

GST Direct:

Bringing you the latest GST
and Customs developments

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In this issue:

- ▶ ***GST on services performed for non-residents in connection with land***
- ▶ ***CZR case heading to Court of Appeal***
- ▶ ***Australia to impose GST on low value goods imports***
- ▶ ***Update on the Customs and Excise Bill 2016***



GST on services performed for non-residents in connection with land

1

*Services supplied to non-residents are usually zero-rated. However, services supplied to non-residents that are “**directly in connection with**” land in New Zealand are subject to GST at 15%. This rule applies to physical services that directly impact the land, such as property maintenance.*



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From 1 April 2017, GST at 15% will apply to services supplied to non-residents where:

“...the services are supplied directly in connection with land situated in New Zealand, or with an improvement to such land, or are supplied in connection with such land or improvement and are intended to enable or assist a change in the physical condition, or ownership, or other legal status, of the land or improvement.”

This amendment was included in the Taxation (Annual Rates for 2016-2017, Closely Held Companies, and Remedial Matters) Bill that is expected to receive Royal Assent very shortly.

The change is a policy response to OECD’s International VAT/GST Guidelines, which state that “for internationally traded supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located.”

Inland Revenue has provided examples of services that will attract GST at 15% or 0%. Under the new law, certain new GST issues will arise. The summary table below provides guidance.

15% GST	Zero-rated	New issues
<ul style="list-style-type: none"> • Assessment of the risk or integrity of land • Intermediation in the sale or lease of land, including by real estate agents and property managers • Architectural or design engineering services that relate to a particular site, including the drawing up of plans for a building or part of a building • Conveyancing or legal services relating to transactions involving the transfer of title to land or the establishment or enforcement of an interest in land (e.g. drafting of land sale and purchase agreements, lease agreements or construction contracts) • Legal services that relate to drafting of an option to acquire land or security over land 	<ul style="list-style-type: none"> • Tax advice on a transaction involving land • Advice on the tax implications of investing in property generally • Advice or information about property prices or investment in the property market in general • Market research relating to the economic viability of a particular project • Architectural services which do not relate to a particular site 	<ul style="list-style-type: none"> • Conveyancing, architectural or legal services in relation to a land transaction that failed to go ahead (15% GST based on the 'intended' test) • Assisting a non-resident with their IRD number application as part of the land conveyance process (15% GST) • Trust deed variations, changing the trustees and/or beneficiaries of a trust that owns land in NZ (GST outcome depends on the nature of the variation)

Providers of services covered by the new rules will need to determine if the services will be subject to 15% or 0% GST. Non-resident recipients of such services may need to factor GST into the price and/or whether there is scope to recover any GST imposed.

There will be further Inland Revenue commentary on this topic to coincide with the 1 April 2017 date of application of the changes.

CZR case heading to Court of Appeal

2

In a recent compulsory zero-rating (CZR) case - Wang and Zhang v Y&P New Zealand Limited (High Court 21 December 2016) - the purchaser argued that no written statement is required to support CZR whereas the vendor contended that a written statement had to be produced otherwise 15% GST would apply. Sargisson AJ held that no written statement is required so long as the CZR criteria in section 11(1)(mb) of the GST Act (sale of land) are met on the facts.

The case involved a purchaser who initially completed the GST Schedule of the Sale and Purchase Agreement on the basis that they were not GST-registered. The purchaser subsequently provided a verbal nomination to the vendor one day before settlement advising that the nominee would be GST-registered and that the CZR criteria would be met. The vendor initially accepted this and issued amended settlement statements showing 0% GST. However, on the day of settlement the vendor asserted that the purchaser was in breach of the change of particulars clause in the contract, which stipulated that the purchaser had to advise a change of particulars at least two working days before settlement. Accordingly, the vendor insisted on a plus GST (at 15%) settlement whereas the purchaser asserted they could settle on a zero-rated basis and sued for specific performance.

