Hon Stuart Nash, Minister of Revenue

Information Release

GST amendments for inclusion in the next omnibus taxation bill

August 2020

Availability

This information release is available on Inland Revenue's Tax Policy website at https://taxpolicy.ird.govt.nz/publications/2020-ir-cab-dev-19-sub-0315/overview

Documents in this information release

#	Reference	Type	Title	Date
1	IR2019/351 T2019/2932	Tax policy report	GST and telecommunications services – summary of submissions and policy recommendations	16 September 2019
2	IR2019/569	Tax policy report	Cabinet paper - GST amendments for inclusion in the next omnibus taxation bill	23 October 2019
3	DEV-19-SUB-0315	Cabinet paper	GST amendments for inclusion in the new omnibus taxation bill	20 November 2019
4	DEV-19-SUB-0315	Regulatory impact assessment	GST on telecommunications services	23 October 2019
5	DEV-19-SUB-0315	Regulatory impact assessment	GST refunds using credit notes	23 October 2019
6	DEV-19-MIN-0315	Minute	GST amendments for inclusion in the new omnibus taxation bill	20 November 2019
7	IR2020/220	Tax policy report	GST on mobile roaming services – application date in light of COVID-19	21 April 2020

Additional information

The Cabinet paper was considered by the Economic Development Committee on 20 November 2019 and confirmed by Cabinet on 25 November 2019.

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

9(2)(a) to protect the privacy of natural persons, including deceased people

Inland Revenue
Te Tari Taake

POLICY AND STRATEGY

TE TAI ŌHANGA
THE TREASURY

Tax policy report: GST and telecommunications services – summary of submissions and policy recommendations

Date:	16 September 2019	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2019/351 T2019/2932

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations **Note** the contents of this report	At your earliest convenience
Minister of Revenue	**Agree** to recommendations **Note** the contents of this report **Refer** a copy of this report to the Minister of Broadcasting, Communications and Digital Media	At your earliest convenience

Contact for telephone discussion (if required)

Name	Position	Telephone
s 9(2)(a) [redacted]	Policy Advisor, Policy and Strategy, Inland Revenue	s 9(2)(a) [redacted]
	Analyst, Tax Strategy, The Treasury	

17 September 2019

Minister of Finance
Minister of Revenue

GST and telecommunications services – summary of submissions and policy recommendations

Executive summary

1. This report summarises the feedback received on the recent issues paper *GST and telecommunications services*. Furthermore, this report seeks your agreement to GST being added at the standard rate of 15% to outbound mobile roaming services received by New Zealand residents travelling overseas (as proposed in the issues paper) and to delay the application date from 1 October 2020 to either 1 October 2021 or, the later of 1 April 2021 or 6 months after enactment.

Consultation

2. Submissions on the issues paper were received from Deloitte (on behalf of Spark, Vodafone and 2Degrees), CA ANZ, CTG, EY, KPMG and PwC. Officials have continued to consult with Deloitte and representatives of the telecommunications industry since the close of submissions.

3. PwC supported the proposal. EY supported the proposal in principle but were concerned the benefits would be outweighed by the additional compliance costs.

4. The telecommunications industry, Deloitte, CA ANZ, CTG and KPMG all expressed opposition to the proposal to add GST to outbound roaming services received by New Zealand residents overseas. The telecommunications industry's preference is for the current rules, in which neither outbound or inbound roaming are subject to GST, to be maintained.

5. A key reason for the opposition is that they considered the proposal to be contrary to the destination principle. Under the destination principle GST should generally apply in the country in which consumption occurs. They consider outbound roaming services to be consumed outside New Zealand.

Applying GST to inbound roaming services

6. Given the concerns raised around applying GST to outbound roaming services being inconsistent with the destination principle, officials have also considered options for applying GST to inbound roaming services received by non-residents in New Zealand.

7. Applying GST to the actual inbound roaming services supplied by foreign telecommunications suppliers to non-resident visitors in New Zealand is unlikely to be a practical option. As an alternative, GST could instead be applied to the wholesale roaming services supplied by New Zealand resident telecommunications suppliers to foreign telecommunications suppliers. These services enable the customers of foreign telecommunications suppliers to roam in New Zealand.

8. Applying GST to wholesale roaming charges would embed unrecoverable GST in the price of inbound roaming services. However, the margins charged by foreign telecommunications suppliers for inbound roaming services in New Zealand would

remain untaxed. This option would also not be consistent with the principle of business neutrality as it would add unrecoverable GST to the price of inbound roaming received by non-residents in New Zealand.

Policy recommendations

9. Officials do not consider the status quo to be a principled option as, under a broad-based GST framework, either outbound or inbound roaming services should be subject to New Zealand GST.

10. On balance officials still recommend applying GST to outbound roaming services as it is more consistent with New Zealand's broad-based GST framework and the principle of business neutrality than applying GST to wholesale roaming services.

11. Furthermore, while there is not yet a consistent approach to the treatment of roaming services internationally, in light of the OECD's GST/VAT Guidelines and the approach to roaming services taken in Europe (that is to apply GST to outbound roaming), officials consider it likely that applying GST to outbound roaming services may become a more common approach internationally.

Application date

12. The issues paper proposed an application date of 1 October 2020. However, the telecommunications industry has indicated that they will not start developing and testing systems changes until the legislation is passed. Assuming the proposals are enacted before the next general election, this means they may have only a month or two to make systems changes following the changes being enacted. Furthermore, there is a risk that if the proposals are not enacted before the next general election, enactment may not occur until closer to March 2021.

13. Given the compliance costs of making systems changes, including the potential opportunity cost of diverting resources from other systems changes, officials recommend delaying application by 12 months to 1 October 2021. Alternatively, application could be delayed to the later of 1 April 2021 or 6 months after enactment.

Financial implications

14. Budget 2019 forecast the proposal to increase GST revenue by $26 million per annum. Owing to budget secrecy officials were unable to consult with the telecommunications industry prior to Budget 2019 on this revenue forecast.

15. During consultation, Deloitte and the telecommunications industry provided data that indicates the revenue estimate for the proposal should actually be $7.041 million per annum. Officials consider this to be a more accurate revenue estimate and therefore recommend forecasts be adjusted.

16. There will be a fiscal cost if the application date is delayed, as the timing of the revenue impact will be different to what was agreed to in Budget 2019. A delay to 1 October 2021 will cost $7.041 million and a delay to 1 April 2021 would cost $3.520 million. The foregone revenue would be a charge against the between-Budget Contingency.

Next steps

17. Once Ministers make decisions and Cabinet approval is obtained, the proposed changes could be included in the next available tax bill. This bill is currently scheduled for introduction in the first quarter of 2020.

Recommended action

We recommend that you:

18. **agree** to apply GST to outbound roaming services as proposed in the issues paper;

Agreed/Not agreed Agreed/Not agreed

19. **Note** that the necessary amendments to apply GST to outbound roaming services could be included in the next tax bill, currently scheduled for introduction in the first quarter of 2020;

Noted Noted

20. **Note** that Cabinet approval will be required to include the necessary amendments to apply GST to outbound roaming services in the next tax bill;

Noted Noted

21. **note** the below forecasting adjustment as a result of data provided by the telecommunications industry with a corresponding impact on the operating balance;

	$m – increase/(decrease)				
Vote Revenue Minister for Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Current Budget 2019 forecasts: GST Revenue	-	19.500	26.000	26.000	26.000
Revised forecasts: GST Revenue	-	5.281	7.041	7.041	7.041
Difference impacting total Operating balance	**-**	**14.219**	**18.959**	**18.959**	**18.959**

Noted Noted

22. **note** the $3.520 million foregone revenue impact as a result of a decision to delay the application date to the later of 1 April 2021 or 6 months after enactment, with a corresponding impact on the operating balance;

	$m – increase/(decrease)				
Vote Revenue Minister for Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Revised forecasts GST Revenue	-	5.281	7.041	7.041	7.041
1 April 2021 option GST Revenue	-	1.761	7.041	7.041	7.041
Difference impacting total Operating balance	**-**	**3.520**	**-**	**-**	**-**

Noted Noted

23. **note** the $7.041 million foregone revenue impact as a result of a decision to delay the application date to 1 October 2021, with a corresponding impact on the operating balance;

	$m – increase/(decrease)				
Vote Revenue **Minister for Revenue**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Revised forecasts GST Revenue	-	5.281	7.041	7.041	7.041
1 October 2021 option GST Revenue	-	-	5.281	7.041	7.041
Difference impacting total Operating balance	**-**	**5.281**	**1.760**	**-**	**-**

Noted Noted

24. **agree** to a proposed application date for applying GST to outbound roaming services (tick one box);

	Minister of Finance	Minister of Revenue
1 October 2020 (current proposal)		
The later of 1 April 2021 or 6 months after enactment		
1 October 2021 (officials' preferred option)		

25. **Agree** that, subject to the decision taken in recommendation 24, the foregone revenue incurred under recommendation 22 or 23 would be a charge against the between-Budget Contingency;

Agreed/Not agreed Agreed/Not agreed

26. **refer** a copy of this report to the Minister of Broadcasting, Communications and Digital Media for his information;

Referred/Not referred

Ben Gaukrodger
Acting Team Leader
The Treasury

Graeme Morrison
Policy Lead
Policy and Strategy, Inland Revenue

Hon Grant Robertson
Minister of Finance
/ /2019

Hon Stuart Nash
Minister of Revenue
/ /2019

Background

27. On 8 April 2019 Cabinet agreed as part of Budget 2019 to repeal the special rules in the Goods and Services Tax Act 1985 (the GST Act) for telecommunications services and align the GST treatment of most of these services with the treatment of other remote services (refer *DEV-19-MIN-0059*). Special rules were also proposed for the use of local SIM cards or mobile devices and for specific services such as making a call from a phone booth.

28. The proposal was not intended to change the GST treatment of most telecommunications services. However, the proposed rules would result in outbound roaming services received by New Zealand residents travelling overseas becoming subject to GST at the standard rate of 15%. This contrasts with the status quo in which both outbound and inbound roaming services are not subject to GST.[1]

Consultation

29. Following Budget 2019, the issues paper *GST on telecommunications services* was released on 17 May 2018 to consult on the technical details of the proposal to align the treatment of telecommunications services with the treatment of other remote services.

30. Submissions closed on 28 June and in total 6 submissions were received from Deloitte (on behalf of Vodafone, Spark and 2Degrees), CA ANZ, CTG, KPMG, PwC and EY. Since submissions closed officials have continued to consult with Deloitte and representatives of the telecommunications industry.

31. The consultation process was heavily criticised by submitters and the telecommunications industry and was considered inconsistent with the Generic Tax Policy Process (GTPP). In particular, it was noted that the proposals were first announced as part of Budget 2019 with no prior consultation on the merits of the proposal.

32. Officials agree that the consultation process was not ideal as Budget secrecy prevented the GTPP being followed. However, the telecommunications industry appears to be appreciative of the further consultation that has been conducted since submissions closed.

Support for the proposal

33. PwC expressed support for the proposal as they consider it consistent with the OECD's International VAT/GST Guidelines. EY expressed in principle support for the proposal but was concerned that the benefits would be outweighed by the compliance costs.

Opposition to the proposal

34. The submissions from Deloitte (on behalf of Spark, 2Degrees and Vodafone), CA ANZ, CTG and KPMG were all strongly opposed to the proposal to add GST to outbound roaming services. In further consultation with the telecommunications industry they have regularly expressed their opposition to the proposal and indicated that they will strongly oppose the proposal if it is included in a subsequent Bill, in particular at the select committee stage.

35. The key argument raised in opposition to the proposal was that, as outbound roaming services can only be consumed outside New Zealand, it would be contrary

[1] Inbound roaming services may, in certain circumstances, be subject to GST but these circumstances rarely arise.

to the destination principle to apply New Zealand GST to outbound roaming services received by New Zealand residents overseas. Under the destination principle, GST should generally apply in the jurisdiction in which consumption occurs.

36. In arguing that it is inappropriate to apply GST to outbound roaming the telecommunications industry and some other submitters also argued that roaming services are on-the-spot services and not remote services as a consumer needs to be in the vicinity of a cell tower to receive the service. However, officials consider it is correct to classify roaming services as remote services.

