

GST on telecommunications services

An officials' issues paper

May 2019

Prepared by Policy and Strategy, Inland Revenue, and the Treasury

SENSITIVE

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CONTENTS

CHAPTER 1	Introduction	1
	How to make a submission	2
CHAPTER 2	Background	5
	OECD VAT/GST Guidelines	6
	Other countries' approaches	7
	United Kingdom	7
	European Union	8
	Norway	8
	Switzerland	8
	Australia	8
	Effect of the current rules for telecommunications services	9
	Resident suppliers	9
	Non-resident suppliers	9
CHAPTER 3	Proposals	11
	The problem	11
	The main proposal	12
	Telecommunications services as remote services	12
	Mobile roaming services	13
	Telecommunications services supplied by residents to non-residents	14
	Local SIM cards, phones and portable mobile routers	14
	Business-to-business supplies	15
	Definition of telecommunications services	16
	Application date	16
CHAPTER 4	Place of supply of specific telecommunications services	17
	OECD Guidelines	17
	Supplies received in New Zealand	18
	Supplies received outside New Zealand	18

CHAPTER 1

Introduction

- 1.1 The Government has announced changes to the GST treatment of telecommunications services that are to apply from 1 October 2020. This issues paper provides further details of the announcement, specifically the decision to repeal most of the special rules currently in the Goods and Services Tax Act 1985 for taxing supplies of telecommunications services.
- 1.2 Under the current special rules for telecommunications services, whether a telecommunications service is subject to New Zealand GST is generally based on the *physical location* of the consumer at the time that service is initiated. This approach is out of date and inconsistent with international best practice (based on guidelines developed by the OECD) which applies GST to these types of services based on the consumer's *usual place of residence*. In light of New Zealand's new GST rules for taxing supplies of remote services, which are based on the residency of the customer, we consider that a better approach would be to align the GST treatment of telecommunications services with our rules for remote services.
- 1.3 Remote services, such as digital downloads and online services, are services which have no necessary connection between the place where the services are performed and the location of the recipient of the services. The GST treatment of a remote service is generally determined by the residency of the consumer.
- 1.4 Aligning the treatment of most telecommunications services with the treatment of remote services would result in outbound mobile roaming services received by New Zealand residents overseas being subject to GST at the standard rate of 15%. However, inbound mobile roaming services received by non-residents while in New Zealand would not be subject to GST.¹
- 1.5 However, treating telecommunications services as remote services would, in some cases, not result in appropriate outcomes. Some telecommunications services require the recipient of the services to be in a specific location to receive the services. For example, a person making a call from a phone booth needs to be at the phone booth to receive the telecommunications services. For these types of telecommunications services, the location of the consumer of the services is a more appropriate proxy than the consumer's residency for determining the place of consumption. We therefore propose that the GST treatment of this type of telecommunications services be determined by the location of the recipient of the services.

¹ Under the current rules, inbound mobile roaming services received by non-residents while in New Zealand are potentially subject to GST. However, section 51(1)(e) means that currently most inbound roaming services are not subject to GST, as non-resident telecommunications suppliers are not required to register if their only taxable supplies are supplies of telecommunications services to non-residents.

Summary of proposed changes

It is proposed that:

- Most of the special rules in the Goods and Services Tax Act 1985 for supplies of telecommunications services be repealed.
- The GST treatment of most telecommunications services be aligned with the treatment of other remote services and determined based on the residency of the consumer.
- However, the GST treatment of some specific telecommunications services will be determined by the physical location of the recipient rather than their residency, if to receive the services, the recipient needs to be at a specific location.

The proposed changes are not intended to change the GST treatment of most telecommunications services. However, the proposed changes would mean that:

- Outbound mobile roaming services received by New Zealand residents overseas would be subject to GST at the standard rate of 15%; and
- Inbound mobile roaming services received by non-residents in New Zealand would no longer be technically subject to GST.

How to make a submission

- 1.6 Officials invite submissions on the proposed changes and points raised in this issues paper.
- 1.7 Send your submission to policy.webmaster@ird.govt.nz with “GST on telecommunications services” in the subject line.
- 1.8 Alternatively, send your submission to:

GST on telecommunications services
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140
- 1.9 The closing date for submissions is **28 June 2019**.
- 1.10 Submissions should include a brief summary of major points and recommendations. They should also indicate whether it is acceptable for Inland Revenue and Treasury officials to contact submitters to discuss the points raised, if required.