On the GST aspects, Sargisson AJ held that the CZR rule in section 11(1)(mb) is paramount and that CZR could apply even if no written statement is given by the purchaser. This means that any type of communication to the vendor regarding the purchaser's GST status can be relied on by the vendor. This is relevant to the application of section 78F of the GST Act and means that section 78F is simply a mechanism that exists for the convenience of the vendor. The current policy of CZR would be frustrated if the vendor had to insist on a written statement and zero-rating could be avoided by not producing a written statement.

PwC's view is that the case was correctly decided on the GST aspect. The case has been appealed.



Australia to impose GST 3 on low value goods imports

*In February 2017, the Australian Government introduced the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (Low Value Goods Bill) into Parliament. The Bill intends to apply GST on the sale of low value goods into Australia from **1 July 2017**. Once enacted, non-resident retailers and platforms will be required to register and account for GST on sales of goods under a “vendor registration model”. New Zealand businesses that sell low value goods to Australian consumers (as defined) may be required to register and return Australian GST.*

In addition, Australia is also joining New Zealand and will apply GST on the supply of inbound intangibles to consumers (i.e. New Zealand’s remote services rules) from 1 July 2017.

With 1 July 2017 around the corner, there are numerous considerations businesses that sell goods into Australia must consider.

The rules are not straightforward and some key issues for New Zealand businesses are:

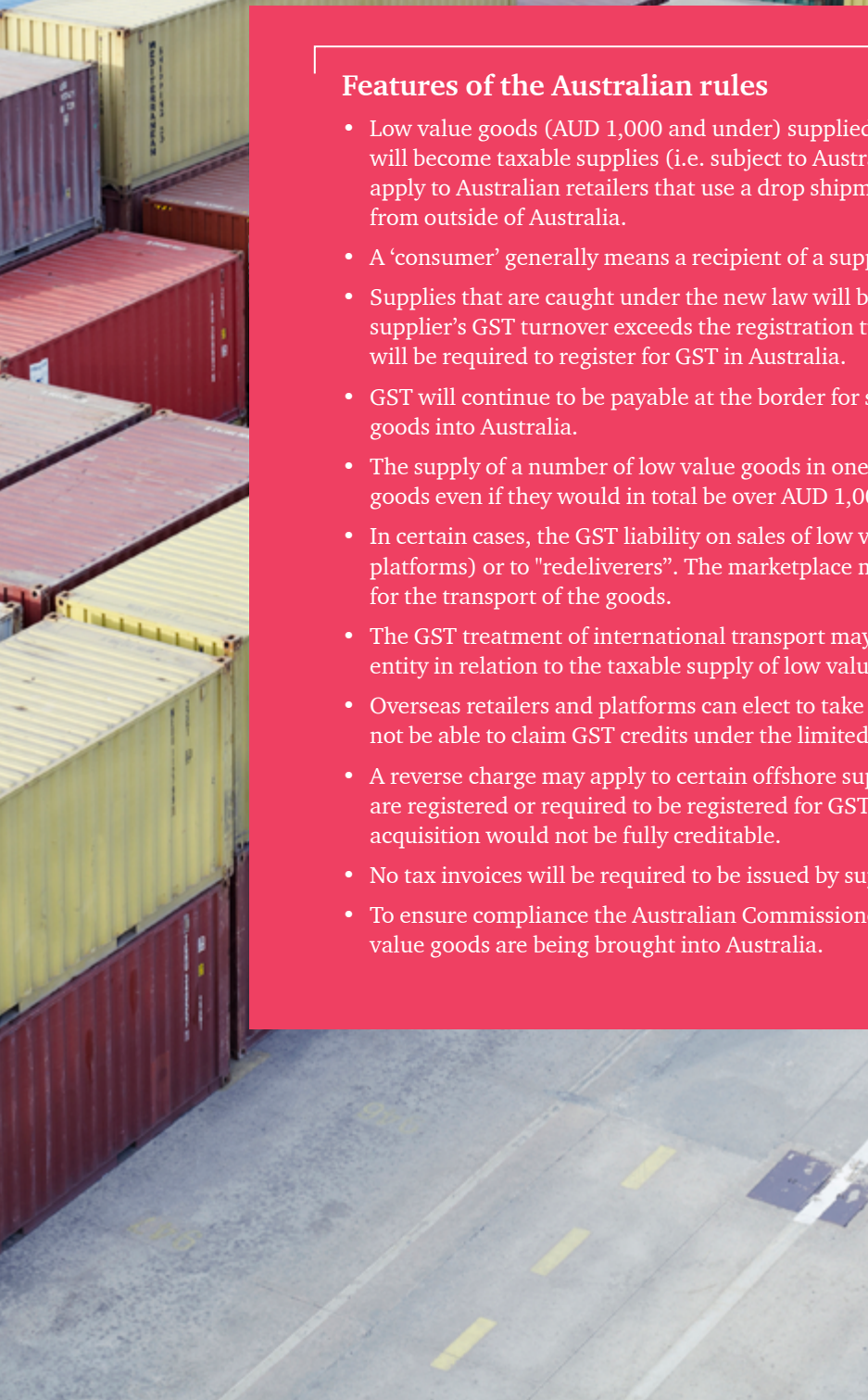
- Whether the rules impact them (i.e. are they the seller, marketplace, “redeliverer” or importer liable).
- What changes to terms and conditions are needed with customers and carriers?
- Whether and how pricing needs to change to reflect the Australian GST payable.
- Whether and how best to register for Australian GST and any related systems changes.