37. Other issues raised in opposition to the proposal included the compliance costs for the telecommunications industry and whether the approach taken to roaming services in Europe should be considered international best practice. The revenue estimate of $26 million per annum was also questioned, with Deloitte and the telecommunications industry subsequently providing data to show the revenue estimate should be approximately $7 million per annum.

Alternative options for applying GST to inbound roaming services

38. Given the concerns raised in submissions around applying GST to outbound roaming being inconsistent with the destination principle, officials have considered whether it would instead be more appropriate to apply GST to inbound roaming services. However, on balance officials still consider it more appropriate to apply GST to outbound roaming services as originally proposed in the issues paper.

39. GST could be applied to inbound roaming services in one of two ways. These are:

    39.1 Applying GST to the actual inbound roaming services supplied by foreign telecommunications suppliers. This would require foreign telecommunications suppliers to register for GST in New Zealand if the roaming services they supply in New Zealand exceed $60,000 per annum.

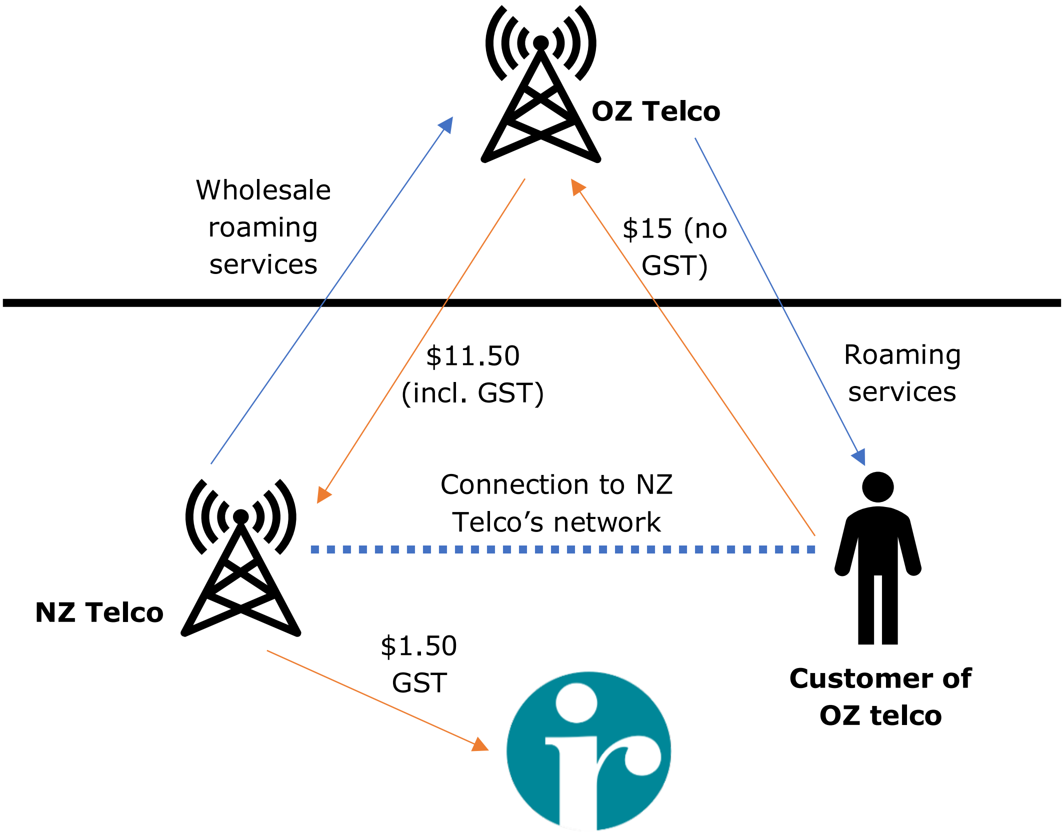
    39.2 Applying GST to the wholesale roaming services supplied by New Zealand telecommunications suppliers to foreign telecommunications suppliers to enable customers of foreign telecommunications suppliers to roam in New Zealand. This would result in New Zealand GST becoming embedded in the price of inbound roaming services but would not add GST to the actual inbound roaming services.

40. Officials do not consider it practical to apply GST to the actual inbound roaming services. Many telecommunications suppliers sell global or regional roaming packs that allow a consumer to roam in multiple jurisdictions for a single fee. At the time of supply the telecommunication supplier will not know which jurisdiction a consumer will consume the roaming services in. Furthermore, a consumer may consume the roaming services in multiple jurisdictions. If the actual inbound roaming services were subject to GST it would therefore be likely to cause telecommunications suppliers significant issues in attempting to apportion roaming charges between the different jurisdictions in which a customer consumed the roaming service.

Wholesale roaming services

41. Given applying GST to the actual inbound roaming services is unlikely to be practical, an alternative way of adding GST to inbound roaming could be to apply GST to the wholesale roaming services supplied by New Zealand telecommunications suppliers to foreign telecommunications suppliers to enable the foreign telecommunications suppliers' customers to roam in New Zealand. This would result in unrecoverable GST being embedded in the price of roaming services

received by non-residents travelling in New Zealand. The diagram below illustrates how applying GST to wholesale roaming charges would work.



42. As can be seen in the above diagram, applying GST to the wholesale roaming charges would add GST on to the services NZ Telco supplies to OZ Telco to allow OZ Telco's customers to roam in New Zealand. There is no GST on the actual supply of roaming to OZ Telco's customer. However, GST is embedded in the price of the roaming services received by OZ Telco's customer as OZ Telco is unable to claim an input tax deduction for the GST they paid to NZ Telco.

43. Based on data provided by Deloitte and the telecommunications industry, applying GST to wholesale roaming services would raise $3.8 million in GST revenue per annum.

Should GST apply to outbound roaming or wholesale roaming services?

44. There are advantages and disadvantages of applying GST to either outbound roaming services or wholesale roaming services. These advantages and disadvantages are discussed below.

45. On balance officials still recommend applying GST to outbound roaming services. However, applying GST to wholesale roaming services is also considered preferable to the status quo.

Destination principle

46. Under the destination principle, GST or VAT should generally apply in the jurisdiction in which consumption occurs. As noted above, the telecommunications industry (and some other submissions) considered it contrary to the destination principle to apply GST to outbound roaming services as, by definition, a New Zealand resident needs to be outside New Zealand to receive roaming services.

47. It could be argued that consumption of outbound roaming services occurs in New Zealand as roaming allows a person to maintain their New Zealand mobile number and use their New Zealand mobile plan. However, applying GST to wholesale roaming services does appear to be more consistent with the destination principle.

48. It should be noted that there are circumstances in which it is appropriate to depart from the destination principle. For example, remote services are subject to GST if supplied to a New Zealand resident, regardless of the physical location of the consumer. This means that New Zealand GST would apply if a New Zealand resident downloads a movie while on holiday in Australia. This departure from the destination principle is considered appropriate as the supplier may not know the location of the consumer and therefore the consumer's residency is considered an appropriate proxy for the most likely place of consumption.

49. As roaming services are a type of remote service it could be argued that the same rationale for departing from the destination principle applies. However, the telecommunications industry has argued that this rationale does not apply as the supplier of outbound roaming services will always know the consumer is outside New Zealand.

Broad-based GST framework

50. Under New Zealand's broad-based GST framework all goods and services should be subject to GST. The question is whether any particular supply of goods and services should be subject to GST in New Zealand or alternatively, another jurisdiction.

51. Under the status quo, neither outbound roaming or inbound roaming services are subject to New Zealand GST. In principle, under the broad-based GST framework, either outbound or inbound roaming services should be subject to New Zealand GST.

52. Applying GST to outbound roaming services would be consistent with this framework as GST would be added to the entire price of outbound roaming services.

53. In contrast, while an improvement on the status quo, applying GST to wholesale roaming services would not be entirely consistent with the broad-based GST framework. Applying GST to wholesale roaming charges would embed GST in the price of inbound roaming services, however, the margin charged by non-resident telecommunications suppliers would remain untaxed. While the margins charged for inbound roaming services are unknown, the difference in revenue estimates for applying GST to outbound roaming services ($7.041 million per annum) and wholesale roaming services ($3.8 million per annum) suggests that these margins form a significant part of the price of inbound roaming services. As such, it is likely that applying GST to wholesale roaming services would result in a significant portion of the price of inbound roaming remaining untaxed.

Business neutrality

54. The principle of business neutrality is that GST should be borne by final consumers and should not be a cost to businesses.

55. Applying GST to outbound roaming services would be consistent with this principle as GST-registered businesses that pay GST on outbound roaming services would be able to claim back this GST as an input tax deduction.

56. In contrast, applying GST to wholesale roaming services would not be consistent with the business neutrality principle. Under this option, non-recoverable GST would be embedded in the price of inbound roaming services. As such, this non-

recoverable embedded GST would be a cost to non-resident businesses that receive roaming services in New Zealand.

57. The telecommunications industry also raised concerns that applying GST to wholesale roaming services would not be consistent with business neutrality as, for this option to work as intended, a rule would be needed to prevent non-resident telecommunications suppliers from claiming back the GST on the wholesale roaming services.

International consistency

58. Applying GST to outbound roaming services would be consistent with the approach taken most prominently in the European Union (EU) and United Kingdom. However, it would not be consistent with a number of other jurisdictions that apply GST to wholesale roaming charges.

59. The submission from Deloitte provided a list of 80 jurisdictions that charge GST, VAT or a local sales tax on inbound roaming. We understand that these taxes are generally levied on the wholesale roaming charges rather than the actual inbound roaming services. The list of countries provided by Deloitte included Afghanistan, Bangladesh, Canada, Egypt, Ghana, Indonesia, Japan, Namibia, Panama, Thailand, Vietnam and Zimbabwe. As such, applying GST to wholesale roaming services would be consistent with the approach taken in these countries.

60. As there is no uniform international approach applying GST to either outbound roaming services or wholesale roaming services would result in partial double taxation in certain circumstances. For example, if New Zealand GST applied to outbound roaming then there would be partial double taxation of the roaming services a New Zealand resident receives in Egypt. Conversely, if New Zealand GST applied to wholesale roaming services there would be partial double taxation of the roaming services EU residents receive in New Zealand. In both cases the double taxation is only partial as the margin charged by the telecommunications supplier for the actual roaming services would only be taxed once.

61. The telecommunications industry and submissions from Deloitte, CA ANZ, KPMG and CTG argued that the approach taken to roaming services in Europe should not be considered international best practice. It was noted that a number of features unique to the EU means New Zealand should not necessarily adopt rules consistent with the EU. These include the ease of cross-border travel within Europe and the existence of EU wide rules for mobile roaming in a broader context than VAT.

62. The telecommunications industry argue that, as New Zealand's telecommunications context is more similar to Australia (where both outbound and inbound roaming are not subject to GST), New Zealand should maintain rules consistent with Australia. However, Australia has not formally considered this issue in recent years.

63. For many (but not all) of the countries on the list provided by Deloitte their GST/VAT rules for telecommunications services pre-date the OECD finalising its guidelines for taxing remote services. It is unclear whether these countries have made a considered decision to maintain their pre-existing rules for telecommunications services or if they have simply not reviewed these rules yet in light of the OECD's *Guidelines*.

64. Given the OECD has now finalised its VAT/GST guidelines and the EU has moved to apply GST to outbound roaming services, officials consider it more likely that, going forward, more countries will start applying GST to outbound roaming than wholesale roaming services.

Compliance costs

65. Both options would impose compliance costs on the telecommunications industry. The billing systems of telecommunications suppliers are complex as they need to operate in real time to ensure a person is correctly charged as they use the network. As such, while changing outbound roaming or wholesale roaming services from a zero-rated supply to a standard rated supply is itself a simple change, the telecommunications suppliers would need to do extensive testing to ensure the change does not cause any issues for their billing systems.