1.11 Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts of submissions, on the grounds of privacy, or commercial sensitivity, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider that there is any part of it that should properly be withheld under the Act should clearly indicate this.

CHAPTER 2

Background

- 2.1 New Zealand's GST is a broad-based consumption tax based on the destination principle. This means that GST applies at the standard rate of 15% to most goods and services that are consumed in New Zealand (with very few exemptions). This ensures that the tax is fair, efficient and simple.
- 2.2 Most other jurisdictions with GST or Value Added Tax (VAT) systems also apply the destination principle for determining the place of consumption. Under this principle, a good or service should be taxable in the jurisdiction in which it is consumed.
- 2.3 Another key principle of GST is tax neutrality. Tax neutrality in GST means that as a consumption tax, GST is borne by the final consumer and should not be a tax on businesses.² It also means that GST should be applied evenly across all businesses in similar circumstances carrying out similar transactions, including similar transactions by resident and non-resident businesses. When different groups of suppliers are treated the same for GST purposes, it ensures that one group is not competitively advantaged over another group. It also means that consumer behaviour is not driven by tax considerations in situations where goods and services supplied by different suppliers are readily substitutable.
- 2.4 The "place of supply" rules in the Goods and Services Tax Act 1985 (the GST Act)³ determine where consumption of goods and services occurs and, therefore, whether they are subject to New Zealand GST. For the supply of services, we generally look to the supplier's location and the place of physical performance to determine consumption. Traditionally, these proxies for consumption could easily be applied to services, as the consumption of services would typically occur in the same place the services were performed. For example, a haircut performed in New Zealand would be subject to New Zealand GST.
- 2.5 The emergence of imported telecommunications services (such as call-back services and international roaming) in the early 2000s, however, gave rise to concerns about how our GST rules at that time applied to these services. The concept of physical performance used to determine consumption and, therefore, which country had the right to tax a service did not fit well with the nature of telecommunications services. Unlike traditional services, telecommunications services were (and still are) highly mobile, often involve many different supplies or "connections", and can be supplied across borders, which meant it was not always clear where the consumption of the services occurred.

²In New Zealand, although GST is collected at each stage of the supply chain, businesses can deduct the GST costs of their inputs through an input tax credit mechanism. This ensures that the tax flows through businesses to tax supplies made to final consumers.

³ Unless otherwise stated, all legislative references in this issues paper are to the Goods and Services Tax Act 1985.

- 2.6 As a result, in 2003 special GST rules for cross-border supplies of telecommunications services were introduced. Under these special rules:
- A supply of telecommunications services is generally subject to GST if the supply is made to a person physically in New Zealand at the time the service is initiated.
 - A supply of telecommunications services is not subject to GST if the supply is made to a person physically outside New Zealand at the time the service is initiated.
 - Telecommunications services supplied by a non-resident to a GST-registered business are not subject to GST.
 - Telecommunications services supplied by a resident are zero-rated if supplied to a non-resident supplier of telecommunications services.
 - A non-resident supplier of telecommunications services is not required to register if their only taxable supplies are supplies of telecommunications services to non-resident consumers.
- 2.7 The special rules for telecommunications services use the location of the person who initiates the supply from a telecommunications supplier as a proxy for determining the place of consumption of these services. It is not always clear who has initiated a supply of telecommunications services. Section 8(9) provides three tests for determining the person who has initiated a supply. Furthermore, for certain telecommunications services it can be difficult to determine the location of the person who initiated the supply. Section 8A allows suppliers to use the customer's billing address to determine the place of supply if the actual location of the initiator of the supply cannot be determined. The "initiator" test is unique to New Zealand's GST system.
- 2.8 When these special rules were introduced in 2003 the place where the service was initiated was considered the best proxy for determining the place of consumption. However, New Zealand's approach to applying GST to telecommunications services is now out-of-date and inconsistent with international best practice.
- 2.9 The *International VAT/GST Guidelines*(the *Guidelines*) developed by the OECD recommend taxing these services based on the consumer's usual place of residence. Many other countries (with the notable exception of Australia) adopt approaches consistent with these guidelines for applying GST/VAT to telecommunications services.

