Goods and Services Tax

Australia • Canada • New Zealand

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Contents

Australia

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SUMMARY A Goods and Services Tax (GST) at a rate of 10% has applied to most goods and services in Australia since July 2000. The revenue from the GST is collected by the federal government and distributed to the states and territories. Entities, including nonprofit organizations, with turnover above a certain threshold must register for GST. Public bodies and entities with lower turnover may register. Registered entities can claim input tax credits for the GST paid on supplies they acquire for their taxable activities. Supplies that are exempt from GST, and for which input tax credits cannot be claimed, include residential property and financial supplies. A number of other supplies are effectively zero-rated, including fresh food, education courses, and medical services. There have been recent discussions about broadening the GST base to include such supplies, or increasing the tax rate. Where a supply is acquired or used for both business and private purposes, input tax credits can be claimed only for the portion used for the enterprise. Entities have different options for the periods and accounting methods used to account for GST and claim input tax credits, and for paying any GST owed to the government.

I. Introduction

A federally-imposed Goods and Services Tax (GST) came into effect in Australia on July 1, 2000. It is a broad-based consumption tax at a single rate of 10% that applies to most goods and services supplied in Australia, as well as those imported into the country.[1] Persons registered for GST "include GST in the price they charge for their goods and services," and claim credits (known as input tax credits) in their GST returns "for the GST included in the price of goods and services they buy for their business."[2] Consumers bear the final tax, which is collected by registered persons and paid to the government.

The passage of the relevant legislation to implement the "A New Tax System" package of reforms,[3] including the introduction of GST, came after the federal government and the governments of the states and territories reached an agreement whereby various indirect taxes would be phased out and the states and territories would receive a share of all the net GST revenue collected by the federal government.[4] Further indirect state taxes, including stamp

[1] For a general overview of the Australian GST system, *see* Rebecca Millar & Denis McCarthy, *Australia*, *in* THE FUTURE OF INDIRECT TAXATION 20–96 (Thomas Ecker et al. eds., EUCOTAX Series on European Taxation vol. 32, 2012).

[2] *How GST Works*, AUSTRALIAN TAXATION OFFICE (ATO), https://www.ato.gov.au/Business/GST/How-GST-works/ (last updated Feb. 27, 2014).

[3] *See* AUSTRALIAN GOVERNMENT, TAX REFORM: NOT A NEW TAX, A NEW TAX SYSTEM (Aug. 1998), http://archive.treasury.gov.au/contentitem.asp?ContentID=167.

duties, would be abolished "once GST revenues proved to be sufficient."[5] Federal personal income tax and company tax rates were also reduced to offset the impact of GST.[6]

The collection and administration of GST is primarily governed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth)[7] (GST Act), A New Tax System (Goods and Services Tax) Regulations 1999 (Cth)[8] (GST Regulations), and associated regulatory instruments.[9] The tax is administered by the Australian Taxation Office (ATO).

II. Scope

A. Basic Scope

There are three types of supply under the GST Act:[10] taxable,[11] GST-free (i.e., zero-rated),[12] and input-taxed (i.e., exempt).[13] There are no reduced rate supplies.

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[4] Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (June 25, 1999), http://www.coag.gov.au/node/75. *See also Intergovernmental Agreement on Federal Financial Relations*, COUNCIL ON FEDERAL FINANCIAL RELATIONS, http://www.federalfinancialrelations.gov.au/content/intergovernmental_agreements.aspx (last visited June 13, 2014). The federal government gave effect to the agreement by enacting the A New Tax System (Commonwealth-State Financial Arrangements) Act 1999 (Cth), http://www.comlaw.gov.au/Details/C2004C01417 (now superseded). The current legislation is A New Tax System (Managing the GST Rate and Base) Act 1999 (Cth), http://www.comlaw.gov.au/Details/C2009C00250. In terms of abolishing state taxes, *see* Australian Government, Budget 2007-08, Budget Paper No. 3: Appendix E – Timetable for the Abolition of State Taxes (May 2007), http://www.budget.gov.au/2007-08/bp3/html/bp3_main-12.htm. For a recent discussion of the arrangements see Daniel Weight, *GST and Commonwealth-State Relations* (Parliamentary Library, Budget Review 2014-15, May 2014), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201415/GST.

[5] Australian Government, Budget 2007-08, Budget Paper No. 3: Overview of Federal Financial Relations (May 2007), http://www.budget.gov.au/2007-08/bp3/html/bp3_main-02.htm.

[6] *See* New Business Tax System (Income Tax Rates) Act (No. 1) 1999 (Cth), http://www.comlaw.gov.au/Details/C2004A00558; David Johnson, *Impact of New Tax Legislation on Households*, 54 FAMILY MATTERS 55 (1999), *available at* http://www.aifs.gov.au/institute/pubs/fm/fm54dj.html.

[7] A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act), http://www.comlaw.gov.au/Details/C2014C00187. There are five further statutes related to GST due to constitutional requirements for taxation, excise, and customs to be dealt with in separate laws, for only one subject matter of taxation to be included in a taxation law, and for laws on taxation to deal only with taxation. *See* Millar & McCarthy, *supra* note 1, at 22.

[8] A New Tax System (Goods and Services Tax) Regulations 1999 (Cth) (GST Regulations), http://www.comlaw.gov.au/Details/F2013C01008/.

[9] For a list of instruments made under the GST Act see A New Tax System (Goods and Services Tax) Act 1999: Enables, COMLAW, http://www.comlaw.gov.au/Series/C2004A00446/Enables.

[10] *See When to Charge GST (and When Not to)*, ATO, https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/ (last updated Mar. 14, 2014).

[11] *GST Definitions: Taxable Sales*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_TaxableSales (last updated Feb. 21, 2014).

[12] *GST Definitions: GST-Free Sales*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_GSTFreeSales (last updated Feb. 21, 2014).

[13] *GST Definitions: Input-Taxed Sales*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_InputTaxedSales (last updated Feb. 21, 2014).

