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## New Zealand

### **INSIGHT: New Zealand's New GST Collection Model for Low Value Imported Goods**



By EUGEN TROMBITAS

The latest New Zealand low value imported goods changes are another of many occurring globally in the e-commerce indirect taxes area. There is a supernova-like explosion of change taking place in indirect taxes, and all impacted sellers need to assess their obligations and prepare for these changes.

On December 5, 2018 the New Zealand government introduced into Parliament the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration and Remedial Matters) Bill ("the Bill").

The Bill is a landmark development proposing new rules that will require offshore sellers, from October 1, 2019, to register and account for Goods and Services Tax ("GST") at 15 percent on supplies of low value imported goods ("LVIGs") if sales to New Zealand private consumers in a 12-month period exceed NZ\$60,000 (\$41,380). The \$60,000 threshold is the same GST registration threshold that applies to domestic businesses and offshore suppliers of cross-border remote services.

Under current law, nonresident suppliers are not required to charge GST on supplies of goods to consumers in New Zealand unless the goods are in New Zealand at the time of supply. The New Zealand Customs Service ("NZCS") is responsible for collecting import

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GST and duties/tariffs on imported goods above the low value threshold (currently ranging between NZ\$225–\$400 as GST applies on the duty-inclusive value of goods and some goods don't attract duty).

In May 2018 the goods value threshold was signaled to be NZ\$400 but the Bill has increased the LVIG threshold to NZ\$1,000. This aligns with the same rules in Australia that have, since July 1, 2018, operated with a threshold of AU\$1,000 (\$720). Switzerland will shortly introduce their version of the LVIG rules from January 1, 2019. The EU's new rules are expected to commence in 2021.

The proposed LVIG rules will align the GST treatment with remote services that have been subject to GST since October 1, 2016, by focusing on the place of consumption.

The general opinion is that the remote services rules have been very successful from the perspective of policy design, ease of compliance and revenue collection. The remote services rules have generated GST in excess of NZ\$130 million for the year ended March 31, 2018.

While it is hard to accurately measure the GST currently not collected from sales of LVIGs, the government's expectation is that approximately NZ\$100 million of annual GST will be collected (and these numbers will increase as e-commerce is growing at a blistering pace).

The proposed law change is complex—over 40 sections in the GST Act will be amended and there is more

than 70 pages of Bill commentary released as part of the reform. This article explores the key practical issues for sellers to NZ consumers.

## Key Features of the New LVIG Rules

**In a Nutshell** For an overview of what the changes mean for you, see the table.

**Distantly Taxable Goods** The Bill introduces a novel concept of “distantly taxable goods” into the GST Act. This is defined as an item of goods that is movable personal property (excluding alcohol and tobacco), outside of New Zealand at the time of the supply, supplied by a nonresident, which is then delivered to New Zealand.

**Entry Value Threshold and GST Base** The goods must be at or below the “entry value threshold” of NZ\$1,000 for the LVIG regime to apply. The “entry value” is the price paid for the goods excluding the cost of transport and insurance, GST and duty (if any). The supplier can determine the entry value on a “reasonable estimate” basis relying on the information available.

If goods are valued at NZ\$1,000 or less, the offshore supplier will be responsible for collecting GST. If goods are valued at more than NZ\$1,000 or if goods are valued at NZ\$1,000 or less and NZCS has insufficient evidence that GST has already been paid, the current processes for collecting GST (and duty, if any) operated by NZCS will continue.

As part of the reform, the government will remove tariffs and border recovery charges on goods valued at or below NZ\$1,000. A positive and more compliance friendly feature of the reform is that the focus will be on the value of the goods (NZ\$1,000) rather than the current requirement to focus on minimum taxes/duties (NZ\$60).

Unlike Australia’s rules, no special rules will exist for multiple items (both high value imported goods and LVIGs) in a single shipment or transaction. However, a special rule will allow offshore sellers to pay GST on all sales to New Zealanders if the seller supplies 95 percent or more of goods that are LVIGs.