66. Spark, Vodafone and 2Degrees have therefore estimated that the costs of changing and testing their systems to apply GST to outbound roaming services would collectively be approximately $1 million. They have not quantified the cost of changing and testing their systems to apply GST to wholesale roaming charges but consider that these costs are not insignificant. Officials note that the costs associated with changing and testing systems would be a one-off cost for the telecommunications industry under either option.

67. The telecommunications industry has also indicated that changing their billing systems to charge GST on either outbound roaming or wholesale roaming services could require them to divert resources from other systems changes. One systems change the telecommunications industry suggested could be impacted by needing to divert resources was the roll-out of 5G.

68. In addition to the costs of changing and testing systems, both options would impose some additional compliance costs on the telecommunications industry. If GST is applied to outbound roaming telecommunications suppliers would incur costs associated with notifying their customers of the change in the GST treatment of outbound roaming. In contrast, applying GST to wholesale roaming services would require New Zealand telecommunications suppliers to review and potentially re-negotiate their contracts with foreign telecommunications suppliers.

Policy recommendations

69. Roaming services are a form of consumption and therefore, under New Zealand's broad-based GST framework, GST should apply to one of outbound or inbound roaming services. As such, officials do not consider the status quo to be a principled option.

70. On balance officials recommend applying GST to outbound roaming services. While applying GST to outbound roaming services is less consistent with the destination principle, it is more consistent with New Zealand's broad-based GST framework and the principle of business neutrality. Furthermore, while there is no clear international consensus at this stage, officials consider that, in light of the OECD's VAT/GST Guidelines and the approach taken by the EU, applying GST to outbound roaming services is more likely to become the common approach worldwide.

71. If Ministers agree to apply GST to outbound roaming services, officials will consult with the industry as to the best way this should be drafted in legislation.

72. Although officials prefer applying GST to outbound roaming services, applying GST to wholesale roaming services is also considered preferable to the status quo.

Telecommunications industry's views

73. The telecommunications industry's strong preference is for the status quo to be maintained. They note that while it is not a conceptually pure option, the existing rules for telecommunications services have been working well. As such, they do not consider that the amount of revenue that would be collected under either option

would justify the compliance costs that changing the rules would impose. Furthermore, they consider that applying GST to either outbound roaming services or wholesale roaming services would also be a compromise on GST policy principles. They therefore consider the status quo to be less of a compromise overall when considering a pure GST framework.

74. Out of applying GST to outbound roaming services or wholesale roaming services the industry has expressed a preference for applying GST to wholesale roaming charges as they consider their compliance costs under this option would be lower. Officials also note that, relative to applying GST to outbound roaming services, applying GST to wholesale roaming services would also result in a reduced GST liability for the telecommunications industry.

Application date

75. The issues paper proposed a 1 October 2020 application date for the proposal. The next tax bill is scheduled for introduction in the first quarter of 2020 and we understand this bill could be passed before the next general election. As such, a 1 October 2020 application date may be achievable without retrospective application.

76. However, if the bill is not passed before the election the application date would need to be delayed. Depending on post-election legislative priorities, the bill may not end up being passed until nearer to March 2021.[2]

77. The telecommunications industry has indicated that they do not intend to start making systems changes to collect GST on outbound roaming services until legislation has been passed. Assuming enactment is achieved before the next general election, this would only give the industry at most 1 or 2 months to make the necessary systems changes. Given the above uncertainty, and the time required to make and test systems changes, the industry has suggested that a delayed application date would be appropriate if the proposal were to proceed.

78. Given these factors, officials recommend that the application date should be delayed. Officials consider a delay of 12 months to 1 October 2021 would be appropriate as this would give the telecommunications industry sufficient time to make systems changes and also minimise any potential opportunity cost from needing to divert resources from other systems changes. A 12-month delay would also mitigate any impacts that may arise if the next tax bill to be introduced to the House is not enacted before the next election.

79. Alternatively, application could be delayed to the later of 1 April 2021 or 6 months after enactment. This would be only a 6-month delay if the bill is enacted by 1 October 2020 but would be a longer delay if the next tax bill is unable to be enacted by then.

Financial implications

Changes to Budget 2019 forecasts

80. Budget 2019 forecasts estimated the proposal to apply GST to outbound roaming services to increase revenue by $26 million per annum. This estimate was based on the amount of zero-rated supplies made by Spark, Vodafone and 2 Degrees and an assumption that 85% of these zero-rated supplies were roaming services. Due to budget secrecy we were unable to consult with the telecommunications industry on the revenue estimate, so the 85% assumption was based on Inland Revenue's experience dealing with the industry.

[2] The bill will contain annual rates so will need to be passed before 1 April 2021.

81. The submission from Deloitte suggested that this estimate had been overstated and would be $7.041 million per annum. This figure was based on Spark, Vodafone and 2Degrees each providing Deloitte with their total amount of outbound roaming supplies per year determined on a transaction by transaction basis ($86.620 million). From this it was calculated that the gross GST that would be collected under the proposal would be $12.993 million.

82. However, GST-registered businesses paying GST on the outbound roaming services they receive would be able to claim back this GST as an input tax deduction. As such, each telecommunications company also provided Deloitte with a split of the roaming services supplied to commercial and consumer accounts respectively. In total $46.940 million of roaming services was supplied to consumer accounts and $39.680 million was supplied to commercial accounts. Deloitte therefore calculated that the net GST that would be collected under the proposal would be $7.041 million.

83. As the estimate provided by Deloitte is based on actual figures on the telecommunications industry's amount of roaming supplies, officials consider it to be more accurate than the estimate included in Budget 2019. Therefore, forecasts should be adjusted to reflect this change.

84. This change will result in $71.096 million foregone revenue from the proposal over the current forecast period compared to Budget 2019 forecasts. The impact of the forecast adjustment can be shown in the table below:

	$m – increase/(decrease)				
Vote Revenue Minister for Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Current Budget 2019 forecasts GST Revenue	-	19.5000	26.000	26.000	26.000
Revised forecasts GST Revenue	-	5.281	7.041	7.041	7.041
Difference impacting total Operating balance	**-**	**14.219**	**18.959**	**18.959**	**18.959**

85. The above change will be reflected as a forecast adjustment and does not need to be accounted for.

Option to delay application date

86. If Ministers decide to delay the application date, there will be a fiscal cost as the timing of the revenue impact will be different to what was agreed to in Budget 2019.

87. Agreeing to delay the application date to 1 October 2021 will have a fiscal cost of $7.041 million compared to the revised forecasts, as shown in the table below.

	$m – increase/(decrease)				
Vote Revenue Minister for Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Revised forecasts GST Revenue	-	5.281	7.041	7.041	7.041
1 October 2021 option GST Revenue	-	-	5.281	7.041	7.041
Difference impacting total Operating balance	**-**	**5.281**	**1.760**	**-**	**-**

88. Agreeing to delay the application date to the later of 1 April 2021 or 6 months after enactment will have a fiscal cost of $3.520 million compared to the revised forecasts as shown in the table below.[3]

	$m – increase/(decrease)				
Vote Revenue Minister for Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Revised forecasts GST Revenue	-	5.281	7.041	7.041	7.041
1 April 2021 option GST Revenue	-	1.761	7.041	7.041	7.041
Difference impacting total Operating balance	**-**	**3.520**	**-**	**-**	**-**

89. The foregone revenue due to delaying the application date would be a charge against the between-Budget Contingency.

Consultation

90. The Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade (MFAT) have been consulted on this report.

91. MFAT advises that applying GST to either outbound roaming or wholesale roaming services is consistent with New Zealand's international trade obligations.

Next steps

92. Any changes to the GST rules for telecommunications services can be included in the next tax bill currently scheduled for introduction in the first quarter of 2020. Once Ministers have made decisions on whether GST should apply to outbound roaming or wholesale roaming services, and whether the application date should be delayed, officials will begin drafting the necessary changes to the GST Act.

93. Cabinet approval will also be required regardless of what decisions are made given the change in forecast revenue figures. This approval could be obtained in either a standalone paper or as part of an omnibus Cabinet paper containing other items for inclusion in the next tax bill.

[3] An assumption has been made that under this option the application date would be 1 April 2021. If enactment is not received by 1 October 2020 the forecasts would need to be further adjusted.

POLICY AND STRATEGY

Tax policy report:	**Cabinet paper – GST amendments for inclusion in the next omnibus taxation bill**

Date:	23 October 2019	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2019/569

Action sought

	Action sought	Deadline
Minister of Revenue	**Authorise** the lodgement of the attached Cabinet paper **Refer** a copy of this report to the Minister of Finance for his information	10am Thursday 14 November 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Graeme Morrison	Policy Lead	s 9(2)(a)
s 9(2)(a)	Policy Advisor	

23 October 2019

Minister of Revenue

Cabinet paper – GST amendments for inclusion in the next omnibus taxation bill

1. This report asks you to approve the attached Cabinet paper and lodge it with the Cabinet Office by 10am Thursday 14 November 2019 for consideration at the Cabinet Economic Development Committee (DEV Committee) meeting on Wednesday 20 November 2019.

2. The Cabinet paper seeks agreement to a number of miscellaneous measures that require changes to the Goods and Services Tax Act 1985 (the GST Act). In particular the paper seeks Cabinet's approval to:

    2.1 Confirm the earlier Cabinet decision to apply GST to outbound mobile roaming services (refer DEV-19-MIN-0059).

    2.2 Provide more flexibility around how the GST Act is amended to apply GST to outbound mobile roaming services.

    2.3 Delay the application date for the changes to the GST rules for telecommunications services to 1 April 2021.

    2.4 Allow credit notes to be used to claim back the full amount of GST included in a supply that was incorrectly standard rated (subject to GST at 15%) but should have been zero-rated (subject to GST at 0%) or been exempt.

    2.5 Introduce a "time bar" from the date of a supply in which a credit note may be issued.

3. Once Cabinet approval has been obtained the necessary legislative amendments would be included in the next available omnibus taxation bill, currently scheduled for introduction in March 2020.

GST and telecommunications services

4. We reported to you on 17 September on consultation and final policy recommendations on the proposed changes to the GST rules for telecommunications services (refer IR2019/351). Since then you and the Minister of Finance have indicated that you have agreed to apply GST to outbound roaming services (as originally proposed) and to delay the application date by six months to 1 April 2021. The Cabinet paper seeks Cabinet's approval of these decisions.

5. Prior to consultation Cabinet had agreed to apply GST to outbound roaming services by specifically repealing the special GST rules applying to telecommunications services and aligning the treatment of most telecommunications services with the treatment of other remote services (refer *DEV-19-MIN-0059*). However, through consultation the telecommunications industry indicated that they consider the current special GST rules for telecommunications services to be operating well. Therefore, instead of repealing these special rules, GST could instead be applied to outbound roaming services by introducing a new provision deeming outbound mobile roaming services to be subject to GST at the standard rate of 15%. The Cabinet paper therefore seeks Cabinet's agreement to provide flexibility around how GST is applied to outbound roaming services. Officials will then further consult with

tax practitioners and the telecommunications industry on how best to draft the changes to the GST Act.

Credit Notes

6. In response to a large GST refund request from a taxpayer, Inland Revenue has recently interpreted how the GST credit note provisions apply in cases where the GST registered business standard rated (applied 15% GST) a supply of goods and services which should in fact have been exempt (e.g. a financial service) or zero-rated (e.g. an export).

7. Inland Revenue's interpretations of the current law have raised two policy issues. Officials recommend that policy and Cabinet decisions should be sought on these issues prior to public consultation as consulting on the second issue before legislation is introduced may create a fiscal risk. To manage this risk the proposed solution could apply from the date it is announced (for example the date that the bill containing the proposed amendment is introduced).

Issue one: Correct amount of GST adjustment

8. Firstly, the recent interpretation provides, from a policy perspective, an incorrect GST adjustment in situations where a supply was standard-rated but should have been exempt or zero-rated. This is because, according to the interpretation, the GST adjustment is limited to the tax fraction (3/23rds) of the adjusted price.

9. For example, consider a supply of $100 plus $15 which was incorrectly charged as GST. The supply should have been exempt or zero-rated (no GST). In this situation, the correct policy outcome would be for the supplier to issue a credit note and make an adjustment for the incorrectly returned $15. The recipient (if GST registered) would then make an adjustment for $15 incorrectly claimed.