The GST Act states in section 9-5 that a person makes a taxable supply if

(a) The person make a supply for consideration; and

(b) The supply is made in the furtherance of an enterprise that the person carries on; and

(c) The supply is connected with Australia; and

(d) The person is registered, or required to be registered.[14]

The provision states that a supply is not a taxable supply to the extent that it is GST-free or input-taxed. The Act goes on to provide definitions of supply, consideration, enterprise, supplies connected with Australia, and supplies that are GST-free or input-taxed.

"Supply" is "any form of supply whatsoever."[15] It includes the supply of goods; services; provision of advice or information; a grant, assignment or surrender of real property; a creation, grant, transfer, assignment or surrender of any right; a financial supply; and an entry into, or release from, an obligation to do anything or refrain from an act.[16]

Excluded from the definition of "enterprise" are activities done by a person in connection with earning withholding payments; or as a private recreational pursuit or hobby; or without a reasonable expectation of profit or gain; or as a member of a local governing body.[17]

B. Registration and Small Business Exemption

Registration is required for people who run an enterprise with annual GST turnover of more than AU$75,000 (about US$70,500), or more than AU$150,000 (about US$141,000) for nonprofit organizations.[18] Persons with a lower level of turnover have the option to register. "GST turnover" is "the sum of the values (excluding GST) of all supplies made or to be made by the entity during the relevant period," excluding exempt supplies, supplies not made in connection with the entity's enterprise, supplies for no consideration, supplies not connected with Australia, sales of capital assets, etc.[19]

C. Exempt Supplies (Input-Taxed Supplies)

Input-taxed supplies must not include GST in the price, and registered persons cannot claim input tax credits for the GST paid on business expenses used to make input-taxed supplies. Input-taxed supplies are listed in Division 40 of the GST Act and include the following:

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[14] GST Act s 9-5.

[15] *Id.* s 9-10.

[16] *Id.*

[17] *Id.* s 9-20.

[18] *Do You Need to Register?*, ATO, https://www.ato.gov.au/Business/GST/Registering-for-GST/Do-you-need-to-register-/ (last updated Mar. 14, 2014).

[19] Millar & McCarthy, *supra* note 1, at 34.

- Financial supplies, as defined in regulations[20]
- Residential rent[21]
- Sales of residential premises or supplies of residential premises by way of a long-term lease[22]
- Supply of precious metals[23]
- Supply of food made through a nonprofit shop operating on the grounds of a school[24]
- Fund-raising events conducted by charities, gift-deductible entities, or government schools[25]

D. Zero-Rated Supplies (GST-free Supplies)

If a supply is GST-free, there is no GST payable on the supply, but a registered entity may still claim input tax credits "for anything acquired or imported to make the supply."[26] This is essentially equivalent to zero-rating, but the mechanism of taxing at the zero rate is not used.[27] GST-free supplies are listed in Division 38 of the GST Act and include the following:

- most basic food[28]
- some education courses, course materials and related excursions or field trips
- some medical, health and care services
- some medical aids and appliances
- some medicines
- some childcare services
- some religious services and charitable activities
- supplies of accommodation and meals to residents of retirement villages by certain operators
- cars for disabled people to use, as long as certain requirements are met
- water, sewerage and drainage
- international transport and related matters

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[20] GST Act s 40-5.

[21] *Id.* s 40-35.

[22] *Id.* ss 40-65 & 40-75.

[23] *Id.* s 40-100.

[24] *Id.* s 40-130.

[25] *Id.* ss 40-160 & 40-165.

[26] *Id.* s 38-1.

[27] Millar & McCarthy, *supra* note 1, at 27.

[28] *See GST Food Guide*, ATO, https://www.ato.gov.au/business/gst/in-detail/your-industry/food/gst-food-guide/?page=2 (last updated May 24, 2014).

- precious metals
- sales through duty-free shops
- grants of land by government
- farmland
- international mail
- exports
- sales of businesses as going concerns
- some telecommunications supplies
- eligible emissions units.[29]

E. Reduced Rate Supplies

There are no reduced-rate supplies provided for in the GST Act.

F. Treatment of Dual-Use Goods

Where a good or service is acquired partly for business and partly for private purposes, input tax credits may only be claimed for the portion of goods and services acquired for business purposes. There is "no legislative formula for working out what proportion is attributable to the enterprise and the appropriate method for working out a reasonable apportionment will depend on the particular facts and circumstances."[30] The ATO advises that the amount of credit that can be claimed is worked out by using one of the following steps:

1. Estimate the portion of your purchase you intend to use for private purposes and reduce the amount of GST credit you claim on your activity statement by this amount.
2. If eligible, you can claim a GST credit on your activity statement for all the GST included in the purchase price and later make a single annual increasing adjustment (usually on your June activity statement) to account for the private portion of all business purchases. This is called annual private apportionment.[31]

An adjustment may be required if the actual use of the acquired supply does not reflect the initial input tax credit claimed.[32] For most purchases, an adjustment will not be required for a change

[29] *Main GST-Free Products and Services*, ATO, https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/GST-free-sales/Main-GST-free-products-and-services/ (last updated Feb. 27, 2014).

[30] Millar & McCarthy, *supra* note 1, at 52.

[31] *GST and Annual Private Apportionment*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Managing-GST-in-your-business/Reporting,-paying-and-activity-statements/GST-and-annual-private-apportionment/ (last updated May 21, 2014).