OECD VAT/GST Guidelines

- 2.10 Over time, the rise of the global economy, technological advances, and trade liberalisation have led to growth in digital supplies of services and intangibles. These developments have allowed businesses to supply services to customers remotely from anywhere in the world, so that customers no longer need to be in the same location as the supplier to consume the services. It was considered internationally that the traditional proxies for determining consumption did not work for the supply of these "remote

services” (including telecommunications services) as it was often unclear where the consumption of these services occurred and, therefore, which country had the right to tax the supply. This led to growing uncertainty globally about how GST/VAT should apply to these services.

- 2.11 As a result, the OECD developed best practice guidelines which provided proxies for determining consumption for supplies of services and intangibles.⁴ For “on-the-spot” services, where the nature of the service requires the supplier and the consumer to be in the same place (for example, a haircut), the *Guidelines* suggest a place of performance test for determining the place of consumption. For remote services and intangibles, where it is not necessary for the supplier and the consumer to be in the same place (for example, a digital download), the *Guidelines* suggest the consumer’s usual place of residence as the test for determining the place of consumption.
- 2.12 The *Guidelines* adopt a broad definition of what is a remote service and include supplies of telecommunications services.⁵
- 2.13 The consumer’s usual place of residence has been broadly accepted as the best proxy for determining the place of consumption for remote services and intangibles. It is relatively easy to determine and less open to manipulation than other proxies such as the location of the consumer at the time of supply (which gives rise to problems of both determining the location of the consumer and how to treat a supply consumed in multiple locations). It is also considered a relatively simple proxy for suppliers to apply in practice.
- 2.14 In line with the *Guidelines*, since 1 October 2016, GST has applied to remote services (such as online services and digital downloads) supplied by offshore suppliers to New Zealand-resident consumers at the standard rate of 15%. While our remote services regime covers a broad range of services, telecommunications services are not covered by the regime.

Other countries’ approaches

- 2.15 Many jurisdictions with comparable GST/VAT systems use the residency of the consumer as a proxy for consumption of telecommunications services. The most notable exception is Australia, whose rules for telecommunications services are similar to New Zealand’s current rules.

United Kingdom

- 2.16 The United Kingdom (UK) is the most recent example of a country which has moved to a residency-based test for consumption of supplies of telecommunications services. Before 1 November 2017, the UK applied a “use and enjoyment” rule to telecommunications services, which meant that if telecommunications services were consumed outside the EU, they were treated as being outside the scope of UK VAT. This approach had the same effect as New Zealand’s current rules in the GST Act for supplies of telecommunications services.

⁴ OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris

⁵ *International VAT/GST Guidelines*, page 69

- 2.17 However, as part of its 2017 Budget, the UK Government announced changes to their VAT place of supply rules for telecommunications services – specifically, supplies of telecommunications services by UK suppliers to UK non-business users (that is, UK consumers). The changes mean that since 1 November 2017, these services, when supplied to UK residents, are subject to UK VAT regardless of where they are consumed. In practical terms, it means that UK VAT now applies to roaming services when UK consumers use their mobile devices outside the UK and the EU. Equally, supplies to visitors from countries outside the EU are no longer subject to UK VAT.
- 2.18 In making the change, the UK Government noted it would align the UK treatment of telecommunications services with the internationally agreed approach for taxing these services.

European Union

- 2.19 Under the EU’s rules, since 1 January 2015, supplies of telecommunications, broadcasting and electronic services have been subject to tax in the Member State in which the customer is resident. VAT applies regardless of whether the customer is a business or a final consumer, and regardless of whether the supplier is based in the EU or outside.
- 2.20 The definition of telecommunications services in the EU VAT Directive⁶ is similar to the definition in New Zealand’s GST Act, except that it does not specifically exclude content.

Norway

- 2.21 Norway’s VAT on electronic services (e-services) has applied since 1 July 2011. Under Norway’s rules, e-services include electronic communication and telecommunications services. The definition of these services is based on the EU VAT Directive and the EU VAT Regulation No 282/2011.⁷

Switzerland

- 2.22 Similarly, since 2010, Switzerland’s “remote services” rules cover both telecom and electronically supplied services.

Australia

- 2.23 Telecommunications supplies of global roaming services outside Australia by an Australian-resident supplier are treated as GST-free (zero-rated) when:
- the customer is outside Australia when the service is supplied; and
 - the effective use and enjoyment of the supply by the customer takes place outside Australia.
- 2.24 Telecommunications supplies made by an Australian-resident supplier to a non-resident supplier are GST-free if the supply enables a non-resident customer (who has a subscription to a telecommunications network outside

⁶ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

⁷ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011, Article 7

Australia) to roam in Australia. In effect this means that no Australian GST applies to either outbound or inbound roaming services.