10. However, according to the recent interpretation, the GST adjustment is instead limited to the tax fraction (3/23rds) of the price adjustment. Since the price adjustment is $15, the GST adjustment is limited to $1.96 (3/23 x $15) rather than $15.

11. This interpretation would not accommodate common commercial practices whereby GST registered persons issue credit notes to provide a $15 GST adjustment (rather than amending the original return). Although GST registered persons can request approval from Inland Revenue to amend their original GST return to get the correct $15 GST adjustment, this approach is inferior to using a credit note as it involves additional compliance costs and administrative costs for the registered persons.

Issue two: Application of the time bar to credit notes

12. The second issue concerns whether the "time bar" is effective at limiting GST refunds which arise due to credit note adjustments. The ability to adjust a GST return to claim a GST refund is "time-barred" which means a GST registered person can only claim a GST refund in respect of GST returns that were filed less than 4 (or in cases of a clear mistake or simple oversight less than 8) years prior to the current date.

13. In contrast, because the credit note is issued on the current date, the time bar may be ineffective in respect of a credit note adjustment. This poses a potentially large fiscal risk as it means a GST registered person may be able to use credit notes to claim large GST refunds if they discovered they had been applying an incorrect GST treatment for a long time (e.g. more than 8 years). This would be contrary to the policy intent of the time bar on GST refunds.

14. There is an existing provision that applies a 7 year "time bar" to credit notes that are issued as a result of when a land sale was incorrectly standard-rated less than 7 years ago.

15. A time limit from the date of a supply could also be introduced for other cases where a credit note is used. This time limit could be aligned with the 4 year (or 8 year in cases of a clear mistake or simple oversight) time bar that applies to GST refunds which are made through amendments to GST returns.

16. We recommend including amendments in the next taxation Bill to address both of these GST credit note issues.

Financial implications

17. The proposed changes to the credit note provisions would not have any fiscal impacts. Allowing credit notes to be used to claim back the full amount of GST included in a supply that has been incorrectly standard rated aligns with a common commercial practice. Introducing a time bar for credit notes would mitigate a potential fiscal risk but would not increase baselines.

18. As noted in the report on 17 September, delaying the application date of the changes to the GST rules for telecommunications services by six months to 1 April 2021 would have a fiscal cost of $3.520 million. This would be a charge against the tax policy scorecard.

Consultation

19. The Treasury has been consulted in the preparation of this report and the attached Cabinet paper.

Next steps

20. The attached Cabinet paper will need to be lodged with the Cabinet office by 10am Thursday 14 November for consideration at the DEV Committee meeting on 20 November. Once Cabinet approval has been received officials will begin drafting the necessary changes to the GST Act for inclusion in the next taxation bill, currently scheduled for introduction in March 2020.

Recommended action

We recommend that you:

21. **note** that you and the Minister of Finance have previously agreed to apply GST to outbound mobile roaming services and to delay the application date for these changes by six months to 1 April 2021 (refer IR2019/351);

    Noted

22. **agree** to flexibility being provided around how the GST Act is amended to apply GST to outbound mobile roaming services;

    Agreed/Not agreed

23. **agree** to allow credit notes to be used to claim back the full amount of GST included in a supply that was incorrectly standard rated;

    Agreed/Not agreed

24. **agree** to apply a time limit from the date of a supply in which a credit note may be issued. This time limit could be aligned with the 4 year (or 8 year in cases of a clear mistake or simple oversight) time bar that applies to GST refunds which are made through amendments to GST returns;

    Agreed/Not agreed

25. **authorise** the attached Cabinet paper for lodgement with the Cabinet Office by 10am Thursday 14 November 2019;

    Authorised and lodged

26. **refer** a copy of this report to the Minister of Finance for their information.

    Referred/Not referred

Graeme Morrison
Policy Lead
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

GST AMENDMENTS FOR INCLUSION IN THE NEXT OMNIBUS TAXATION BILL

Proposal

1. This paper seeks the Cabinet Economic Development Committee's (the Committee) agreement to a number of miscellaneous measures that require changes to the Goods and Services Tax Act 1985 (the GST Act).

2. If approved, I propose including the necessary legislative amendments in the next omnibus taxation bill for introduction in 2020.

Executive Summary

3. This paper has been prepared to obtain the Committee's agreement to a number of miscellaneous GST policy matters for inclusion in the next omnibus taxation bill currently scheduled for introduction in March 2020. In particular, this paper seeks the Committee's agreement to:

   3.1 Confirm the earlier Cabinet decision to apply GST to outbound mobile roaming services (refer *DEV-19-MIN-0059*).

   3.2 Provide flexibility around how the GST Act is amended to apply GST to outbound mobile roaming services.

   3.3 Delay the application date for the changes to the GST rules for telecommunications services to 1 April 2021 (from 1 October 2020 as previously agreed by Cabinet (refer *DEV-19-MIN-0059*)).

   3.4 Allow credit notes to be used to claim back the full amount of GST included in a supply that was incorrectly standard rated (subject to GST at 15%) but should have been zero-rated (subject to GST at 0%) or been exempt.

   3.5 Introduce a provision to apply a time limit from the date of a supply in which a credit note may be issued.

GST and telecommunications services

Background

4. Currently GST does not apply to either outbound mobile roaming services received by New Zealand residents travelling overseas or inbound mobile roaming services received by non-residents in New Zealand. As such, on 8 April 2019 Cabinet agreed as part of Budget 2019 to repeal the special rules in the GST Act for telecommunications services and align the GST treatment of most of these services with the treatment of other remote services (refer DEV-19-MIN-0059). These proposed changes to the GST rules for telecommunications services were not

intended to change the GST treatment of most telecommunications services. However, it would result in outbound mobile roaming services becoming subject to GST at the standard rate of 15%.

5. Special rules were also proposed for particular situations such as a New Zealand resident using a foreign SIM card while travelling overseas and services such as making a call from a phone booth.

6. Cabinet agreed to an application date of 1 October 2020 for the proposed changes.

7. Following Budget 2019, the issues paper *GST on telecommunications services* was released to consult on the technical details of the proposed rules.

8. Submissions closed on 28 June and in total six submissions were received from Deloitte (on behalf of Vodafone, Spark and 2Degrees), Chartered Accountants Australia and New Zealand (CA ANZ), the Corporate Taxpayers Group (CTG), KPMG, PwC and EY. Following the close of submissions officials undertook further consultation with Deloitte and representatives of the telecommunications industry.

9. The submissions from Deloitte (on behalf of Vodafone, Spark and 2Degrees), CA ANZ, CTG and KPMG were all strongly opposed to the proposal to add GST to outbound mobile roaming services. The telecommunications industry in particular was strongly opposed to the proposal and argued for maintaining the status quo in which both outbound and inbound mobile roaming services are not subject to GST. The telecommunications industry also indicated that they would strongly oppose the proposal when it was included in a subsequent bill, in particular at the select committee stage.

10. PwC expressed support for the proposal as they considered it consistent with the OECD's *International VAT/GST Guidelines*. EY also expressed in principle support for the proposal but was concerned the benefits may be outweighed by the additional compliance costs imposed on the telecommunications industry.

Applying GST to outbound roaming services

11. Despite the opposition to the proposal raised through consultation, I still recommend that GST apply at the standard rate of 15% to outbound mobile roaming services received by New Zealand residents travelling overseas. Applying GST to outbound mobile roaming services is consistent with New Zealand's broad-based GST framework and the OECD's *International VAT/GST Guidelines*.

12. Cabinet had earlier agreed to apply GST to outbound mobile roaming services by repealing most of the special GST rules applying to telecommunications services and aligning the treatment of most telecommunications services with the treatment of other remote services (refer *DEV-19-MIN-0059*). However, through consultation the telecommunications industry has indicated that they consider the special GST rules for telecommunications services to be operating well. Instead of repealing these special GST rules, GST could instead be applied to outbound roaming services by introducing a new provision deeming outbound mobile roaming services to be subject to GST at the standard rate of 15%.

13. I therefore recommend that the earlier specific Cabinet decision to repeal most of the special GST rules applying to telecommunications services be rescinded and instead the Committee agree to simply apply GST at the standard rate of 15% to outbound mobile roaming services. This will provide flexibility around how the legislative amendments to apply GST at the standard rate of 15% to outbound roaming services are drafted. Officials will consult with tax practitioners and the telecommunications industry on how best to draft the changes to the GST Act.

Application date

14. Cabinet has previously agreed to an application date for the changes to the GST rules for telecommunications services of 1 October 2020. However, the bill containing these changes is currently scheduled for introduction in March 2020. This would mean that there would likely be little or no time between the legislation being enacted and the original application date of 1 October 2020. If the bill is not passed before the next general election, enactment might not occur until after 1 October 2020.

15. A very short time period between the bill being enacted and the application date may not give the telecommunications industry sufficient time to make the necessary systems changes to apply GST to outbound mobile roaming services. Through consultation it was revealed that the billing systems of telecommunications suppliers are complex as they need to operate in real time to ensure a person is correctly charged as they use a telecommunications network. Updating these billing systems to charge GST on outbound mobile roaming services would therefore require telecommunications suppliers to do extensive testing to ensure the change does not cause any issues for their billing systems. Making these changes to their billing systems may also cause telecommunications suppliers to divert resources from other systems changes.

16. Given the factors discussed above, I recommend the application date for the changes to the GST rules for telecommunications services be delayed by six months to 1 April 2021.

Financial Implications

17. Owing to more accurate information obtained through consultation, the revenue forecasts for applying GST to outbound mobile roaming services have been adjusted down. Applying GST to outbound mobile roaming services from 1 October 2020 is now estimated to increase GST revenue by $26.404 million over the forecast period as shown below:

	$m - increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	5.281	7.041	7.041	7.041

18. In addition, agreeing to delay the application date to 1 April 2021 will have a fiscal cost of $3.520 million in 2020/21. This can be accounted for on the tax policy scorecard as shown below:

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	(3.520)	-	-	-

19. The tax policy scorecard is an accounting mechanism designed to ensure that the cumulative net revenue impacts of non-significant tax policy changes are considered in aggregate. It acts as a memorandum account attached to the Between-Budget contingency.

Credit Notes

20. Credit notes are issued when the price of a supply is reduced after a tax invoice was issued, for example if a refund is provided when faulty goods are returned.

Using credit notes for incorrectly standard rated supplies

21. In cases where a GST registered business has incorrectly standard-rated (applied GST at 15%) a supply of goods or services which should in fact have been exempt (e.g. a financial service) or zero-rated (e.g. an export), it is common to use a credit note to correct this, rather than applying to Inland Revenue to approve an amendment to the original GST return. Using a credit note is preferred to applying to Inland Revenue to amend the original return as it reduces compliance and administrative costs for the registered person.

22. I therefore recommend an amendment to clarify that the credit note provision provides the correct amount of GST adjustment in such cases (so the amount of GST adjustment is the same as if the taxpayer had amended their original GST return).

Time bar for issuing credit notes

23. The ability to adjust a GST return to claim a GST refund is “time-barred” which means a GST registered person can only claim a GST refund in respect of GST returns that were filed less than 4 (or in cases of a clear mistake or simple oversight less than 8) years prior to the current date. In contrast, because the credit note is issued on the current date, the time bar may be ineffective in respect of a credit note adjustment. This poses a potentially large fiscal risk as it means a GST registered person may be able to use credit notes to claim large GST refunds if they discovered they had been applying an incorrect GST treatment for a long time (e.g. more than 8 years). It would also undermine the policy intent of the time bar on GST refunds.

24. There is an existing provision that applies a 7 year time limit to credit notes that are issued as a result of a land sale being incorrectly standard-rated (subject to GST at 15% when it should have been subject to GST at 0%).

25. I recommend inserting a provision to apply a time limit to other cases where a credit note is used. This time limit could be aligned with the 4 year (or 8 year in cases of a clear mistake or simple oversight) time bar that applies to GST refunds which are made through amendments to GST returns.