Features of the Australian rules

- Low value goods (AUD 1,000 and under) supplied by overseas retailers to Australian consumers will become taxable supplies (i.e. subject to Australian GST) from 1 July 2017. This will also apply to Australian retailers that use a drop shipment model – i.e. direct shipping to Australia from outside of Australia.
- A ‘consumer’ generally means a recipient of a supply that is not registered for GST in Australia.
- Supplies that are caught under the new law will be included in the supplier’s GST turnover. If the supplier’s GST turnover exceeds the registration turnover threshold of AUD 75,000 the supplier will be required to register for GST in Australia.
- GST will continue to be payable at the border for sales over AUD 1,000 upon importation of the goods into Australia.
- The supply of a number of low value goods in one order will be individually treated as low value goods even if they would in total be over AUD 1,000.
- In certain cases, the GST liability on sales of low value goods will shift to marketplaces (or platforms) or to “redeliverers”. The marketplace may still be liable even if the supplier arranges for the transport of the goods.
- The GST treatment of international transport may no longer be GST-free if it is provided by an entity in relation to the taxable supply of low value goods and the entity is a “redeliverer”.
- Overseas retailers and platforms can elect to take a limited simplified GST registration but will not be able to claim GST credits under the limited registration model.
- A reverse charge may apply to certain offshore supplies of low value goods where entities that are registered or required to be registered for GST and acquire low value goods where the acquisition would not be fully creditable.
- No tax invoices will be required to be issued by suppliers of low value goods.
- To ensure compliance the Australian Commissioner will require additional information when low value goods are being brought into Australia.

