

Policy and Process for Non Resident Registrars to Apply for the Zero Rating of GST.

Statement of Purpose

To set out the application process for Non Resident Registrars (“Foreign Registrars”) for Zero Rating of GST.

Background

NZRS has undertaken a review of the charging of GST for Foreign Registrars. The conclusion from this review is that NZRS may zero rate for GST purposes, transactions it enters into with Foreign Registrars. However, if in relation to any particular transactions NZRS is uncertain as to the GST treatment, NZRS will charge GST at 12.5% as the liability for charging GST remains with NZRS.

NZRS will zero rate GST to Foreign Registrars where a Foreign Registrar has applied to NZRS and NZRS is satisfied that the Registrar meets the criteria outlined below.

NZRS reserves the right to charge Foreign Registrars GST at 12.5% if NZRS is satisfied that the Foreign Registrar no longer meets the required criteria or if the relevant legislation and/or Inland Revenue Department rulings are amended.

Foreign Registrars who are zero rated are required to inform NZRS of any changes that may affect their ability to meet the required criteria below and in the attached Appendix.

Criteria for Zero Rating of GST

NZRS may zero rate for GST purposes, charges for services it supplies to Foreign Registrars provided NZRS is satisfied:

1. the Foreign Registrar is non-resident; and
2. the Foreign Registrar is outside New Zealand at the time NZRS makes a supply of services to the Foreign Registrar; and
3. the services are not in relation to land or moveable personal property situated in New Zealand.

Further, in relation those services contractually supplied to a Foreign Registrar, zero rating will not apply if another person receives the performance of those services in New Zealand, otherwise than in the course of making taxable or exempt supplies.

Process

Foreign Registrars may apply to be Zero rated for GST by completing the “Application for Non Resident Registrars to apply to NZRS for Zero Rating of GST.”



NZRS will advise the Foreign Registrar whether or not their application has been accepted or declined. If the application is accepted NZRS will advise the date from which the GST will be Zero rated.

NZRS will advise the Foreign Registrar if GST at 12.5% is payable or becomes payable at any time.



Appendix 1. Definitions

1.1 In the main, the services provided to the Registrars comprise availability of the SRS to register Registrants and the provision of technical support services. On the basis that Registrars are provided with services only (and not goods) the relevant provisions of the Goods and Services Tax Act 1985 (the “GST Act”) to consider in the context of non-resident Registrars are as follows.

1.2 The definition of the term “resident” which means:

“resident as determined in accordance with sections OE 1 and OE 2(1) of the Income Tax Act 1994:

Provided that, notwithstanding anything in that section,—

- (a) A person shall be deemed to be resident in New Zealand to the extent that that person carries on, in New Zealand, any taxable activity or any other activity, while having any fixed or permanent place in New Zealand relating to that taxable activity;*
- (b) A person who is an incorporated body is deemed to be resident in New Zealand if the body has its centre of administrative management in New Zealand.”*

A copy of section OE 1 and OE 2(1) of the Income Tax Act 1994 (the “Act”) are attached at the end of this Appendix.

1.3 Under the zero rating provisions, section 11A(1)(k) provides that a supply of services may be zero rated where:

“the services are supplied to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, not being services which are—

- (i) Supplied directly in connection with—*
 - (A) Land situated in New Zealand or any improvement to the land; or*
 - (B) Moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed; or*
- (ii) The acceptance of an obligation to refrain from carrying on a taxable activity, to the extent that the activity would have occurred within New Zealand;”*

1.4 Section 11A(1)(n) of the GST Act also provides for the zero rating of services where:

“the services are—

- (i) The filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyrights, plant variety rights, know-how, confidential information, trade secrets or similar rights; or*
- (ii) Other services in respect of rights listed in subparagraph (i), including services involved in the making of searches, the giving of advice, opposing a grant or seeking the revocation of the rights, or opposing steps taken to enforce the rights;”*



OE 1 DETERMINATION OF RESIDENCE OF PERSON OTHER THAN A COMPANY

OE 1(1) [Permanent place of abode] Notwithstanding any other provision of this section, a person, other than a company, is resident in New Zealand within the meaning of this Act if that person has a permanent place of abode in New Zealand, whether or not that person also has a permanent place of abode outside New Zealand.

OE 1(2) [Deemed resident] Where a person other than a company is personally present in New Zealand for a period or periods exceeding in the aggregate 183 days in any period of 12 months, that person shall be deemed to be resident in New Zealand from the first day within that period of 12 months on which that person was personally present in New Zealand.

OE 1(3) [Deemed non-resident] Where a person other than a company is resident in New Zealand and is personally absent from New Zealand for a period or periods exceeding in aggregate 325 days in any period of 12 months, that person shall be deemed not to be resident in New Zealand from the first day within that period of 12 months on which that person was personally absent from New Zealand and, subject to this section, thereafter.

OE 1(4) [Present for part of a day] For the purposes of this section, where a person, other than a company, is personally present in New Zealand for part of a day, that person shall be deemed to be personally present in New Zealand for the whole of that day and not to be personally absent from New Zealand for any part of that day.

OE 1(5) [Absent on government service] Notwithstanding any other provision of this section, a person, other than a company, who is personally absent from New Zealand in the service in any capacity of the Government of New Zealand shall be deemed to be resident in New Zealand during that absence.

OE 2 DETERMINATION OF RESIDENCE OF COMPANY

OE 2(1) [Requirements for resident company] A company is resident in New Zealand within the meaning of this Act if—

- (a) It is incorporated in New Zealand; or
- (b) It has its head office in New Zealand; or
- (c) It has its centre of management in New Zealand; or
- (d) Control of the company by its directors, acting in their capacity as directors, is exercised in New Zealand, whether or not decision making by directors is confined to New Zealand.