Consultation

26. No public consultation has been undertaken on the proposal to ensure a time limit applies to issuing credit notes as informing taxpayers that the existing time bar for GST refunds may be ineffective in these cases could expose the Government to a significant fiscal risk. In particular, a GST registered person may be able to use credit notes to claim large GST refunds if they discovered they had been applying an incorrect GST treatment for a long time (e.g. more than 8 years). To manage this risk the proposed amendment could apply from the date that the proposed amendment is announced (or introduced in a bill).

Financial Implications

27. The proposed changes to the credit note provisions would not have any fiscal impacts. Allowing credit notes to be used to claim back the full amount of GST included in a supply that has been incorrectly standard rated aligns with a common commercial practice. Introducing a time bar for credit notes would mitigate a potential fiscal risk but would not increase baselines.

Legislative Implications

28. Implementing the proposals in this paper requires changes to the Goods and Services Tax Act 1985.

29. If approved, I propose including the legislative changes resulting from these recommendations in the next omnibus taxation bill, currently scheduled for introduction in the first quarter of 2020.

Impact Analysis

30. The Impact Analysis Requirements apply to the proposals in this Cabinet paper and, therefore, the following Regulatory Impact Assessments (RIA) have been prepared and are attached to the Cabinet paper:

    30.1 Impact Summary: GST and telecommunications services

    30.2 Impact Summary: GST refunds using credit notes

31. The Quality Assurance reviewer at Inland Revenue has reviewed the *GST on telecommunications services* RIA prepared by Inland Revenue and considers that the information and analysis summarised in it **meets** the quality assurance criteria.

32. The Quality Assurance reviewer at Inland Revenue has reviewed the *GST refunds using credit notes* RIA and considers that the information and analysis summarised in it **partially meets** the quality criteria of the Regulatory Impact Analysis framework.

33. The Key Limitations or Constraints on Analysis section of the RIA notes that no consultation has been undertaken on the specific proposals and the amount of fiscal risk from not changing issue two is unable to be quantified. The first proposal is taxpayer favourable and maintains current operational practice. The second

proposal is a base maintenance change consistent with the policy intent and the fiscal impact, although not quantifiable poses a significant risk if not addressed. The reviewer considers that the information in the RIA is as complete as could be expected and identifies the main risks and uncertainties.

Human Rights

34. The proposals in this paper do not impinge on rights and freedoms under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Gender Implications

35. There are no gender implications arising from these proposals.

Disability Perspective

36. No disability issues arise from these proposals.

Publicity

37. I will make an announcement on the contents of the next omnibus taxation bill, including these proposals, when the bill is introduced. A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

38. I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers until the introduction of the omnibus taxation bill containing these proposals. The expected introduction date for this bill is March 2020.

39. Drawing attention to the credit note time bar issue before legislation is introduced may create a fiscal risk.

Recommendations

The Minister of Revenue recommends that the Cabinet Economic Development Committee:

Telecommunications services

1. **Note** that on 8 April 2019 Cabinet agreed to apply GST at the standard rate of 15% to outbound mobile roaming services received by New Zealand residents travelling overseas by making some specific changes to the Goods and Services Tax Act 1985 (refer *DEV-19-MIN-0059*, *recommendations 1.1-1.5*);

2. **Note** that there are ways other than those previously agreed to by Cabinet (refer *DEV-19-MIN-0059, recommendations 1.1-1.5*) in which the Goods and Services Tax Act 1985 could be amended to apply GST at 15% to outbound mobile roaming services;

3. **Agree** to provide flexibility around how the Goods and Services Tax Act 1985 is amended to apply GST at 15% to outbound mobile roaming services by recommending that Cabinet rescind its decision in recommendations 1.1-1.5 of *DEV-19-MIN-0059* and instead simply agree that GST apply at the standard rate of 15% to outbound mobile roaming services;

4. **Note** that on 8 April 2019 Cabinet agreed to an application date for the proposed changes to the GST rules for telecommunications services of 1 October 2020 (refer *DEV-19-MIN-0059*);

5. **Agree** to delay the application date for the proposed changes to the GST rules for telecommunications services by six months to 1 April 2021;

6. **Note** that agreeing to delay the application date by 6 months to 1 April 2021 would have a fiscal cost of $3.520 million in 2020/21 which can be accounted for on the tax policy scorecard as shown below:

	$m - increase/(decrease)				
Vote Revenue Minister of Revenue	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	(3.520)	-	-	-

Credit Notes

7. **Agree** to allow credit notes to be used to claim back the full amount of GST included in a supply that was incorrectly standard rated (subject to GST at 15%) but should have been zero-rated (subject to GST at 0%) or been exempt;

8. **Agree** to apply a time limit from the date of a supply in which a credit note may be issued. This time limit could be aligned with the 4 year (or 8 year in cases of a clear mistake or simple oversight) time bar that applies to GST refunds which are made through amendments to GST returns;

9. **Note** that there are no fiscal impacts from agreeing to the recommended changes to the rules for credit notes;

Legislative vehicle

10. **Agree** that the legislative amendments to the Goods and Services Tax Act 1985 required to give effect to the changes recommend in this paper be included in the next omnibus taxation bill currently scheduled for introduction in March 2020;

11. **Invite** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to give effect to the changes recommended in this paper;

12. **Agree** to delegate authority to the Minister of Revenue to make decisions on the detailed design of the changes recommended in this paper;

Proactive Release

13. **Note** that, to prevent creating a fiscal risk by drawing the public's attention to the credit note time bar issue, the release on Inland Revenue's website of this Cabinet paper, the associated Cabinet minute, and key advice papers will be delayed until after the introduction of the omnibus taxation bill containing the changes recommended in this paper.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue

Impact Summary: GST on telecommunications services

Section 1: General information

Purpose
Inland Revenue is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment (RIA), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis
An assumption has been made that applying GST or VAT to outbound mobile roaming services is more likely to become the common approach worldwide. This assumption is based on the OECD finalising in 2017 its *International VAT/GST Guidelines* (*the Guidelines*) which set forth internationally agreed standards for the GST/VAT treatment of international transactions and the European Union applying VAT to outbound roaming services received by its residents. Under the *Guidelines,* remote services (which includes telecommunications services) should generally be subject to GST/VAT in the country that the recipient of the services is normally resident.
Quality Assurance Reviewing Agency:
Inland Revenue
Quality Assurance Assessment:
The Quality Assurance reviewer at Inland Revenue has reviewed the *GST on telecommunications services* regulatory impact assessment prepared by Inland Revenue and considers that the information and analysis summarised in it **meets** the quality assurance criteria.
Reviewer Comments and Recommendations:
The reviewer's comments on earlier versions of this RIA have been incorporated into this version.
Responsible Manager (signature and date):
Graeme Morrison Policy Lead Policy and Strategy Inland Revenue 23 October 2019

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?
Under New Zealand's current GST rules for telecommunications services both outbound mobile roaming services received by New Zealand residents travelling overseas and inbound mobile roaming services received by non-residents in New Zealand are not subject to GST (or are subject to GST at the rate of 0%).[1] The current rules are inconsistent with New Zealand's broad-based GST framework, under which one of outbound or inbound mobile roaming services should be subject to GST. As GST is intended to be a tax on final consumption, applying GST to either outbound or inbound mobile roaming services received by GST registered businesses should not have a net revenue benefit. Businesses receiving roaming services should (if GST-registered and using the services for making taxable supplies) be able to claim back the GST incurred on these services as an input tax deduction. The net revenue benefit from applying GST to either outbound or inbound mobile roaming services should therefore only be the GST incurred by final consumers. The OECD released *International VAT/GST Guidelines* in 2017. Under these Guidelines remote services (including telecommunications services) should generally be subject to GST or VAT in the jurisdiction where the recipient of the service is normally resident. Remote services are services in which there is no necessary connection between the place of performance of the services and the location of the recipient of the services. In light of the OECD's Guidelines, the European Union (EU) and the United Kingdom (UK) have begun applying VAT to outbound mobile roaming services received by their residents travelling overseas. However, in over 80 other jurisdictions (including Canada, Japan and Singapore) GST, VAT or a local sales tax is added to inbound mobile roaming services, generally by applying these taxes to the wholesale roaming services supplied by local telecommunications suppliers to foreign telecommunications suppliers to enable the supply of inbound mobile roaming services. The GST/VAT rules for telecommunications services in most of these jurisdictions pre-date the OECD finalising its *International VAT/GST Guidelines*. It is unclear whether these countries have made a considered decision to maintain their pre-existing rules for telecommunications services or if they have simply not reviewed these rules yet in light of the OECD's *Guidelines*. Like New Zealand's current rules, Australia does not apply GST to either outbound or inbound mobile roaming services. The differing treatment of mobile roaming services around the world can result in both double taxation and double non-taxation. For example, the roaming services received by an EU resident travelling in Canada would be subject to GST/VAT in both the EU and Canada. Conversely, the roaming services received by a Canadian resident in the EU would not be

[1] Inbound mobile roaming services may, in certain circumstances, be subject to GST but these circumstances rarely arise.

subject to GST/VAT in either jurisdiction.

On 8 April 2019 Cabinet agreed as part of Budget 2019 to amend the GST rules for telecommunications services to apply GST to outbound mobile roaming services from 1 October 2020 (refer *DEV-19-MIN-0059*). The issues paper *GST and telecommunications services* was then released on 17 May 2019 to consult on the detailed design of the proposed changes.

This RIA updates the analysis of options following consultation on the issues paper. However, the proposed option is still to apply GST to outbound mobile roaming services.

Application date

Cabinet has previously agreed to an application date for the proposed changes to the GST rules for telecommunications services of 1 October 2020. However, this application date may not give telecommunications suppliers enough time to make and test the necessary systems changes to apply GST to outbound mobile roaming services.

2.2 Who is affected and how?

The affected parties are suppliers of telecommunications services and the consumers of these services. New Zealand telecommunications suppliers will be affected as the proposed options would impact on the GST treatment of their supplies of outbound mobile roaming services. Consumers of telecommunications services will be affected as the price they pay for mobile roaming services may increase depending on whether suppliers pass on the full GST cost, or alter their pricing strategies.

2.3 Are there any constraints on the scope for decision making?

Applying GST to the actual inbound mobile roaming services supplied by foreign telecommunications suppliers to non-residents travelling in New Zealand is unlikely to be a viable option and has therefore not been considered. Many telecommunications suppliers sell global or regional roaming packs that allow a consumer to roam in multiple jurisdictions for a single fee. At the time of supply the telecommunication supplier will not know which jurisdiction a consumer will consume the roaming services in. Furthermore, a consumer may consume the roaming services in multiple jurisdictions. If the actual inbound roaming services were subject to GST it would therefore be likely to cause telecommunications suppliers significant difficulties in attempting to apportion roaming charges between the different jurisdictions in which a customer consumed the roaming service.

Section 3: Options identification

3.1 What options have been considered?

The objective is to maintain New Zealand's broad-based GST framework by extending the application of GST to more services. The following criteria have been used to assess the options against this objective:

- Destination principle: The option should be consistent with the principle that GST or VAT should generally apply in the jurisdiction in which consumption occurs.
- Business neutrality: The option should be consistent with the principle that GST should be borne by final consumers and should not be a cost to businesses.
- International consistency: The option should give consideration to approaches taken internationally to minimise instances of double taxation or double non-taxation.
- Compliance costs – The option should minimise compliance costs for telecommunications suppliers as much as possible.

Option 1: Status quo

Under the status quo both outbound and inbound roaming services are not subject to GST at 15%.

The status quo does not achieve the objective as, under New Zealand's broad-based GST framework, GST should apply to one of outbound or inbound mobile roaming services.

Option 2: Apply GST at 15% to outbound mobile roaming services (proposed option)

Under this option, outbound mobile roaming services received by New Zealand residents travelling overseas would become subject to GST at the standard rate of 15%.

The gross GST that would be collected under this option is estimated to be $12.993 million per annum. However, GST registered businesses paying GST on the outbound mobile roaming services they receive would be able to claim back this GST as an input tax deduction. It is therefore estimated that this option would increase net GST revenue by $7.041 million per annum.