Effect of the current rules for telecommunications services

2.25 The GST rules for telecommunications services (based on the physical location of the consumer) are out-of-date and inconsistent with both international best practice and with our rules for taxing supplies of remote services. The current rules result in the following outcomes:

Resident suppliers

2.26 Supplies of telecommunications services by a resident to a person who initiates that supply outside New Zealand are zero-rated (subject to tax at a rate of zero percent). In practical terms, this allows a resident telecommunications supplier to zero-rate roaming services provided to New Zealand-resident consumers who are temporarily offshore (outbound roaming). The principle on which this rule is based was that the consumption of roaming services occurred offshore as the recipient of the services is offshore when these services are physically performed.

Example 1: Current GST treatment of outbound roaming services

Nell is a New Zealand resident visiting her Aunty in Brussels. Nell uses her New Zealand mobile phone during her visit to Brussels. GST is charged at the rate of zero percent on the roaming services supplied by the New Zealand telecommunications services provider to Nell.

Non-resident suppliers

2.27 Supplies of telecommunications services by non-residents to both resident and non-resident consumers physically in New Zealand are subject to GST provided the non-resident supplier meets the threshold for GST registration. This means that under current rules, inbound roaming services to non-resident consumers who are temporarily in New Zealand could technically be subject to New Zealand GST. However, a special rule for suppliers of telecommunications services means these suppliers are not required to register if their only taxable supplies are supplies of telecommunications services to non-residents physically in New Zealand.⁸

Example 2: Non-resident supplier of inbound roaming services not required to register

Britphones is a British telecommunications company that supplies \$100,000 worth of roaming services to British tourists on holiday in New Zealand. Britphones does not make any other taxable supplies in New Zealand. Britphones is not required to register for GST as their only taxable supplies in New Zealand are telecommunications services supplied to non-residents.

⁸ Section 51(1)(e) of the GST Act

CHAPTER 3

Proposals

It is proposed that:

- The special rules in the GST Act for supplies of telecommunications services be mostly repealed.
- The GST treatment of most telecommunications services be aligned with the treatment of other remote services.
- The GST treatment of some specific telecommunications services will be determined by the physical location of the recipient rather than their residency, if to receive the services, the recipient needs to be at a specific location.
- The residency of a consumer receiving mobile telecommunications services be determined solely by the country code of the SIM card they are using to receive those services.
- Business-to-business supplies of telecommunications services by non-resident suppliers would continue to not be subject to GST.

The problem

- 3.1 As outlined in chapter 2, the approach of many countries is to apply tax to telecommunications services on a residency basis. As New Zealand's current rules are not aligned with international best practice they could give rise to potential double non-taxation and double taxation issues. Outbound roaming services supplied to New Zealand-resident consumers temporarily offshore may not be taxed in any country (double non-taxation). On the other hand, inbound roaming services received by a non-resident in New Zealand could possibly be subject to tax in both New Zealand and in the country where the consumer is usually resident (double taxation).
- 3.2 Further, the nature of telecommunications services has changed significantly since the special GST rules were introduced in 2003. The lines between telecommunications services and content are now blurred and services that were once separate are now supplied together over data-based networks.
- 3.3 It does not make sense when these services are now so interconnected, for the supply of digital content to be treated differently (currently taxable under the remote services regime) from the telecommunications services through which the content is able to be provided or delivered. The current rules mean that a New Zealand resident would, for example, be charged GST on music that she has downloaded while overseas, but no GST would be charged on the roaming services that she has used to download the music.

Example 3: Current treatment of outbound roaming services versus treatment of other remote services

Nell is still in Brussels on holiday. She uses roaming services on her New Zealand mobile phone to search for a song title. She then pays to download that song from a popular international music website. The song she downloads onto her phone is subject to New Zealand GST (taxable under the remote service rules). However, the underlying roaming services which enabled her to search for the song on the internet and subsequently download it onto her phone are not subject to GST (currently zero-rated under the special rules for telecommunications services).

The main proposal

3.4 The Government has proposed to repeal most of the special rules applying to telecommunications services. Repealing the telecommunications services rules would mean that telecommunications services would generally be treated as remote services. As such, their place of consumption would be determined by the residency of the recipient of the services.