[32] *Adjustments for Changes in Creditable Purpose*, ATO, https://www.ato.gov.au/Business/Bus/Making-adjustments-on-your-activity-statements/?anchor=creditablepurposes#creditablepurposes (last updated Apr. 29, 2014).

in creditable purpose if the value of the supply was AU$1,000 (GST-exclusive) (about US$940) or less.[33] There are a maximum number of adjustment periods that may apply to a purchase, depending on the value of that purchase.[34]

Where a person holds an insurance policy for an asset used partly for business and partly for private purposes, they can claim a partial credit for the GST included in the premium.[35]

1. Annual Private Apportionment

Registered persons who are eligible to use the annual private apportionment concession are small businesses and enterprises with turnover of less than AU$2 million (about US$1.88 million) who have not opted to pay GST by installments or to report GST annually.[36] Annual private apportionment cannot be used where "the business portion of the purchase relates solely to input-taxed supplies" or where "any part of the purchase is a reduced credit acquisition" (that is, a purchase related to making financial supplies for which reduced GST credit can be claimed).[37]

If annual private apportionment is used, a person can generally claim an input tax credit for the total amount of GST paid to acquire the good or service. If it is not used, a person would only be able to claim back the percentage of the GST based on the percentage to which the good or service is used for business purposes.[38]

Where the full GST amount is refunded under the annual private apportionment option, the person would need to make an "annual increasing adjustment" at a later date.[39] The amount of a person's annual increasing adjustment equals

- the amount of the GST credit you have received or will receive for your purchase, **less**
- the amount of the GST credit you would have received if you had not chosen annual private apportionment.[40]

2. Decreasing Adjustment on Disposal of Asset

Entities may be able to claim a decreasing adjustment when they dispose of a capital asset that was purchased or subsequently used for a private purpose.[41] This adjustment "does not reduce

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[33] *Id.*

[34] *Id.*

[35] *GST and Insurance*, ATO, https://www.ato.gov.au/Business/Bus/Insurance-and-GST/ (last updated May 3, 2014).

[36] *GST and Annual Private Apportionment*, *supra* note 31.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

the amount of GST payable on the sale of the asset, but reduces the net amount of GST you are liable to pay for the tax period."[42]

III. Treatment of Certain Sectors/Supplies

A. Government

1. Government as Purchaser and Seller

Government entities are included in the GST system in Australia,[43] with section 9-20 of the GST Act including activities done by the federal, state, or territory governments within the meaning of "enterprise."[44] Division 149 of the GST Act relates specifically to the registration of government entities for GST and states that

> [p]arts of the Commonwealth, a State or a Territory may register even if they are not separate legal entities. Once registered, they may become liable for GST and entitled to input tax credits. Government entities may also form GST groups.[45]

Government entities may register for GST even if they are not carrying on an enterprise, and where they are carrying on an enterprise they may not be required to register.[46]

A government entity that is registered for GST is treated as if it was carrying on an enterprise.[47] However, transfers between government entities are nontaxable as they are excluded from the meaning of "consideration" if the payment is covered by an appropriation governed by Australian law.[48] In effect, "all transfers between government entities are zero-rated unless they entail consideration for exempt supplies in the case where input VAT [GST] is not deductible to the extent that exempt supplies are made."[49]

As discussed below in relation to the interaction between GST and other taxes, fees, and charges imposed by government entities, GST does not apply to a number of such transactions, whether

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[41] *See, e.g.*, *GST and Motor Vehicles: Disposing of a Motor Vehicle You Used to Make Financial Supplies or for Private Purposes*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Motor-vehicles/Publications/GST-and-motor-vehicles/?page=1#Vehicles_used_only_partly_for_business_purposes (last updated May 24, 2014).

[42] *GST and the Disposal of Capital Assets*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/Business-asset-transactions/GST-and-the-disposal-of-capital-assets/ (last updated May 6, 2014).

[43] OSKAR HENKOW, THE VAT/GST TREATMENT OF PUBLIC BODIES 169 (2013).

[44] GST Act s 9-20(1)(g).

[45] *Id.* s 149-1.

[46] *Id* ss 149-5 & 149-10.

[47] *Id.* s 149-15.

[48] *Id.* s 9-17(3).

[49] HENKOW, *supra* note 43, at 170.

they involve registered or nonregistered persons. Essentially, "Australia intends to tax only commercial activities of government and to effectively zero-rate non-commercial activities."[50]

2. Government Grants

Grants come within the meaning of "supply" in the GST Act, and the acceptance of a grant is an "acquisition" for the purposes of the Act.[51] GST-registered persons do not need to pay GST on grant funding they receive unless they make a supply in return for the payment, thereby making the grant consideration for a taxable sale.[52]

B. Nonprofits

1. Nonprofits as Purchaser and Seller

Nonprofit organizations with GST turnover of AU$150,000 or more must register for GST, and those with a lower turnover can also voluntarily register.[53] Taxable sales and acquisitions by nonprofits, including for the purposes of fundraising activities, are generally subject to GST under the standard rules.[54]

A nonprofit must pay GST on income received through grants if in exchange the nonprofit sells goods and services (or anything else) or enters into "a binding obligation with the grant provider to do something, such as provide services to the community."[55] GST is not required if the sale or exchange for the grant is a GST-free or input-taxed supply.[56]

GST must also be paid for any sponsorship that a GST-registered nonprofit receives, since the monetary support is provided in return for advertising or other benefits to the sponsor.[57]

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[50] *Id.*

[51] GST Act s 11-10(2)(e).

[52] *GST: Grants and Sponsorship*, ATO, https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/Grants-and-sponsorship/ (last updated Feb. 24, 2014).

[53] *GST Tips for Non-Profit Organisations: GST Registration*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Non-profit-and-government-organisations/Non-profit-organisations/GST-tips-for-non-profit-organisations/?page=4#GST_registration (last updated June 7, 2013); *GST and Grants*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Non-profit-and-government-organisations/Non-profit-organisations/GST-and-grants/ (last updated May 6, 2014).

[54] *GST Tips for Non-Profit Organisations: Common Accounting and Reporting Errors*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Non-profit-and-government-organisations/Non-profit-organisations/GST-tips-for-non-profit-organisations/?page=5#Common_accounting_and_reporting_errors (last updated June 7, 2013).

[55] *GST Tips for Non-Profit Organisations: Grants, Gifts and Sponsorship*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Non-profit-and-government-organisations/Non-profit-organisations/GST-tips-for-non-profit-organisations/?page=12#Grants__gifts_and_sponsorship (last updated June 7, 2013).