<u>Analysis of option</u>

This option would be consistent with the objective of maintaining New Zealand's broad-based GST framework as it would add GST to the entire outbound mobile roaming services received by New Zealand residents travelling overseas.

Applying GST to outbound mobile roaming services is not consistent with the destination principle as to receive mobile roaming services a New Zealand resident must be outside New Zealand. However, there are circumstances in which it is appropriate to depart from the destination principle. The OECD's *Guidelines* recommend using a consumer's usual place of residence for determining which jurisdiction's GST or VAT applies to a supply of remote services (including telecommunications services) regardless of the physical location of the consumer. For example, if a New Zealand resident downloads a movie while on holiday in Australia, New Zealand GST should apply to the download of the movie. This departure from the destination principle is considered appropriate as often the supplier of a remote service will not know the actual location of the consumer and therefore the consumer's residency is considered an appropriate proxy for the most likely place of consumption of remote services.

This option would be consistent with the principle of business neutrality as GST-registered business can claim back the GST they incur as an input tax deduction.

This option would be consistent with rules in the European Union and the United Kingdom which apply VAT to outbound mobile roaming services received by their residents.

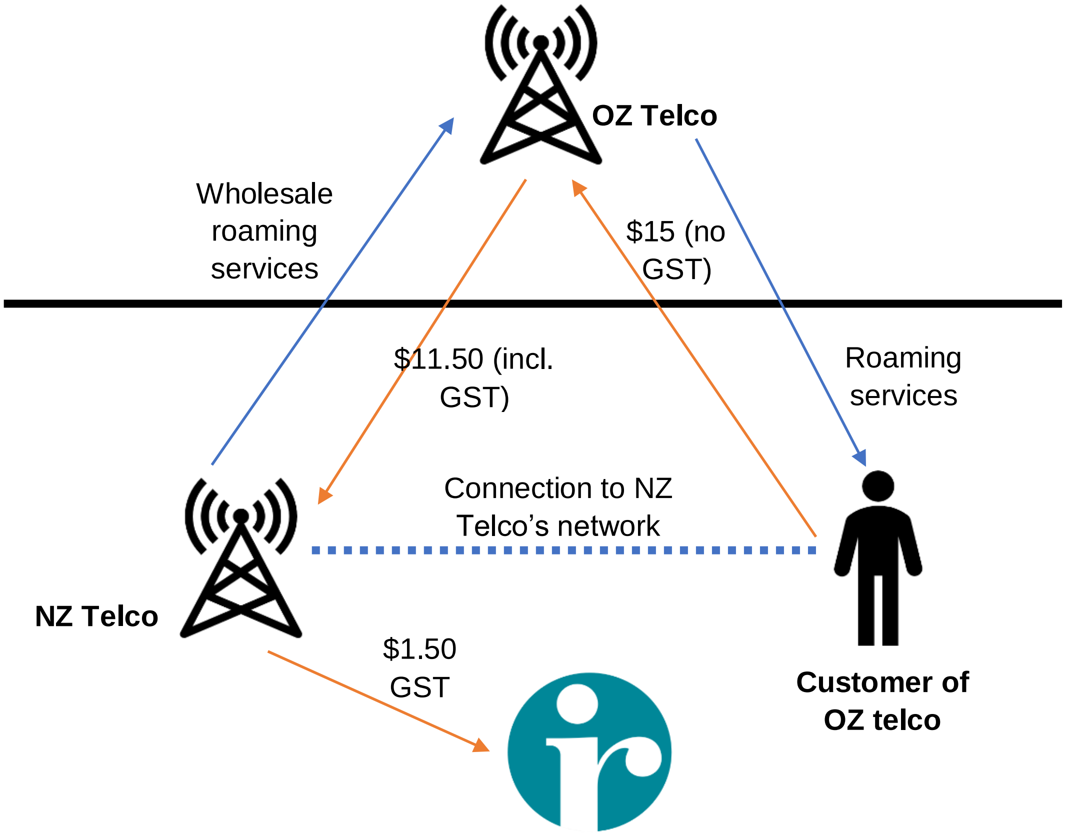
However, this option would be inconsistent with the approach taken in over 80 other jurisdictions which add GST, VAT or a local sales tax to inbound mobile roaming services, generally by applying GST to wholesale mobile roaming services. However, the rules in many of these jurisdictions pre-date the OECD finalising its *International VAT/GST Guidelines.*

The option would also be inconsistent with Australia which, like New Zealand's current rules, does not apply GST to either outbound or inbound roaming services.

The telecommunications industry has estimated that this option would impose on the industry compliance costs associated with updating their billing systems of approximately $1 million. They would also incur costs associated with notifying their customers of the change in the GST treatment of outbound roaming services. The compliance costs for this option would be a one-off cost and on-going compliance costs would be comparable to the status quo.

Option 3: Apply GST to inbound wholesale mobile roaming services

GST could be added to inbound roaming by applying GST to the wholesale mobile roaming services supplied by New Zealand telecommunications suppliers to foreign telecommunications suppliers to enable the foreign telecommunications suppliers' customers to roam in New Zealand. This would result in unrecoverable GST being embedded in the price of roaming services received by non-residents travelling in New Zealand. The diagram on the following page illustrates how applying GST to wholesale roaming charges would work.



As can be seen in the above diagram, applying GST to the wholesale roaming charges would add GST on to the services NZ Telco supplies to OZ Telco to allow OZ Telco's customers to roam in New Zealand. There is no GST on the actual supply of roaming to OZ Telco's customer. However, GST is embedded in the price of the roaming services received by OZ Telco's customer as OZ Telco is unable to claim an input tax deduction for the GST they paid to NZ Telco.

It is estimated that this option would increase GST revenue by $3.8 million per annum. As GST would be imposed on the wholesale roaming services rather than the actual inbound mobile roaming services, non-resident businesses consuming inbound mobile roaming services in New Zealand would not be able to claim back the GST embedded in the price of these services. As such, there is no need to consider the difference between gross and net GST revenue under this option.

Analysis of option

This option partially achieves the objective of maintaining New Zealand's broad-based GST system as it would add GST to the price of inbound roaming services received by non-residents travelling in New Zealand. However, the margins charged by the suppliers of inbound roaming services would remain untaxed.

This option would be consistent with the destination principle.

Applying GST to wholesale roaming services is inconsistent with the principle of business neutrality as it would add unrecoverable GST to the price of inbound roaming services received by non-resident businesses in New Zealand.

This option is inconsistent with the approach taken in the European Union and United

Kingdom. However, it would be consistent with the approach taken in over 80 other jurisdictions which apply GST or VAT to wholesale roaming services. Like option 2, this option is also inconsistent with the approach taken to mobile roaming services in Australia.

The telecommunications industry has not quantified the cost of making systems changes to add GST to wholesale mobile roaming services. However, the industry considers that these costs would not be insignificant. Officials consider that the costs of making systems changes for this option may be similar to the costs of making systems changes for option 2. This option would also impose costs on the New Zealand telecommunications industry related to reviewing and potentially re-negotiating their contracts with foreign telecommunications suppliers. As with option 2, the compliance costs of this option would be one-off costs and on-going compliance costs would be comparable to the status quo.

Application date

An application date of 1 October 2020 was originally proposed for the proposed changes to the GST rules for telecommunications services. However, it is proposed to delay this application date by six months to 1 April 2021.

The bill containing the changes to the GST rules for telecommunications services is scheduled for introduction in March 2020. This would mean that there may be little or no time between the legislation being enacted and the original application date of 1 October 2020. If the bill is not passed before the next general election, enactment might not occur until after 1 October 2020.

A very short time period between the bill being enacted and the application date may not give the telecommunications industry sufficient time to make the necessary systems changes to apply GST to outbound mobile roaming services. The billing systems of telecommunications suppliers are complex as they need to operate in real time to ensure a person is correctly charged as they use the network. As such, while changing outbound mobile roaming services from a zero-rated supply to a standard rated supply is itself a simple change, the telecommunications suppliers would need to do extensive testing to ensure the change does not cause any issues for their billing systems.

Given, the factors discussed above, delaying the application date by six months to 1 April 2021 is considered appropriate.

Delaying the application date by six months would have a fiscal cost of $3.52 million.

3.2 Which of these options is the proposed approach?
The proposed approach is to apply GST at the standard rate of 15% to outbound mobile roaming services received by New Zealand residents travelling overseas from 1 April 2021 (option 2 with a six-month delay to the application date previously agreed by Cabinet). While applying GST to outbound mobile roaming services is less consistent with the destination principle than the status quo, it best achieves the objective of maintaining New Zealand's broad-based GST framework and is more consistent with the principle of business neutrality than applying GST to wholesale roaming services. Furthermore, while there is no clear international consensus at this stage, officials consider that, in light of the OECD's *International VAT/GST Guidelines* and the approach taken by the European Union, applying GST to outbound roaming services is more likely to become the common approach worldwide. The proposed approach is aligned with the Government's expectations for the design of regulatory systems.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment:	Impact
Additional costs of proposed approach, compared to taking no action		
Regulated parties (suppliers)	One-off compliance costs in complying with the change in GST treatment of telecommunications services.	Approximately $1 million
Regulators (Inland Revenue)	Administration costs of proposed approach are comparable to the status quo.	Low
Wider government	Fiscal cost from delaying application date by six months	$3.52 million
Other parties (consumers)	Potential increase in the costs of outbound roaming services supplied to New Zealand residents whilst outside New Zealand. Whether the costs of roaming increase depends on whether and to what extent suppliers pass the GST cost onto consumers or alter their pricing strategies.	Up to $7.041m per annum if suppliers increase their roaming prices to fully recover the GST. This cost would be spread across New Zealand residents who travel overseas each year
Total Monetised Cost		$7.041m per annum (on-going) $4.52 million one-off cost
Non-monetised costs		*Low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties (suppliers)	Extra six months to make the required systems changes	Low
Regulators (Inland Revenue)	None	None
Wider government	Increase in GST revenue. Applying GST to outbound mobile roaming services helps to maintain the broad-based framework which underpins New Zealand's GST system.	$7.041 million per annum Low
Other parties (consumers)	Reduced GST payments from six-month delay in application date	$3.52 million
Total Monetised Benefit		$7.041 million per annum $3.52 million one-off benefit
Non-monetised benefits		*Low*

4.2 What other impacts is this approach likely to have?
We do not anticipate the proposed approach would have any other impacts. We will consult with tax advisors and the telecommunications industry on how best to draft the changes to the GST Act to ensure there are no unintended impacts. The select committee process will also be used to ensure there are no unintended impacts.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

The issues paper *GST on telecommunications services* was released on 17 May 2019 to consult on the technical details of the proposal to apply GST to outbound mobile roaming services. Submissions closed on 28 June and in total 6 submissions were received. Following the close of submissions officials conducted further consultation with representatives of the telecommunications industry.

Support for the proposal

Two submissions from accounting firms expressed support for the proposal as they consider it consistent with the OECD's *International VAT/GST Guidelines*. However, one of these submissions expressed concerned that the benefits of the proposal would be outweighed by the compliance costs.

Opposition to the proposal

Four submissions, including one made on behalf of the telecommunications industry, were strongly opposed to the proposal to add GST to outbound roaming services. In further consultation with the telecommunications industry they have regularly expressed their opposition to the proposal.

The key argument raised in opposition to the proposal was that, as outbound roaming services can only be consumed outside New Zealand, it would be contrary to the destination principle to apply New Zealand GST to outbound roaming services received by New Zealand residents overseas. Under the destination principle, GST should generally apply in the jurisdiction in which consumption occurs.

In arguing that it is inappropriate to apply GST to outbound roaming some submitters also argued that roaming services are on-the-spot services and not remote services as a consumer needs to be in the vicinity of a cell tower to receive the service. In arguing that roaming services are on-the-spot services these submitters were arguing that it would be inappropriate to use a consumer's usual place of residence to determine which jurisdiction's GST or VAT applied to a supply of roaming services. However, roaming services should not be considered on-the-spot services as they are not physically performed at a readily identifiable place,[2] and do not require the physical presence of both the person performing the service and the person consuming the service.