3.5 However, for certain telecommunications services the consumer's residency is not an appropriate proxy for the place of consumption. These services require a person to be in a specific location to receive the services. For these specific telecommunications services we propose that the location of the recipient of the services should be used for determining the place of consumption (discussed in chapter 4).

Telecommunications services as remote services

3.6 Section 2 of the GST Act defines a remote service as:

a service that, at the time of the performance of the service, has no necessary connection between –

- (a) the place where the service is physically performed; and*
- (b) the location of the recipient of the services*

3.7 We consider that most telecommunications services meet this definition. Therefore, by repealing the special GST rules for telecommunications services, the treatment of telecommunications services would be aligned with the treatment of other remote services and based on the consumer's residency rather than their physical location. This means that telecommunications services supplied to New Zealand-resident consumers would be subject to GST regardless of the location of the consumer. Conversely, telecommunications services supplied to non-resident consumers would not be subject to GST.

3.8 For most telecommunications services, aligning their treatment with the GST treatment of other remote services would not change their GST treatment. These telecommunications services are currently initiated in New Zealand by a New Zealand resident, or initiated outside New Zealand by a non-resident.

Example 4: Telecommunication services supplied to a resident

Brett is a New Zealand resident living in Hamilton. Brett receives mobile phone services from Kiwiphone, a New Zealand-resident telecommunications supplier. The mobile phone services supplied to Brett are currently standard-rated (subject to GST at 15%) as they are supplied by a New Zealand resident and are initiated by Brett in New Zealand (meaning that section 11AB, which zero-rates telecommunications services initiated outside New Zealand, does not apply to the treatment of the services). These mobile phone services would still be standard-rated in the absence of the special telecommunications rules as they are supplied by a New Zealand resident.

Brett also receives landline phone services to his house in Hamilton from Kiwiphone. These services are currently subject to GST at 15% as they are initiated by Brett in New Zealand. In the absence of the special telecommunications rules these services would also be subject to GST at 15% as they are supplied by a New Zealand resident.

Brett also contracts Catapult Broadband, an American internet service provider to supply internet to Brett's home in Hamilton. Under the current rules, assuming Catapult Broadband meets the registration threshold, they would need to charge GST on the internet services they provide to Brett as the services are initiated by a person in New Zealand. Under the remote services rules these internet services would still be subject to GST as they are provided to a New Zealand-resident consumer.

Mobile roaming services

- 3.9 Telecommunications services supplied to a New Zealand resident physically outside New Zealand, or to a non-resident physically inside New Zealand would have their GST treatment changed under the proposals. The place of consumption for these services would no longer be determined by the place the services are initiated but would instead be determined by the residency of the recipient of the services.
- 3.10 The most prominent type of telecommunications services that would have their GST treatment changed under the proposals are mobile roaming services. For example, outbound roaming services supplied to New Zealand residents outside New Zealand are currently zero-rated but would be standard-rated (subject to GST of 15%) under the proposed changes.

Example 5: Roaming services supplied to residents

Kiwi Telco, a New Zealand-resident telecommunications supplier, supplies mobile phone services to New Zealand residents. Currently, Kiwi Telco charges GST on the mobile phone services its customers receive in New Zealand. However, Kiwi Telco zero-rates the roaming services it provides to its customers when they are outside New Zealand. Under the proposed rules, Kiwi Telco would be required to charge GST at the standard rate on both the regular mobile phone services and the outbound roaming services it supplies to New Zealand residents.

- 3.11 Conversely, inbound roaming services supplied to non-residents inside New Zealand would no longer be potentially subject to GST.

Example 6: Roaming services supplied to non-residents

Ozzy Telco is an Australian telecommunications company that supplies roaming services to Australian tourists on holiday in New Zealand. Ozzy Telco also makes some taxable supplies to New Zealand residents and is therefore GST-registered. Currently Ozzy Telco would be required to return GST on the inbound roaming services it provides to tourists in New Zealand. Under the proposals, Ozzy Telco would no longer be required to return GST on its supplies of inbound roaming services to non-residents.

Telecommunications services supplied by residents to non-residents

- 3.12 Applying the remote services rules to telecommunications services would mean that telecommunications services supplied by a resident supplier to non-residents outside New Zealand would remain zero-rated. Telecommunications services supplied to non-residents physically in New Zealand would under section 8(2) be *prima facie* still subject to GST at the standard rate. However, section 20(3)(dc) would mitigate double taxation by reducing the amount of output tax payable on these services to the extent the supplier has incurred liability for, returned and paid a consumption tax in another jurisdiction.