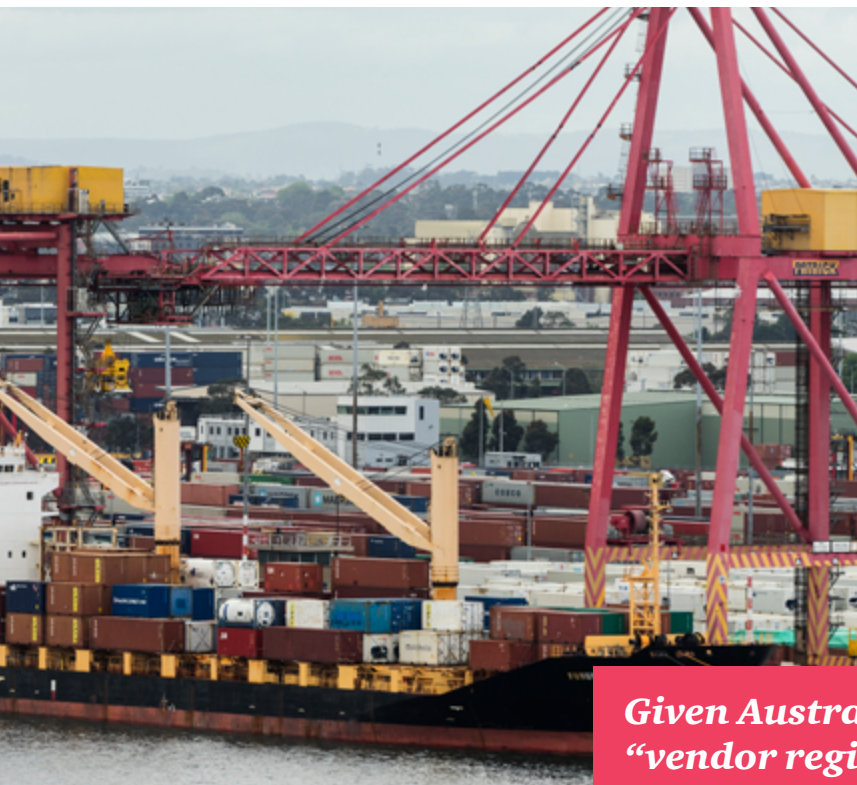


What about New Zealand?

New Zealand is still grappling with the issue of low value imported goods and GST. Government officials (both Customs and Inland Revenue) have publically announced that they are actively considering the issue. However, no concrete solutions have been proposed to date. Given Australia has moved to a “vendor registration model”, it will be interesting to see if New Zealand will explore this as an option. The Australian move is bold because there are tens of thousands of offshore sellers of goods compared to the several hundred (approximately 100-200) offshore sellers of remote services who are expected to register under the remote services rules.

Other potential options that New Zealand officials could consider include lowering the current de minimis threshold (\$60 of taxes or \$225 - \$400 of goods value) that applies to low value goods or require the importer/individual to pay the GST but to do so under a new procedure. These options look to collect the GST from within New Zealand rather than getting the offshore seller to register. The key aspect to any reform is to ensure that GST/duty can be collected efficiently. We expect officials will assess what process improvements can be made to ensure that any low value goods reform is successfully implemented.

The Australian experience will eventually provide insights into whether offshore sellers will be receptive to the “vendor registration model” and if this is effective at collecting GST. While GST on low value goods is a long-standing issue, the size of the problem will continue to grow. New Zealand will need to assess all options, including use of technology, and determine the best way forward balancing the GST to be collected versus the cost of collection.



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Update on the Customs and Excise Bill 2016

4

During 2013 - 2016, the Government undertook a major review of the current Customs and Excise Act 1996 with the intention of creating new Customs legislation that is less prescriptive and more business friendly.

The Bill incorporating the proposed legislation is a positive step and passed its first reading in Parliament in December 2016. The Bill is currently at the Select Committee stage. The Committee is considering a number of submissions from various manufacturers, industry groups, exporters/importers, and professional advisers.

Key points raised by submitters

1. Expanding the scope of the rulings scheme

The Bill empowers NZ Customs to give rulings on valuations. Many submitters considered the ruling scheme should be expanded, so that rulings can be sought on a broader range of Customs rules – PwC supports this position.

2. Allowing records to be kept offshore

The Bill allows customs records to be retained offshore. This has been universally well-received.

3. Expanding the situations where provisional values can be declared on import

The Bill allows importers to declare a provisional value on imports in limited circumstances, including when a transfer pricing arrangement is in place. PwC considers that the instances where provisional values can be used by importers should be expanded.

4. Administrative review regime

The Bill has introduced a formal process for the Chief Executive to review certain matters raised by importers, exporters and manufacturers. The submissions have broadly been supportive of this change. The Committee should consider allowing for an administrative review to be available in a broader range of situations.

5. Powers to conduct searches and to collect/share information

The Bill grants NZ Customs the right to conduct searches and to collect and share information under certain circumstances. Some submitters have raised concerns about how these powers might be exercised and have requested the Committee to consider setting out when such powers can be exercised in further detail, and when certain information cannot be collected (e.g. privileged information).

What's next?

The Bill is a significant step towards a more modern and flexible Customs framework, which will help exporters and importers. Once the Bill passes, the application date is likely to be **1 April 2018**.

Contact us

If you have any questions regarding the issues covered in this publication, please contact your usual PwC adviser or a member of our GST team. Our team can help you by delivering practical GST and Customs solutions and effectively managing your indirect taxes risk.

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