

*Special report from the*  
Policy Advice Division of Inland Revenue

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## **Proposed amendment to the Goods and Services Tax Act**

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The Finance and Revenue Minister Hon Dr Michael Cullen announced today that the Government would legislate to clarify the pre-1999 application of GST to services contracted for outside New Zealand by non-New Zealand residents but consumed here. The amendment will apply from 1 October 1986 to refund claims made after 15 September 1995, the date of the Court of Appeal decision in *Wilson & Horton*.<sup>1</sup>

The amendment will contain a saving provision for taxpayers who have already received a refund of GST.

### **Background**

The refund claims relate to the design and sale of New Zealand travel packages to overseas tour wholesalers and contracts for services provided by New Zealand educational institutions to non-resident students. The refunds all relate to the period before 20 May 1999, when the GST Act was changed to clarify the policy in this area following the decision in *Wilson & Horton*.

The *Wilson & Horton* decision concerned the zero-rating of advertising services that were supplied to a non-resident in relation to a New Zealand published newspaper. The Court of Appeal held that the zero-rating provisions, in particular section 11(2)(e), since re-numbered as 11A(1)(k), were directed to the contractual arrangements between the supplier and the recipient. Any benefits that accrued in New Zealand arising from the advertising were disregarded because of the indirect relationship that the benefits had with the contract between *Wilson & Horton* and the non-resident. On this basis the advertising services were zero-rated.

One interpretation of the decision suggested that when services are supplied to a non-resident who is outside New Zealand at the time of supply, the services may be zero-rated, regardless of any benefits that may be enjoyed in New Zealand.

The broader implications of the *Wilson & Horton* decision may be at odds with the policy of taxing consumption that occurs in New Zealand. The correct policy is that GST (at the rate of 12.5 percent) should be paid on services that are consumed in New Zealand including travel packages consumed by tourists and educational services consumed by non-resident students. This policy has been confirmed in the GST Act in relation to supplies made on and after 20 May 1999 by the Taxation (Remedial Matters) Act 1999 which introduced new section 11(2A), now renumbered as 11A(2).

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<sup>1</sup> (1995) 17 NZTC 12,325

The legislative change to the GST Act excluded from the zero-rating provisions services that are supplied to a non-resident if another person received the performance of the services in New Zealand.

The change will remove a fiscal risk of up to \$200 million.

### **Details of proposed amendment**

The proposed legislation will extend the application of section 11A(2) of the GST Act to a supply made by a registered person after 1 October 1986 if the person has sought, after 15 September 1995 (the date of the Court of Appeal decision in *Wilson & Horton*), to adjust on any basis, or to have the Commissioner adjust, the GST treatment of the supply.

However, the proposed legislation will not apply if, as a result of the person having sought the adjustment, the Commissioner has, on or before 14 May 2001, to the extent of the adjustment sought, paid a refund to the person or made an offset against, or reduction in, a tax liability.

In addition, supplies of services made before 20 May 1999 to which section 11A(2) would otherwise apply will be treated as zero-rated if:

- The registered person seeking to adjust the GST treatment of the supply proves to the satisfaction of the Commissioner that the person who received the performance of the services in New Zealand (or a person who has control of the latter person) has received a payment from the registered person equal to the amount of the adjustment sought; and
- The registered person has written evidence of the payment to the person.

### **Application date**

The amendment will apply from 14 May 2001 and will be introduced into Parliament at the earliest possible opportunity.