Example 7: Telecommunications services supplied by a resident to non-residents

Kiwiphone is a New Zealand-resident telecommunications supplier that primarily supplies mobile phone services to New Zealand residents. However, Kiwiphone also operates a mobile network in the UK through which it supplies mobile phone services to UK residents. Currently, the regular mobile services Kiwiphone supplies to UK residents are zero-rated under section 11AB(b), whilst the inbound roaming services they supply to UK residents physically in New Zealand are standard rated.

Under the remote services rules the regular mobile services Kiwiphone supplies to UK residents would remain zero-rated and the inbound roaming services they supply to UK residents in New Zealand would *prima facie* be subject to GST at the standard rate. However, as Kiwiphone is registered for VAT in the UK they are paying UK VAT on these inbound roaming services at the rate of 20%. Under section 20(3)(dc) Kiwiphone would therefore not be required to return GST on the inbound roaming services they supply to UK residents.

Local SIM cards, phones and portable mobile routers

- 3.13 It is a common practice for tourists travelling overseas to purchase local SIM cards or use local portable mobile routers (such as, pocket wi-fi) of the country they are travelling in to avoid paying international roaming charges. Alternatively, some tourists may purchase local mobile phones of the country they are travelling in to use while away on holiday.
- 3.14 Under the remote services rules, these mobile telecommunications services a tourist receives should be subject to GST/VAT in the jurisdiction they are resident in even if they are using a local SIM card or phone. However, it can be argued that the place of consumption for the telecommunications services a tourist receives through the use of a local SIM card, portable mobile router or mobile phone should be the tourist's physical location and not their residency as, to receive the "non-roaming" mobile telecommunications services, a tourist using a local SIM card needs to be in the country associated with that SIM card.

- 3.15 In practice it is also likely to be difficult for telecommunications suppliers to charge the correct jurisdictions' GST or VAT when a tourist is using a local SIM or phone. Under section 8B(2) suppliers are required to use two non-contradictory pieces of evidence for determining the residency of the consumer. However, under paragraph (e) one of the pieces of evidence that can be used is the mobile country code of the SIM card used by the person. It may therefore be difficult for a supplier of mobile phone services to have two non-contradictory pieces of evidence for a consumer's residency status when a tourist is using a local SIM card.
- 3.16 As such, we propose that the residency of a consumer receiving these mobile telecommunications services should be determined solely by the country code of the SIM card they are using to receive those services. This would mean that mobile telecommunications services a tourist receives through using a New Zealand SIM card, for example, would be subject to GST. Likewise, the mobile telecommunications services a New Zealand resident receives through a foreign SIM card while overseas would not be subject to GST.

Example8: New Zealand resident using a foreign SIM card

Kirsty, a New Zealand resident, is on holiday in Egypt. To avoid paying international roaming charges she purchases a SIM card of a local Egyptian telecommunications supplier. The mobile telecommunications services she receives through her Egyptian SIM card will not be subject to GST.

Example9: Non-residents using a New Zealand mobile device

Steve, Dave and Cameron are Australian tourists on holiday in New Zealand. To avoid paying international roaming charges while in New Zealand, they purchase a pocket wi-fi device from the local supermarket. This device provides them with a private wi-fi signal and allows them all to connect to the Internet from their respective mobile devices. This mobile telecommunications service they receive through the pocket wi-fi will be subject to GST at 15%.

- 3.17 We are seeking feedback on whether this is an appropriate approach for determining the place of consumption of mobile telecommunications services when a person uses a local SIM card or mobile device while overseas.

Business-to-business supplies

- 3.18 Telecommunications services supplied by a non-resident to a GST-registered business are generally not subject to GST under section 8(8). Treating telecommunications services as remote services should generally maintain this treatment. Under section 8(4D), remote services supplied by a non-resident to a GST-registered business are not subject to GST unless the supplier chooses to zero-rate the supply in order to claim back any New Zealand GST incurred in making the supply.
- 3.19 Currently telecommunications services supplied by a resident are zero-rated if supplied to a non-resident supplier of telecommunications services. We

recommend that this treatment be retained to ensure that GST remains a tax on consumption and not on businesses.