[56] *Id.*

[57] *Id.*

As with other registered entities, nonprofits may claim input tax credits in relation to goods and services purchased to produce taxable supplies.

Special rules apply in relation to the fundraising activities of registered charities, gift deductible entities, and government schools.[58] Money raised through fundraising will not be subject to GST if the organization

- raises the funds by selling donated second-hand goods[59]
- raises the funds by holding a raffle or game of bingo
- chooses to have the fundraising activity treated as a non-profit sub-entity, or
- is able to treat any sales connected with the fundraising event as input taxed – in which case the funds raised will not be subject to GST, but your organisation will not be able to claim credits for the GST in any purchases connected with the event.[60]

However, other fundraising events held by such entities, such as dinners or performances, are treated as input-taxed (exempt) supplies.[61]

2. Donations

Making a gift to a nonprofit organization is not a provision of consideration for the purposes of GST.[62] Gifts received by nonprofits therefore do not attract GST and are not included in calculating a nonprofit's GST turnover. In order to qualify as a gift, a payment, whether monetary or nonmonetary, must be made voluntarily and the giver "cannot receive a material benefit in return."[63]

C. Financial Services

As indicated above, most financial services are considered input-taxed (exempt) supplies. This includes the following:[64]

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[58] GST Act s 38-270.

[59] *Id.* s 38-255.

[60] *Gifts and Fundraising: Goods and Services Tax (GST)*, ATO, https://www.ato.gov.au/Non-profit/Gifts-and-fundraising/Goods-and-services-tax-%28GST%29/ (last updated May 21, 2013). *See generally Goods and Services Tax – Fundraising*, ATO, https://www.ato.gov.au/Non-profit/Income,-sales,-fundraising---donations/In-detail/Grants/GST---Fundraising/ (last updated Jan. 9, 2014).

[61] GST Act ss 40-160 & 40-165.

[62] *Id* s 9-17(2).

[63] *GST Concessions – Tax Basics for Non-Profit Organisations: Gifts*, ATO, https://www.ato.gov.au/General/Enquiry-hot-topics/In-detail/Non-profit-organisations/GST-concessions----Tax-basics-for-non-profit-organisations/?page=2 (last updated Jan. 8, 2014).

[64] *Financial Supplies*, ATO, https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/Input-taxed-sales/Financial-supplies/ (last updated Feb. 24, 2014).

- Lending or borrowing money;
- Granting credit to a customer;
- Buying or selling shares or other securities;
- Creating, transferring, assigning, or receiving an interest in, or right under, a superannuation fund;
- Providing or receiving credit under a hire purchase agreement entered into before July 1, 2012 (the provision of credit under hire purchase agreements entered from that date are taxable).

In special cases, input tax credits can be claimed for purchases that a person uses to make a financial supply. This includes where the person makes a relatively small amount of financial supplies as compared to their taxable or GST-free supplies;[65] or where the purchase relates to an amount that the person borrowed and used to make a non-input-taxed supply; or where the purchase qualifies as a "reduced credit acquisition,"[66] in which case a reduced input tax credit can be claimed.[67]

Detailed provisions on financial supplies are contained in the GST regulations, including lists of examples of what is and what is not financial supply.[68]

D. Insurance and Reinsurance

Division 78 of the GST Act contains detailed provisions related to insurance. Registered persons can claim input tax credits for GST paid on insurance policies (including reinsurance policies) for assets used to produce taxable supplies. As noted above, if the asset is partly used for private purposes, a partial credit can be claimed. Credits cannot be claimed if the insurance is to cover input-taxed supplies (e.g., providing loans or credit).[69]

GST-registered persons are advised to inform insurers that they are registered for GST. In settling insurance claims, an insurer will then compensate the registered person for the amount of the loss exclusive of GST. The registered person can then claim input tax credits for any GST paid in replacing or repairing the insured asset. The payment received by the registered person also does not give rise to a GST liability for that person. However, if the registered person does

[65] *See GST Definitions: Financial Acquisitions Threshold*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_FinancialAcquisitionsThreshold (last updated Feb. 21, 2014).

[66] *See GST Definitions: Reduced Acquisitions Threshold*, ATO, https://www.ato.gov.au/Business/GST/How-GST-works/Definitions/#Def_ReducedCreditAcquisitions (last updated Feb. 21, 2014).

[67] *GST: Financial Supplies*, ATO, https://www.ato.gov.au/Business/GST/When-to-charge-GST-%28and-when-not-to%29/Input-taxed-sales/Financial-supplies/ (last updated Feb. 24, 2014).

[68] GST Regulations, subdiv 40-A & schs 7 & 8. *See generally Financial Services – Questions and Answers*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/GST-issues-registers/Financial-services---questions-and-answers/ (last updated June 17, 2013).

[69] *GST and Insurance*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Financial-services-and-insurance/Insurance-and-GST/ (last updated May 23, 2014).

not inform the insurer that they are registered for GST and the proportion of GST credits they can claim in relation to the settlement, they may have to pay GST when the claim is settled.[70]

Where an insurer pays insurance settlements directly to a service provider, such as in relation to car insurance, the insured person can generally not claim GST credits unless, for example, the insurer has no contractual relationship with the supplier and pays the supplier on behalf of the insured person.[71]

A supply of health insurance is GST-free; however, a supply of reinsurance is not.[72]

E. Commercial Property

People who deal in property, whether commercial or residential, may be considered to be conducting an enterprise and therefore be required to register for GST if their turnover is higher than the threshold.[73]

GST generally applies to the sale of commercial premises, including commercial residential premises such as hotels,[74] and a registered person can claim input tax credits for purchases made in relation to selling such property. Purchasers of commercial premises for use in their GST-registered business can claim input tax credits for the GST included in the purchase price as well as related expenses.[75]

Eligible sellers of commercial property may use a "margin scheme" for the sale. This is an alternative way of working out the GST that is required to be paid, with the margin being the difference between the sale price and either the amount the seller paid for the property (consideration method) or an appropriate property valuation (valuation method).[76]

Commercial or commercial residential property that is leased by a registered person will also generally be taxable. The owner may claim input tax credits for purchases that relate to renting or leasing the property.[77] The lessee can claim credits for the GST included in the rent if the

[70] *Id.*

[71] *Id.*

[72] GST Act s 38-55.