Once it is determined that goods are in the regime (looking at their “entry value”), GST will apply on the total value including transport and insurance costs plus duty, if any.

**Example: Value for Threshold and Liability Purposes** An offshore supplier sells a watch to a consumer in New Zealand for NZ\$980 plus NZ\$40 shipping (excluding GST) via its own website. Because the Customs value (NZ\$980) is less than NZ\$1,000, the offshore supplier charges GST at the point of sale. The amount of GST charged is however based on the total value of NZ\$1,020, so the amount of GST charged by the vendor is  $\text{NZ\$}1,020 \times 15\% = \text{NZ\$}153$ .

This means that the supplier would need to implement rules in its systems to calculate the amount of GST based on the total value, but only charge this GST if the Customs value (which is different to the value used for calculating the amount of GST) is equal to or less than NZ\$1,000. Because the Customs value of NZ\$980 is below the NZ\$1,000 threshold, NZCS does not collect GST or duties at the border.

**Wide Coverage of Offshore Sellers** The proposals are broad and will apply to underlying suppliers, electronic marketplaces (“EMPs”) and redeliverers. The rules will also apply to EMPs resident in New Zealand on all sales of LVIGs. Offshore sellers will be able to appoint a New Zealand agent to account for the GST.

EMPs will be responsible for registering and remitting GST on sales of LVIGs that are made through their platform. Certain limited safe harbor rules will apply to make it easier for EMPs. The EMP rules provide the Commissioner of Inland Revenue (“Commissioner”) a discretion to reach an agreement with the EMP as to when GST is required to be returned, having regard to commercially relevant information available to the EMP and compliance costs.

For example, if an EMP has an agreement with the Commissioner and underpays GST relying on incorrect information provided by the underlying supplier, the EMP will not be liable for the additional GST.

Redeliverers will also be required to register and return GST in respect of goods delivered to a New Zealand address. These rules will be relevant if neither the underlying supplier nor the EMP assists in bringing the goods to New Zealand.

Redeliverers will need to be clear as to when time of supply is triggered by the underlying (or actual supplier) to the consumer.

Redeliverers will also be able to reach an agreement with the Commissioner under the safe harbor rules in relation to determining their GST obligations. For example, it may be easier for a redeliverer to rely on the customer’s declaration of value rather than issuing a receipt.

**B2B Supplies out of Scope** Supplies to New Zealand businesses will not be charged with GST, but offshore suppliers may still be able to claim a deduction for any New Zealand GST they may incur (applying new zero-rating rules). New Zealand business customers will be able to provide their GST number, confirmation of GST status or NZ Business Number (“NZBN”) to suppliers in order to ensure no GST is charged by the seller.

The supplier will be able to seek an alternative method from the Commissioner to determine business-to-business (“B2B”) recipients looking at the nature of the supply, value of the supply or the terms and conditions.

**Other Features** The Bill contains several rules to prevent double taxation. For example, if multiple LVIGs are sent in one consignment, the goods may be taxed at the point of sale and then again at the border. Suppliers will be able to provide tax information on Customs documents to ensure that the goods are not taxed a second time if GST has already been charged at the point of sale.

If this information is not provided, the recipient of the goods may ask the supplier for a refund of the GST charged at the point of sale.

There are other rules dealing with correcting GST incorrectly charged to New Zealand businesses.

Nonresident suppliers of distantly taxable goods (charged with GST at 15 percent) will be required to issue a receipt to consumers. The receipt will need to contain certain criteria and penalties will apply for breaching this obligation.

The voucher rules will be extended to apply to a supply of remote services and distantly taxable goods.

Vouchers have come in for attention as countries look to settle on the best GST/value-added tax (“VAT”) treatment for cross-border transactions. New Zealand has not yet moved to a fully-fledged redemption model for international voucher transactions.

Redeliverers need to take note as some of their fees will no longer be zero-rated.