The New Zealand telecommunications industry's strong preference is for the status quo to be

[2] Telecommunications services tend to have multiple places of performance and it is difficult to identify a single place of performance. The GST rules for telecommunications services were introduced to address this issue.

maintained. They note that while it is not a conceptually pure option, the existing rules for telecommunications services have been working well and the consider the status quo to be less of a compromise on a conceptually pure GST system than the proposed option. Furthermore, they do not consider that the increase in GST revenue of $7.041 million per annum would justify the one-off compliance costs of approximately $1 million from making changes to their billing systems.

Application date

The telecommunications industry suggested a delayed application date would be appropriate given the time required to make and test systems changes. They are therefore likely to welcome the delayed application date of 1 April 2021.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?
Following Cabinet approval, the necessary amendments to the Goods and Services Tax Act 1985 will be included in an omnibus tax bill currently scheduled for introduction in March 2020. The proposals are intended to apply to supplies of telecommunications services from 1 April 2021. Inland Revenue will be responsible for the on-going administration of the new arrangements. Inland Revenue officials have assessed the magnitude of these administrative impacts and consider that they would be comparable to the status quo. Guidance on how the proposed approach would work would be provided in bill commentary published at introduction of the legislation and a Tax Information Bulletin published after enactment.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?
Inland Revenue will monitor the outcomes to confirm that they match the policy objectives. Officials from Inland Revenue expect that, once the proposals are enacted, affected telecommunications suppliers and their tax advisors will raise with them any concerns they have with how the rules are working in practice. Any necessary changes identified as a result would be recommended for addition to the Government's tax policy work programme.

7.2 When and how will the new arrangements be reviewed?
The review will be the monitoring described in section 7.1 above.

Impact Summary: GST refunds using credit notes

Section 1: General information

Purpose
Inland Revenue is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment (RIA), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

Number of affected parties and potential future fiscal risks are unknown

The potential future fiscal risk that the time bar may be ineffective for GST refunds made using credit notes is unknown as it depends on the scale of the particular issue that gave rise to the refund (e.g. changing interpretations or errors by the affected businesses that have not yet been identified) and number of past years affected. Therefore, it is not possible to estimate these amounts – although in some potential cases they could be in the tens of millions of GST revenue.

Limited consultation with affected parties

Issue one: ***Correct amount of GST adjustment***

A draft interpretation of the current law on the first issue is currently being consulted on and the initial feedback that has been received supports the proposed policy change as it would align the law with common business practices.

Some submissions were received on a similar proposal in 2012 (see section 5.1 below for more detail) which have been used to inform this RIA.

However, there has been no specific consultation on the proposed changes.

Issue two: ***Application of the time bar to credit notes***

The second issue has not been consulted on with external parties as informing external parties that the time bar may be ineffective could expose the Government to a significant fiscal risk. A GST registered person may be able to use credit notes to claim large GST refunds if they discovered they had been applying an incorrect GST treatment for a long time (e.g. more than 8 years).

Consultation will occur once the bill is introduced and during the Select Committee stage of the bill.

Quality Assurance Reviewing Agency:
Inland Revenue
Quality Assurance Assessment:
The Quality Assurance reviewer at Inland Revenue has reviewed the *GST refunds using credit notes* RIA and considers that the information and analysis summarised in it **partially meets** the quality criteria of the Regulatory Impact Analysis framework. The Key Limitations or Constraints on Analysis section of the RIA notes that no consultation has been undertaken on the specific proposals and the amount of fiscal risk from not changing issue two is unable to be quantified. The first proposal is taxpayer favourable and maintains current operational practice. The second proposal is a base maintenance change consistent with the policy intent and the fiscal impact, although not quantifiable poses a significant risk if not addressed. The reviewer considers that the information in the RIA is as complete as could be expected and identifies the main risks and uncertainties.
Reviewer Comments and Recommendations:
Comments from the review of earlier versions of this RIA have been incorporated into this version.
Responsible Manager (signature and date):
Graeme Morrison Policy Lead Policy and Strategy Inland Revenue 23 October 2019

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

GST credit notes are issued by a supplier when the price for a supply is reduced after a tax invoice was issued, for example when faulty goods are returned. When a credit note is issued:

- the supplier must make an adjustment in their GST return in the period they issued the credit note; and
- the recipient (if GST registered), must make an adjustment in their GST return in the period they received the credit note.

Through these adjustments, the supplier will effectively be refunded for the GST accounted for on the portion of the supply that was refunded, and the recipient (if GST registered) will be required to repay the GST claimed on the refunded portion of the supply.

Inland Revenue has recently considered how the GST credit note provisions apply in cases where the GST registered business standard-rated (applied 15% GST) to a supply of goods and services which should in fact have been exempt (e.g. a financial service) or zero-rated (e.g. an export).

This has raised two policy issues:

Issue one: *Correct amount of GST adjustment*

Firstly, from a policy perspective the current law may provide an incorrect amount of GST adjustment in situations where a supply was standard-rated but should have been exempt or zero-rated. This is because, the GST adjustment may be limited to the tax fraction (3/23rds) of the adjusted price.

For example, consider a supply of $100 plus $15 of GST which was incorrectly charged. The supply should have been exempt or zero-rated (no GST). In this situation, the correct policy outcome would be for the supplier to issue a credit note and make an adjustment for the incorrectly returned $15. The recipient (if GST registered) would then make an adjustment for $15 incorrectly claimed.

However, according to a draft interpretation that Inland Revenue is currently consulting on, the GST adjustment is limited to the tax fraction (3/23rds) of the price adjustment. Since the price adjustment is $15, the GST adjustment is limited to $1.96 (3/23 x $15) rather than $15.

This interpretation would not accommodate common commercial practices whereby GST registered persons issue credit notes to provide a $15 GST adjustment (rather than amending the original return). Although GST registered persons can request approval from Inland Revenue to amend their original GST return to get the correct $15 GST adjustment, this approach is inferior to using a credit note as it involves additional compliance costs and administrative costs.

Issue two: *Application of the time bar to credit notes*

The second issue concerns whether the "time bar" is effective at limiting GST refunds that arise due to credit note adjustments. The ability to adjust a GST return to claim a GST refund is "time-barred" which means a GST registered person can only claim a GST refund in respect of GST returns that were filed less than 4 (or in cases of a clear mistake or simple oversight less than 8) years prior to the current date.

In contrast, because the credit note is issued on the current date, the time bar may be ineffective in respect of a credit note adjustment. This poses a potentially large fiscal risk as it means a GST registered person may be able to use credit notes to claim large GST refunds if they discovered they had been applying an incorrect GST treatment for a long time (e.g. more than 8 years). This would be contrary to the policy intent of the time bar on GST refunds.

2.2 Who is affected and how?

The first issue affects some GST registered persons (businesses) which have incorrectly charged 15% GST on a sale of goods and services when that sale should in fact have been exempt or zero-rated (0%).

However, GST advisors have informed us it is a common commercial practice to use credit notes to provide the correct amount of GST adjustment in such cases, in which case the proposed law change would simply align with existing practice (and therefore have no impact on compliance costs).

The second issue could potentially provide additional GST refunds to some businesses on rare occasions where they made a mistake more than 4 or 8 years ago. However, it was not intended that GST registered persons could receive additional GST refunds from using a credit note instead of adjusting the original GST return.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the decisions.

Section 3: Options identification

3.1 What options have been considered?

The following criteria was used to assess the options:

- Horizontal equity – the affected parties should be able to achieve the intended policy outcomes and similar outcomes as other groups in similar situations such as those who amend their original GST return.
- Certainty – the affected parties should understand how the tax rules operate.
- Compliance costs and administration costs should be minimised.
- Policy stability / sustainability – the option should be able to be maintained and cope with future developments.

Issue one: *correct amount of GST adjustment issue*

Option 1: No law change (status quo)

GST registered persons will still be required to request approval from Inland Revenue to amend their original GST return to get the correct GST adjustment, or accept a lower GST adjustment through a credit note.

Pros:

- Requirement to amend original return may provide IRD with a greater ability to check / approve the refund.
- IRD can increase certainty by publishing guidance on how the current law operates.

Cons:

- Provides the wrong policy outcome as it results in a much lower amount of GST refund compared to amending the original GST return.
- Uncertain and would impose compliance and administration costs as IRD's draft interpretation does not align with current business practices.
- Inconsistent with self-assessment basis of GST.

Option 2: Make it easier to make the adjustment through amending the GST return

This option would allow the affected GST registered persons to amend their GST returns on a self-assessment basis using Inland Revenue's systems (MyIR). For example, by allowing the amendment to be made in their GST return for the next period, or by relaxing the requirement to apply to Inland Revenue to approve an amendment to an earlier GST return.

Pros:

- May provide IRD with a greater ability to check the refund.

Cons:

- Some additional complexity as to get the correct GST adjustment a different refund mechanism must be used depending on why the GST was incorrect.
- Would impose compliance and admin costs as does not align with current business practices.
- Requires IRD to make systems and process changes and may require a law change.

Option 3: Law change to clarify the correct amount of GST adjustment *(preferred option)*

This option would involve adding a new provision that ensures that when the affected GST registered person issues a credit note for a particular supply, it provides the same amount of GST refund compared to amending the original GST return which included the relevant supply.

Pros:

- Provides the same GST refund amount as amending the original GST return.
- Aligns with current business practices.
- Provides certainty about the refund amounts when GST credit notes are used.
- Reduces compliance and admin costs.

Cons:

- Requires law change.

Issue two: *Application of the time bar to credit notes issue*

Option 1: No law change (status quo)

Because the credit note is issued on the current date, the time bar may be ineffective in respect of a credit note adjustment, even though the relevant supply which is adjusted was included in a GST return more than 4 or 8 years ago.

Pros:

- Allows the business to go back and correct all past mistakes, and claim GST refunds for these, no matter how long ago the mistake occurred.

Cons:

- Potentially large fiscal risk to the Government and could effectively allow GST refunds for time-barred returns contrary to the policy intent of the time bar.
- High compliance and admin costs due to the potentially large refund amounts and the historic nature of the relevant supplies.

Option 2: Align with the time bars which apply for GST refunds made through amending the original GST return *(preferred option)*

This would involve applying a time limit from the date of a supply in which a credit note may be issued. The time limit would match the existing 4 year (or 8 year in the case of a clear mistake or simple oversight) time limits for GST refunds which apply when an amendment is made to the original GST return which included the relevant supply.

Pros:

- Provides the same GST refund amount as amending the original GST return.
- Provides certainty that the time bar applies to credit notes.
- Reduces compliance and admin costs (consistent set of GST refund rules and likely to align with current practices).

Cons:

- Limits the ability to claim GST refunds for past mistakes (but still allows a generous 4 or 8 years for this).

Option 3: Expand an existing provision which provides a 7 year limit for using credit notes when a supply of land has been incorrectly standard-rated

Credit notes cannot be issued in relation to supplies of land which were incorrectly standard-rated more than 7 years ago. This 7 year limit could be expanded to prevent a credit note from being issued in respect of other supplies that occurred more than 7 years ago.

Pros:

- Aligns with an existing 7 year time limit for credit notes and 7 year record-keeping requirements.
- Provides certainty for the time limit that applies to credit notes.

Cons:

- Can allow a different amount of refund to amending the original GST return (as this has a 4 or 8 year time limit) which could change which refund mechanism is used (and increase administration and compliance costs).
- Limits ability to claim GST refunds for past mistakes to 7 years.