[73] *GST and Property*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/ (last updated May 21, 2014).

[74] *GST and Property: Commercial Residential Premises*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=3#Commercial_residential_premises (last updated May 21, 2014).

[75] *GST and Property: Commercial Premises*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=4#Commercial_premises (last updated May 21, 2014).

[76] *GST and Property: Margin Scheme*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?anchor=Margin_scheme#Margin_scheme (last updated May 21, 2014); *GST and the Margin Scheme*, ATO, https://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/ (last updated May 30, 2014).

[77] *GST and Property: Commercial Premises*, *supra* note 75.

property is leased to carry on a business.[78] There is some concessional treatment available for long-term commercial residential accommodation, such as hotels, whereby GST applies to only half of the GST-inclusive price from the twenty-eighth day of a person's stay.[79]

As indicated above, sales of businesses as going concerns are classed as GST-free supplies. Where commercial property is part of the sale, there is no GST liability on the sale. However, the seller and purchaser may be able to claim input tax credits for other expenses related to selling and buying the property.[80]

F. Residential Property

Renting or leasing residential property is an input-taxed (exempt) supply. Landlords are not liable for GST on the rental income and cannot claim credits for the GST paid on anything purchased to rent or lease the premises.[81]

Sales of "new" residential premises are taxable and input tax credits can be claimed for expenses associated with the sale. Residential premises are considered to be new where any of the following apply:

- They have not been sold as residential premises before
- They have been created through substantial renovations
- New buildings replace demolished buildings on the same land[82]

For example, where a registered person builds new residential premises for sale, input tax credits can be claimed in relation to the construction, and the sale price would include GST.

If residential premises are rented out continuously for five years they are no longer considered new. However, if they have been held for a dual purpose, such as being marketed for sale, during the five years they may still be considered "new" for the purposes of GST. In such cases, an adjustment will be needed for part of the input tax credits claimed in relation to the sale.

The sale of residential premises that are no longer new is considered an input-taxed supply.[83]

Special rules apply in relation to accommodation at retirement villages.[84] Such villages are not considered commercial residential premises for the purposes of GST. Instead, the treatment is

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[78] *Id.*

[79] *GST and Property: Commercial Residential Premises*, *supra* note 74.

[80] *GST and Property: Going Concerns*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=7#Going_concerns (last updated May 21, 2014).

[81] *GST and Property: Residential Premises*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=2#Residential_premises (last updated May 21, 2014).

[82] *Id.*

[83] *Id.*

similar to residential premises. For example, leasing an independent living unit in a retirement village is generally an input-taxed supply. Selling such a unit for the first time since it was constructed is a taxable sale of new residential premises. Supplying a serviced apartment in a retirement village, however, may be a GST-free supply if certain conditions are met.[85] The supply of retirement village accommodations may also be GST-free if the supplier is a charitable institution.[86]

G. Land

Supplies of real property may be taxable supplies under the GST Act. "Real property" specifically includes

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.[87]

Division 75 of the GST Act allows registered persons "to use a margin scheme to bring within the GST system your taxable supplies of freehold interests in land, of stratum units and of long-term leases."[88] There are also some specific rules that relate to farmland,[89] whereby the sale or long-term lease (more than fifty years) of such land will be a GST-free supply if the following two conditions are met:

- the land was used for a farming business for at least five years immediately before the sale
- the buyer intends to use it for a farming business.[90]

The sale of subdivided land "on which a farming business has been carried on for at least five years" will be GST-free if

- it is permissible to use the land for residential purposes
- the sale is made to an associate of the supplier for less than market value.[91]

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[84] *GST and Property: Retirement Villages*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=5#Retirement_villages (last updated May 21, 2014).

[85] GST Act s 38-25(4).

[86] *Id.* s 38-260.

[87] GST Act s 195-1.

[88] *Id.* s 75-1.

[89] *Id.* subdiv 38-O.

[90] *GST and Property: Farmland*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-and-property/?page=6#Farmland (last updated May 21, 2014).

[91] *Id.*

Sales that do not meet the above conditions are taxable supplies.

Government grants of freehold interest in land by way of long-term leases are also GST-free.[92]

H. Educational Institutions

Under the GST Act, a supply of an education course, or administration services related to the supply of such a course, is GST-free.[93] "Education course" is defined as being any of the following:

- a pre-school course;[94] or
- a primary [elementary] course; or
- a secondary course; or
- a tertiary course; or
- a special education course; or
- an adult and community education course; or
- an English language course for overseas students; or
- a first aid or life saving course; or
- a professional or trade course; or
- a tertiary residential college course.[95]

Excursions and field trips that are directly related to the curriculum of an education course are also GST-free, as are course materials.[96]

Accommodations at boarding schools, where a student is undertaking a primary, secondary, or special education course provided by that school, is GST free.[97]

Childcare provided by a registered caregiver or under the Australian family assistance law is also a GST-free supply.[98]

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[92] GST Act subdiv 38-N.

[93] *Id.* s 38-85.

[94] *See generally*, *GST for Preschool Operators*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Education/GST-for-preschool-operators/ (last updated May 23, 2014).

[95] GST Act s 195-1.

[96] *Id.* ss 38-90 & 38-95.

[97] *Id.* s 38-105.

[98] *Id.* s 38-D.