Finally, the marketplace rules will be extended to apply to “resident” marketplaces and this expanded scope will apply to both LVIGs and remote services.

**GST Returns and Transitional Period** Once the law is enacted, nonresident suppliers will be required to file GST returns on a quarterly basis. However, during the first six months of the rules offshore suppliers (who only supply taxable goods) can elect to have a six-month taxable period (from October 1, 2019 to March 31, 2020).

## Planning Points

There is still time to influence the design of the proposed rules through the public submission process at Parliament’s Finance and Expenditure Select Committee (FEC) in early 2019.

Impacted sellers should consider forming a project team. There will be different considerations depending on whether the seller is an underlying supplier, an EMP, a redeliverer, or a combination of these. All impacted sellers will need to assess their obligations, pricing and customer terms and conditions.

They will also need to assess the ability of systems to track the location of customers, business-to-consumer versus B2B customers, the location of the goods and calculating the Customs value (for the NZ\$1,000 threshold) as well as the value on which GST is paid.

Systems also need to handle issuing receipts, refunds, returned goods, vouchers, discounts and arranging related services such as transport/logistics/storage/insurance, to mention a few. Some offshore sellers of remote services will need to incorporate the sale of LVIGs into their current business and tax processes.

### Underlying Suppliers—Key Considerations

- Do you currently make sales of goods to New Zealand and what is the value of each item?
- Are these goods outside of New Zealand at the time of supply?
- Do you have supplies of LVIGs fulfilled from offshore as well as from New Zealand?
- Does the total value of sales to New Zealand exceed NZ\$60,000 in a 12-month period?
- Do you supply these goods to someone who is registered for New Zealand GST or has a NZBN?
- Do you issue vouchers or accept vouchers as payment for goods?

**Electronic Marketplace—Key Considerations** Operators of EMPs will be required to account for GST on LVIGs sold on their platform to New Zealand private consumers, as the supply will be deemed to be between the EMP and the recipient (unless limited exceptions apply).

There are a number of intricacies that will need to be considered by EMP operators, for example:

- Do you authorize the charge for goods or delivery of the goods, or set any of the terms and conditions under which the supply is made?
- Do you sell vouchers or credits on your platform?
- What kind of information do you currently receive from your underlying suppliers?
- Are your underlying suppliers registered for New Zealand GST because they make sales to New Zealand through other platforms?
- Do you solely process payments or provide other functions?

**Redeliverers—Key Considerations** A redeliverer will only be deemed to be the supplier of the goods if neither the supplier nor the EMP is responsible for GST. Redeliverers will need to consider:

- Has the underlying supplier or EMP already charged GST on the sale?
- Is there uncertainty about the time of supply?
- Are there other (multiple) redeliverers involved in a supply?

Following the introduction of the Bill, the likely time frame is that the FEC then has six months to report back. The law is expected to be enacted by June/July 2019 for a October 1, 2019 start date. The first return—for the period from October 1, 2019 to March 31, 2020—can be a six-month return and can be filed by May 7, 2020.

## Concluding Comments

New Zealand is not alone in trying to reshape its GST laws to the modern e-commerce environment. The remote services rules were successfully implemented in 2016 and now it is the turn to deal with the collection of GST on LVIGs.

The issues affecting LVIGs are more complex and present greater challenges. Other countries are dealing with their version of the LVIG rules. In relation to cross-border services, a greater number of countries have introduced rules dealing with e-services (or remote services) and more jurisdictions are coming on board, such as Singapore, Malaysia and Quebec (Canada).

The other main theme with e-services is that certain countries—such as Russia and South Africa—are looking to expand the scope of their cross-border services rules by reference to the ambit of services in scope of GST/VAT and B2B transactions.

By way of final observation, the overlap with other corporate tax international considerations in a digital global economy is becoming more and more significant. The place of consumption looks likely to dominate as a principle and international cohesion in this area is a must.

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