Definition of telecommunications services

3.20 Telecommunications services are currently defined in section 2 of the GST Act as:

the transmission, emission or reception, and the transfer or assignment of the right to use capacity for the transmission, emission or reception, of signals, writing, images, sounds or information of any kind by wire, cable, radio, optical or other electromagnetic system, or by a similar technical system, and includes access to global information networks but does not include the content of the telecommunication

3.21 While we are proposing to repeal the special telecommunications rules we consider that a definition of telecommunications services is still required in the GST Act. We are therefore seeking feedback on whether the current definition is still fit for purpose.

Application date

3.22 It is proposed that the new rules apply from 1 October 2020.

CHAPTER 4

Place of supply of specific telecommunications services

It is proposed that:

- Specific telecommunications services supplied by residents would be subject to GST at 15% regardless of the consumer's residency if, to receive the services, the recipient of the services needs to be in a specific location in New Zealand.
- Specific telecommunications services would not be subject to GST even when supplied to a New Zealand resident, if to receive the services the recipient needs to be in a specific location outside New Zealand.
- A new test for determining the place of supply of these specific telecommunications services replace the existing test based on the location of the person initiating the supply.

4.1 Some telecommunications services require the recipient of the services to be in a specific location to receive the services. For example, a person using wi-fi at an internet cafe needs to be at that cafe to receive the wi-fi services. For these types of telecommunications services, we do not consider the residency of the recipient of the services to be an appropriate proxy for determining the place the services are consumed. Instead we propose that the place of consumption for these telecommunications services be determined by the location that the services are received.

4.2 The current test for determining the place of supply of telecommunications services, based on the location of the person initiating the supply, may achieve the correct result for these specific telecommunications services. However, we do not propose keeping the “*initiator test*” for these telecommunications services. It may not always be clear who has initiated a supply of telecommunications services. Furthermore, determining the place of consumption based on where a service is initiated is unique to New Zealand's GST. Therefore, we consider that repealing this test and developing a clearer test for the place of consumption of these specific telecommunications services is appropriate.

OECD Guidelines

4.3 As noted in chapter 2, the OECD's *International VAT/GST Guidelines* recommend that for business-to-consumer supplies of services, the place of consumption should generally be determined by:

- the consumer's residency, in the case of remote services; and
- the place where the service is performed, in the case of on-the-spot services.

- 4.4 However, the *Guidelines* also note that in some specific cases these proxies may not be appropriate for determining the place of consumption. The *Guidelines* mention the provision of wi-fi in an internet cafe or the use of a telephone booth to make a phone call as examples of remote services in which the consumer's residency is not an appropriate proxy for determining the place of consumption. Instead the *Guidelines* note that, in the case of these telecommunications services, the actual location of the consumer is a more appropriate proxy for the place of consumption.
- 4.5 In line with the *Guidelines*, we consider that for specific telecommunications services which require the consumer to be in a specific place to receive the services (such as making a call from a phone booth), the place of consumption should be determined by the location of the consumer.

Supplies received in New Zealand

- 4.6 We propose that regardless of the residency of the recipient, a supply of telecommunications services by a resident supplier would be subject to GST at 15% if the supply requires the recipient to receive the services at a specific place in New Zealand. This generally aligns with the current GST treatment of these telecommunications services.

Example 10: Internet Cafe

Wi-Fi & Kai is an internet cafe located in Tauranga. They charge customers \$5 an hour for access to wi-fi at the cafe. As customers need to be at Wi-Fi & Kai to receive the supply of wi-fi it will be subject to GST at the rate of 15% regardless of the residency of the cafe's customers.

Example 11: Phone booth

Aneale, an Australian tourist in Wellington, uses a phone booth to make a call to a friend. Despite being a non-resident, Aneale would be charged GST at 15% on the supply of telecommunications services as he had to be at the phone booth in Wellington to receive the supply.

- 4.7 We do not anticipate many instances in which these specific telecommunications services could be supplied in a specific location in New Zealand by non-resident suppliers.

Supplies received outside New Zealand

- 4.8 We propose that regardless of the residency of the recipient, a supply of telecommunications services would not be subject to GST (or zero-rated) if the supply requires the recipient to receive the services at a specific place outside New Zealand. This also would generally align with the current treatment of these services.

Example 12: Telecommunication service received at a specific place outside New Zealand

Keava, a New Zealand resident, is staying at a hotel in Sydney. The hotel charges her for using the phone in her room to make an international call to her sister in Hamilton. Despite Keava being a New Zealand resident, the supply of telephone services would not be subject to GST as Keava had to be in her hotel in Sydney to receive the supply.