I. Health Institutions

Medical services are GST-free under the GST Act.[99] Such services are those for which a Medicare benefit is payable or otherwise where the service performed "is generally accepted by the medical profession as a necessary and appropriate treatment for the patient."[100] Medicare is Australia's publicly-funded universal health care program that generally provides

- free or subsidised treatment by health professionals such as doctors, specialists, optometrists and in specific circumstances dentists and other allied health practitioners free treatment and accommodation as a public Medicare patient in a public hospital
- 75% of the Medicare Schedule fee for services and procedures if you are a private patient in a public or private hospital. It does not include hospital accommodation and items such as theatre fees and medicines
- some health care services in certain countries[101]

In addition, other health services[102] that do not meet the definition of medical services are GST-free if they are

- a listed health service
- performed by a recognised health professional[103]
- accepted in the relevant health profession as necessary and appropriate to treat the patient or recipient of the service[104]

To be eligible for GST-free status, a health service must be one of the following:

- an Aboriginal or Torres Strait Islander health service
- acupuncture
- audiology or audiometry
- chiropody
- chiropractic

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[99] *GST and Medical Services*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Health/GST-and-medical-services/ (last updated May 24, 2014); GST Act s 38-7.

[100] *GST and Medical Services*, *supra* note 99.

[101] *Medicare Services*, DEPARTMENT OF HUMAN SERVICES, http://www.humanservices.gov.au/customer/subjects/medicare-services (last updated June 3, 2014).

[102] GST Act s 38-10.

[103] *See GST and Other Health Services: Who is a Recognised Health Professional?*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Health/Publications/GST-and-other-health-services/?page=2#Who_is_a_recognised_health_professional_ (last updated June 29, 2012).

[104] *GST and Other Health Services*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Health/Publications/GST-and-other-health-services/ (last updated June 29, 2012).

- dental
- dietary
- herbal medicine (including traditional Chinese herbal medicine)
- naturopathy
- nursing
- occupational therapy
- optometry
- osteopathy
- paramedical
- pharmacy
- psychology
- physiotherapy
- podiatry
- speech pathology
- speech therapy
- social work.[105]

Goods supplied by health professionals as part of most GST-free health services will also generally be GST-free,[106] as are prescribed drugs and medicinal preparations.[107] In addition, medical aids and devices may be sold GST-free at every point in the supply chain if they are[108]

- listed in schedule 3 to the GST Act or in schedule 3 to the GST regulations
- specifically designed for people with an illness or disability
- not widely used by people without an illness or a disability.[109]

The supply of services through a residential care service or through home care, such as for aged and disabled people, is also generally GST-free.[110]

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[105] *Id.*

[106] *GST and Other Health Services: Are Goods Supplied as Part of Health Services GST-Free?*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Health/Publications/GST-and-other-health-services/?page=7#Are_goods_supplied_as_part_of_health_services_GST_free_ (last updated June 29, 2012).

[107] GST Act s 38-50.

[108] *Id.* s 38-45.

[109] *GST and Medical Aids and Appliances*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Health/Publications/GST-and-medical-aids-and-appliances/ (last updated May 20, 2014).

[110] GST Act ss 38-25 & 38-30.

IV. Special Transactions/Adjustment

A. Barters or Like-kind Exchanges

Where the consideration received for a taxable supply is nonmonetary the normal GST rules apply, with GST being applied to the fair market value of the supply. The fair market value is "the cash price which the taxpayer would normally have charged a stranger for the services or for the sale of the goods or property."[111] Tax invoices are required for barter transactions.[112]

B. Fringe Benefits

GST applies to supplies acquired by employers for the purposes of providing a fringe benefit to employees, and employers are entitled to claim input tax credits for these acquisitions if they are registered for GST. Exceptions are where the acquisition relates to a GST-free of input-taxed supply.[113]

ATO states that "[i]f you are entitled to a GST credit in providing a fringe benefit, you use the higher gross-up rate (called type 1) to calculate the FBT [fringe benefit tax] payable."[114] Such benefits are called "GST-creditable benefits."[115] The higher grossed-up formula

> was introduced to avoid allowing employers the benefit of GST credits for goods and services purchased for the private use of employees. The higher gross-up rate effectively recovers the GST credit you can obtain in providing a fringe benefit.[116]

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[111] *GST: Bartering and Barter Exchanges*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/Barter-transactions/Bartering-and-barter-exchanges/ (last updated Apr. 30, 2014).

[112] *Id.*

[113] *Fringe Benefits Tax: 1.9 – What are the GST Consequences of Providing Benefits?*, ATO, https://www.ato.gov.au/General/Fringe-benefits-tax/In-detail/Employers-guide/What-is-FBT-/?page=9 (last updated Jan. 18, 2012).

[114] *Id. See also Fringe Benefits Tax: 2.4 – GST and Fringe Benefits*, ATO, https://www.ato.gov.au/General/Fringe-benefits-tax/In-detail/Employers-guide/Calculating-FBT/?page=4#2_4_GST_and_fringe_benefits (last updated Apr. 1, 2011).

[115] *Fringe Benefits Tax: 2.5 –GST-Creditable Benefits*, ATO, https://www.ato.gov.au/General/Fringe-benefits-tax/In-detail/Employers-guide/Calculating-FBT/?page=5#2_5_GST_creditable_benefits (last updated Apr. 1, 2011).

[116] *Fringe Benefits Tax: 2.11 – The Fringe Benefits Taxable Amount*, ATO, https://www.ato.gov.au/General/Fringe-benefits-tax/In-detail/Employers-guide/Calculating-FBT/?page=11#2_11_The_fringe_benefits_taxable_amount (last updated Apr. 1, 2011).