3.2 Which of these options is the proposed approach?
Issue one: *Correct amount of GST adjustment*   The preferred option is option 3 – a law change to clarify the correct amount of GST adjustment as it: • Provides the same GST refund amount as amending the original GST return.   • Reduces compliance and administration costs by aligning the law with some common current practices of the affected businesses.   **Issue two: *Application of the time bar to credit notes***   The preferred option is option 2 - align with the time bars which apply for GST refunds made through amending the original GST return because it: • Provides the same GST refund amount as amending the original GST return.   • Reduces compliance and admin costs (consistent set of GST refund rules and likely to align with current practices).   • Should be a sustainable policy as it means credit notes cannot be used to undermine the policy intent of the existing time bars for GST refunds and also removes the risk of a potentially large, unintended fiscal cost to the Government.   The proposed options are compatible with the Government's '*Expectations for the design of regulatory systems'*.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment:	Impact
Additional costs of proposed approach, compared to taking no action		
Regulated parties *(Some GST registered businesses which have incorrectly charged 15% GST)*	***Issue two:*** Lose the potential ability to access an unintended windfall of GST refunds in respect of transactions that took place more than 4 or 8 years ago in "time-barred" periods. ***Both issues:*** Minimal ongoing compliance costs as should be no change compared to current practices for most of the affected businesses.	Unknown, potentially high depending on the scale of the issue that creates the GST refund and number of years affected. Low
Regulators *(Inland Revenue)*	***Both issues:*** Minimal ongoing administration costs as should be no change compared to IRD's current operational practices. One-off cost of law change and associated guidance materials / monitoring and responding to any issues queries with the change.	Low Low
Wider government	No expected costs.	
Other parties	No expected costs.	
Total Monetised Cost	***Both issues:*** Not possible to quantify. It depends on future issues that give rise to this type of GST refund which are unknown.	Potentially high but unable to quantify
Non-monetised costs		*Low*
Expected benefits of proposed approach, compared to taking no action		
Regulated parties *(Some GST registered businesses which have incorrectly charged 15% GST)*	***Issue one:*** Certainty and minimising compliance costs by aligning the law with current practices for most of the affected businesses.	Low
Regulators *(Inland Revenue)*	***Issue two:*** Removes the risk of a potentially large, unintended fiscal cost to the Government.	Unknown, potentially high depending on the scale of the issue that creates the GST refund and number of years affected.

	Both issues: Certainty and minimising compliance costs and systems changes by aligning the law with current operational practices.	Low
Wider government	No expected benefits.	
Other parties	No expected benefits.	
Total Monetised Benefit	***Both issues:*** Not possible to quantify. It depends on future issues that give rise to this type of GST refund which are unknown.	Potentially high but unable to quantify
Non-monetised benefits		*Low*

4.2 What other impacts is this approach likely to have?
No other impacts have been identified from the proposed options.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Issue one: *Correct amount of GST adjustment*

A draft interpretation of the current law on the first issue is currently being consulted on (*PUB 00352, Changing GST treatment after reducing the previously agreed consideration*) and the initial feedback that has been received supports the proposed policy change as it would align the law with common business practices.

A similar set of proposed changes to the credit note rules was consulted on as part of 2012 issues paper *GST remedial issues*. However, a decision was made not to proceed with any changes to the credit note rules in 2012. This was because one part of the 2012 proposals suggested that when a credit note was issued in such circumstances it should be necessary to pass on the GST refund to the purchaser. Submissions from private sector GST advisors disagreed with this aspect of the proposal and noted that whether or not a refund should be paid through to the purchaser was a contractual matter and should not be dictated by the GST Act. The new proposal does not include the aspect which these submitters opposed in 2012.

Issue two: *Application of the time bar to credit notes*

The issue of how the time bar applies to credit notes has not been directly consulted on with external parties. Informing external parties that the time bar may be ineffective in such cases could expose the Government to a significant fiscal risk. To manage this risk the proposed option could apply from the date that the bill containing the proposed amendment is introduced.

Despite this, a proposed option which would have addressed the second issue was referenced in the 2012 consultation document *GST remedial issues* (which asked whether that adjustment should be treated as taking place in the same period as the original supply), but no submissions were received on this option. A decision was made not to proceed with any of the proposed changes to the credit note rules in 2012 due to submitter's disagreeing with one aspect of the 2012 credit note proposals that suggested that the refund should be passed onto the purchaser (described above).

Further consultation

Further consultation on both issues / proposals will occur during the Select Committee stage of any bill containing the proposed amendments.

It is expected that some stakeholders will submit against the proposal to apply a time bar to credit notes as the proposed law change could potentially limit businesses ability to claim a GST refund for errors they made in their GST returns more than 4 or 8 years ago.

However, it was not intended that GST registered persons could receive additional GST refunds from using a credit note instead of adjusting the original GST return as this would be contrary to the policy intent of the time bar on GST refunds. Most of the affected businesses have been applying the time bar on GST refunds to credit notes (and this has also been Inland Revenue's operational practice). This means the proposed law change to apply a time bar would align with these current practices.

In contrast, if the existing law is unchanged it could potentially provide an unintended windfall of large GST refunds in respect of transactions that occurred more than 4 or 8 years ago in "time-barred" periods.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?
The proposals will require amendments to the Goods and Services Act 1985 which could be included in the next available tax omnibus bill expected to be introduced in early 2020. Guidance materials to explain how the amendments would operate will be published when the bill is introduced, in response to submissions raised with the Select Committee and after the bill is enacted. There is a risk that the proposed amendments could have unintended consequences or may not adequately accommodate existing business practices. These risks will be mitigated by aligning the provisions with similar existing rules, consulting GST advisors once the relevant provisions are introduced in a bill and through the monitoring described in section 7.1 below.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

As both proposed law changes are expected to align the law with the current practices of most of the affected businesses and Inland Revenue's operational practice, they should have minor impacts on compliance and administrative costs.

Inland Revenue will monitor if any unintended consequences arise through its usual processes of monitoring GST refunds, and through contacts and feedback from the affected businesses and their GST advisors. Inland Revenue would then consider how best to address specific issues that arise. This could include answering queries, publishing guidance materials, adjusting operational practices, making remedial law changes or reviewing the policy.

7.2 When and how will the new arrangements be reviewed?

The review will be the monitoring described in section 7.1. above, on an ongoing basis.

6.

DEV-19-MIN-0315

Cabinet Economic Development Committee

Minute of Decision

GST Amendments for Inclusion in the Next Omnibus Taxation Bill

Portfolio **Revenue**

On 20 November 2019, the Cabinet Economic Development Committee (DEV):

Telecommunications services

1 **noted** that on 3 April 2019, DEV agreed to apply GST at the standard rate of 15% to outbound mobile roaming services received by New Zealand residents travelling overseas by making some specific changes to the Goods and Services Tax Act 1985 [DEV-19-MIN-0059, paragraphs 1.1-1.5];

2 **noted** that there are ways other than those previously agreed to by DEV in which the Goods and Services Tax Act 1985 could be amended to apply GST at 15% to outbound mobile roaming services [DEV-19-MIN-0059];

3 **agreed**:

3.1 to provide flexibility around how the Goods and Services Tax Act 1985 is amended to apply GST at 15% to outbound mobile roaming services;

3.2 to recommend that Cabinet rescind the decision referred to in paragraph 1 above; and

3.3 instead that GST apply at the standard rate of 15% to outbound mobile roaming services;

4 **noted** that on 3 April 2019, DEV agreed to an application date for the proposed changes to the GST rules for telecommunications services of 1 October 2020 [DEV-19-MIN-0059];

5 **agreed** to delay the application date for the proposed changes to the GST rules for telecommunications services by six months to 1 April 2021;

6 **noted** that agreeing to delay the application date by 6 months to 1 April 2021 will have a fiscal cost of $3.520 million in 2020/21 which can be accounted for on the tax policy scorecard as shown below:

	$m - increase/(decrease)				
Vote Revenue **Minister of Revenue**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24 & Outyears**
Crown Revenue and Receipts: Tax Revenue	-	(3.520)	-	-	-

Credit Notes

7 **agreed** to allow credit notes to be used to claim back the full amount of GST included in a supply that was incorrectly standard rated (subject to GST at 15%) but should have been zero-rated (subject to GST at 0%) or been exempt;

8 **agreed** to apply a time limit from the date of a supply in which a credit note may be issued. This time limit could be aligned with the 4 year (or 8 year in cases of a clear mistake or simple oversight) time bar that applies to GST refunds which are made through amendments to GST returns;

9 **noted** that there are no fiscal impacts from agreeing to the recommended changes to the rules for credit notes;

Legislative vehicle

10 **agreed** that the legislative amendments to the Goods and Services Tax Act 1985 required to give effect to the changes proposed above be included in the next omnibus taxation bill currently scheduled for introduction in March 2020;

11 **invited** the Minister of Revenue to instruct Inland Revenue to draft the necessary amendments to give effect to the proposed changes;

12 **agreed** to delegate authority to the Minister of Revenue to make decisions on the detailed design of the proposed changes.

Jack Petterson
Committee Secretary

Present:
Rt Hon Winston Peters
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon James Shaw
Hon Eugenie Sage

Officials present from:
Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:
Minister of Revenue

Inland Revenue
Te Tari Taake

POLICY AND STRATEGY

Tax policy report: **GST on mobile roaming services – Application date in light of COVID-19**

Date:	21 April 2020	**Priority:**	Low
Security level:	In Confidence	**Report number:**	IR2020/220

Action sought

	Action sought	Deadline
Minister of Revenue	**Agree** to recommendations **Refer** a copy of this report to the Minister of Finance for his information	24 April 2020

Contact for telephone discussion (if required)

Name	Position	Telephone
Graeme Morrison	Policy Lead	s 9(2)(a)
s 9(2)(a)	Policy Advisor	

21 April 2020

Minister of Revenue

GST on mobile roaming services – Application date in light of COVID-19

1. In November 2019 Cabinet agreed to apply GST at the standard rate of 15% to outbound mobile roaming services received by New Zealanders travelling overseas with an application date of 1 April 2021 (DEV-19-MIN-0315 refers). However, due to the impacts of COVID-19 this report recommends the application date for the proposal be delayed by 12 months to 1 April 2022. Delaying the application date would have a very low but unquantifiable fiscal cost.

Delayed introduction of the next omnibus taxation Bill

2. Owing to more urgent COVID-19 related priorities and the adjournment of Parliament, the introduction of the omnibus taxation Bill containing the proposal to apply GST to outbound mobile roaming services has been delayed and is now scheduled for introduction in June.

3. As previously reported to you, the billing systems of telecommunications suppliers are complex as they need to operate in real time to ensure a person is correctly charged as they use the network (IR2019/351 refers). As such, telecommunications suppliers will need sufficient time to test changes to their billing systems to add GST to outbound mobile roaming services to ensure there are no unintended consequences.

4. The next omnibus taxation Bill contains annual rates for 2020-21 and will therefore need to be enacted before the current application date for the GST on mobile roaming proposal of 1 April 2021. However, there is likely to be at most only a few weeks between enactment and 1 April 2021. This is unlikely to give telecommunications suppliers enough time to make and test changes to their billing systems. The ability of telecommunications suppliers to make the necessary systems changes in time may also be limited if COVID-19 causes reductions in their staff numbers or forces them to make other systems changes.

Impact of COVID-19 on international travel

5. COVID-19 is likely to cause a significant decrease in the number of New Zealanders travelling overseas in the short-medium term. As such, it will also likely result in a significant decrease in the consumption of mobile roaming services.

6. Before COVID-19 the proposal to apply GST to outbound mobile roaming services was forecast to raise revenue by $7.041 million per annum. However, the decrease in international travel because of COVID-19 means the amount of revenue that will be raised by the proposal in the short-medium term will be significantly lower. Delaying the application date by 12 months would therefore have no or very little fiscal cost but would provide additional time for telecommunications suppliers to make the necessary systems changes.

Fiscal impact

7. The fiscal impact of delaying the application date by 12 months to 1 April 2022 cannot be accurately quantified. The actual fiscal cost would depend on many unknowns such as when a vaccine to COVID-19 is developed, when international

borders start re-opening and the impacts COVID-19 will have on New Zealanders ability to afford international travel.

8. While the fiscal impact cannot be quantified, it is forecast that delaying the application date would have only a very small fiscal cost.

Consultation

9. The Treasury has been consulted on this report.

Recommended action

We recommend that you:

10. **agree** to delay the application date for the GST on outbound mobile roaming services proposal by 12 months to 1 April 2022;

    Agreed/Not agreed

11. **refer** a copy of this report to the Minister of Finance for his information.

    Referred/Not referred

s 9(2)(a)

Graeme Morrison
Policy Lead
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2020