 2017.

This would align with the proposed application date of similar rules in Australia (albeit limited to digital products) and, subject to the details of the changes being confirmed in the short term, should allow sufficient time for foreign suppliers to implement changes to processes and systems.

Transition

It is possible that the introduction of the new registration systems may bring into question historical practice. For example, the new rules may identify persons that:

- Have been incorrectly returning GST (and could now seek a refund); and
- Those who should have been returning GST.

This issue does not appear to have been considered in the Discussions Document.

In relation to the latter, the incentive to register under the proposed rules may be lower because of the historical position. For the former, the Crown is at risk of having to refund GST already collected.

On balance, we consider that a pragmatic approach, not to open up historical positions, is the appropriate answer. This is particularly in light of the fact that the introduction of a new registration systems is a unique and one-off event. We consider that this should be in the legislation rather than in Inland Revenue practice.

Legislative approach

We prefer the relevant remote services for foreign suppliers to be in a separate part of the GST Act. This would allow a clearer view of the effect of foreign suppliers making such supplies. Compliance should, therefore, be easier.

Amending various parts of the GST Act raises the risk that those amendments will have an inadvertent impact on the current system. In our view, it is preferable to keep the system intact except to the extent the proposed rules raise issues that should be addressed (see for example our submissions on section 11A and section 54B).