V. Administration

A. General Method of Reporting

1. Frequency of Returns

Part 2-6 of the GST Act relates to determining tax periods, while part 2-7 sets out obligations related to GST returns and payments of GST for such periods. The general rule is for a three-month tax period to apply on a calendar quarterly basis.[117] However, GST-registered persons may elect to submit GST returns monthly.[118] The ATO may require an entity to submit returns monthly if its annual turnover is AU$20 million or more, or where it will be carrying on an enterprise in Australia for less than three months, or where it has a history of failing to comply with tax obligations.[119]

In certain limited situations, an entity may elect to lodge GST returns annually. Only persons who voluntarily register for GST may choose this option.[120]

2. Options for Paying

The first option for paying GST for most businesses is to calculate GST and report and pay the actual GST amount quarterly. Registered entities with a quarterly tax period may also choose to calculate and make GST payments and report only the GST collected and paid and total sales for the quarter, then lodge a more detailed annual information report that accounts for different types of sales, such as exports and other GST-free sales. A further option, available only to small businesses (with turnover of AU$2 million or less) that meet certain criteria, is to submit quarterly returns and pay GST in quarterly instalments based on the previous year's GST, and then make adjustments in a GST return submitted at the end of the year. Where an entity has elected to lodge annual GST returns, no GST is reported or paid during the year.[121]

GST-registered entities with annual turnover of less than AU$2 million can account for their GST liability using either a cash or non-cash (accruals) accounting method.[122] Accounting for GST on a cash basis means that sales and purchases are included on the GST return that covers the period in which they were made, even if only partial payment was made or received for the supply. If partial payment is received, then the person only accounts for the GST on the part of

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[117] GST Act s 27-5; *Options for Paying and Reporting GST*, ATO, https://www.ato.gov.au/Business/GST/Lodging-your-BAS-or-annual-GST-return/Options-for-reporting-and-paying-GST/ (last updated Mar. 21, 2014).

[118] GST Act s 27-10.

[119] *Id.* s 27-15.

[120] *Id.* s 151-5.

[121] *GST Instalments*, ATO, https://www.ato.gov.au/Business/GST/In-detail/Managing-GST-in-your-business/Reporting,-paying-and-activity-statements/GST-instalments/ (last updated June 4, 2014).

[122] *GST: Choosing an Accounting Method*, ATO, https://www.ato.gov.au/business/gst/accounting-for-gst-in-your-business/choosing-an-accounting-method/ (last updated May 20, 2014); GST Act s 29-5.

the payment received; and if only a partial payment is made for an expense, the person would claim only the GST credit for the part of the cost paid.[123]

Most large businesses must account for GST using the non-cash accounting method. Under this method, an entity would account for the GST payable on a sale for the period in which it has either issued a tax invoice or received full or part payment for the sale, whichever happens first. Similarly, GST credits can be claimed in the return that covers the period during which a purchase was made and either a tax invoice received or part or full payment made.[124]

Regardless of the method used, a person must have a tax invoice for a purchase in order to claim a GST credit. Businesses have four years to claim GST credits for purchases.

Five simplified accounting methods are available to food retailers who make both taxable and GST-free sales.[125] The method used will depend on a person's turnover, nature of their business, and nature of their point-of-sale equipment.[126] The different methods involve estimating GST-free sales and purchases by applying standard percentages,[127] applying the same percentage to GST-free sales as is worked out for GST-free purchases (used where the person is a reseller of GST-free food),[128] taking a snapshot of a certain period and using this to work out the percentages of GST-free sales and/or purchases,[129] applying the same percentage to GST-free purchases as is worked out for GST-free sales (used by entities that are almost exclusively

[123] *GST: Choosing an Accounting Method*, *supra* note 122.

[124] *Id.*

[125] *Simplified GST Accounting Methods for Food Retailers*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/ (last updated May 24, 2014).

[126] *Simplified GST Accounting Methods for Food Retailers: Five SAMs You Can Choose From*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?page=3#Five_SAMs_you_can_choose_from (last updated May 24, 2014).

[127] *Simplified GST Accounting Methods for Food Retailers: Business Norms Method*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?anchor=Businessnormsmethod#Businessnormsmethod (last updated May 24, 2014).

[128] *Simplified GST Accounting Methods for Food Retailers: Stock Purchases Method*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?anchor=Stockpurchasesmethod#Stockpurchasesmethod (last updated May 24, 2014).

[129] *Simplified GST Accounting Methods for Food Retailers: Snapshot Method*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?anchor=Snapshotmethod#Snapshotmethod (last updated May 24, 2014).

resellers but do convert some products to taxable goods),[130] or calculating GST credits by applying a percentage of GST-free trading stock purchases worked out over a sample period.[131]

B. Transparency Measures

As indicated above, a tax invoice is required in order for a registered person to claim input tax credits for a business-related purchase. Tax invoices are not required for supplies that are valued at less than AU$50 (or AU$82.50 including GST).[132] Section 29-70 of the GST Act sets out the requirements for a document to constitute a tax invoice. Tax invoices for taxable sales of less than AU$1,000 "must include enough information to clearly determine the following seven details":

1. that the document is intended to be a tax invoice
2. the seller's identity
3. the seller's Australian business number (ABN)
4. the date the invoice was issued
5. a brief description of the items sold, including the quantity (if applicable) and the price
6. the GST amount (if any) payable – this can be shown separately or, if the GST amount is exactly one-eleventh of the total price, as a statement such as 'Total price includes GST'
7. the extent to which each sale on the invoice is a taxable sale (that is, the extent to which each sale includes GST) . . . .[133]

In addition to the above, tax invoices for taxable sales of more than AU$1,000 must show the buyer's identity or ABN.[134]

In some cases, purchasers of goods or services may issue their own invoices, known as recipient-created tax invoices.[135]

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[130] *Simplified GST Accounting Methods for Food Retailers: Sales Percentage Method*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?anchor=Salespercentagemethod#Salespercentagemethod (last updated May 24, 2014).

[131] *Simplified GST Accounting Methods for Food Retailers: Purchases Snapshot Method*, ATO, https://www.ato.gov.au/Business/Consultation--Business/In-detail/Food-industry/Simplified-GST-accounting-methods/Simplified-GST-accounting-methods-for-food-retailers/?anchor=Purchasessnapshotmethod#Purchasessnapshotmethod (last updated May 24, 2014).

[132] GST Act s 29-80; *GST: Issuing Tax Invoices*, ATO, https://www.ato.gov.au/Business/GST/Issuing-tax-invoices/ (last updated Mar. 7, 2014).

[133] *GST: Issuing Tax Invoices*, *supra* note 132.

[134] *Id.*

[135] *Id.*

VI. Interaction with Other Taxes

A. State and Local Sales and Other Taxes

There are no state or local sales taxes in Australia. In terms of other taxes, fees, and charges that might be imposed by Australian government entities, division 81 of the GST Act states that

> GST does not apply to payments of taxes, fees and charges that are excluded from the GST by this Division or by regulations.
>
> GST applies to certain taxes, fees and charges prescribed by regulations.[136]

The GST Regulations prescribe the following fees and charges as constituting consideration for a supply by a government entity and therefore subject to GST:

> (a) a fee for parking a motor vehicle in a ticketed or metered parking space;
>
> (b) a toll for driving a motor vehicle on a road;
>
> (c) a fee for hire, use of, or entry to a facility, except for an entry fee to a national park;
>
> (d) a fee for the use of a waste disposal facility;
>
> (e) a fee for pre-lodgment advice if:
>
> (i) the advice relates to an application to which subsection 81-10(4) of the Act applies; and
>
> (ii) it is not compulsory to seek the advice;
>
> (f) a fee or charge for the provision of information by an Australian government agency if the provision of the information is of a non-regulatory nature;
>
> (g) a fee or charge for a supply of a non-regulatory nature;
>
> (h) a fee or charge for a supply by an Australian government agency, where the supply may also be made by a supplier that is not an Australian government agency.[137]

Fees and charges that do not constitute consideration include the following:

> (a) a fee or charge for:
>
> (i) the kerbside collection of waste; or
>
> (ii) the supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;
>
> (b) royalties charged in relation to natural resources;
>
> (c) a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;

[136] GST Act s 81-1.

[137] GST Regulations reg 81-10.01.

(d) a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities;

(e) a fee or charge imposed in relation to a court, tribunal, commission of inquiry or Sheriff's office;

(f) a fee or charge for a supply of a regulatory nature made by an Australian government agency;

(g) a fee or charge for entry to a national park;

(h) any other fee or charge:

(i) specified in the A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2011 (No. 1), as in force immediately before the commencement of Schedule 4 to the Tax Laws Amendment (2011 Measures No. 2) Act 2011; and

(ii) imposed before 1 July 2013.[138]

The A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1) (Cth) lists the taxes, fees, and charges of each state or territory government that do not constitute consideration and are therefore excluded from the scope of the GST base.[139] The following principles apply in determining what may be listed in the Determination:

- taxes that are in the nature of a compulsory impost for general purposes and compulsory charges by the way of fines or penalties will be exempt from GST;
- regulatory charges that do not relate to particular goods or services will be exempt from GST, including-
  - fees and charges levied on specific industries and used to finance particular regulatory or other activities in the government sector; and
  - licences, permits and certifications that are required by government prior to undertaking a general activity.[140]

B. Excise Taxes

Excisable goods include alcohol, tobacco, fuel, and petroleum products manufactured in Australia.[141] While excise taxes imposed under the Excise Act 1901 (Cth) and the Excise Tariff Act 1921 (Cth) are listed under the Determination referred to above and are therefore exempt

[138] *Id.* reg 81-15.01.

[139] A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1) (Cth), http://www.comlaw.gov.au/Details/F2010L03352.

[140] A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1): Explanatory Statement, http://www.comlaw.gov.au/Details/F2010L03352/Explanatory%20Statement/Text.

[141] *See Excise and Excise Equivalent Goods: Excise*, ATO, https://www.ato.gov.au/Business/Excise-and-excise-equivalent-goods/Excise/ (last updated May 2, 2014).

from GST,[142] this only relates to the amount of excise payable by the manufacturer to the government. The consumer pays GST on the total price of the relevant good, which includes any excise tax.[143]

C. Deductibility of GST from Income Taxes

Assessable income for the purposes of income tax returns does not include GST payable on sales or input tax credits received by a business.[144] In claiming deductions for business purchases, a GST-registered person can claim the amount of the purchase less any input tax credit to which the person is entitled. If the person is not entitled to a GST credit in relation to the purchase, the full cost of the purchase can be claimed, including the GST paid.[145]

VII. Transition/Progressivity Issues

There were several transitional arrangements put in place when GST was introduced in July 2000. These included a credit for businesses holding stock for resale on which they had paid the previous wholesale sales tax; the phasing out of the luxury wholesale sales tax; and the phasing in over two years of input tax credits for motor vehicles, with no credits available for motor vehicle purchases in the first year of operation of GST.[146] There were no transitional measures to counteract the burden of GST in relation to specific types of goods.

A 2005 study of GST and the changing incidence of taxes in Australia in the period during which the "A New Tax System" reforms were implemented, found that

> personal income tax has become more income redistributive and more progressive over the period 1994–95 to 2001–02. However, the broad-based indirect tax reforms implemented over this period have become marginally more regressive and, because they have become more important as a revenue source, they now impact more adversely on post-tax income distribution. In the case of taxes other than the personal income tax and the reformed indirect taxes, they have become less regressive and have increased in

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[142] A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1) (Cth) sch 1.

[143] Some people oppose this approach, particularly in relation to gas prices, arguing that this is a tax on a tax. *See, e.g.*, Transcript, Chris Bowen Interview with John Miller, 4BC, May 25, 2018, http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=transcripts/2008/022.htm&pageID=&min=ceb&Year=2008&DocType=2; SENATE STANDING COMMITTEE ON ECONOMICS, PETROL PRICES IN AUSTRALIA ch. 5 (Dec. 2006), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2004-07/petrol_price/report/c05.

[144] *Income Tax for Business: Taxation*, BUSINESS.GOV.AU, http://www.business.gov.au/BusinessTopics/Taxation/Taxesexplained/Pages/Incometaxforbusiness.aspx (last visited June 18, 2014); *Business Income, Deductions and Tax Returns*, ATO, https://www.ato.gov.au/Business/Starting-and-running-your-small-business/Income,-deductions-and-concessions/Business-income,-deductions-and-tax-returns/ (last updated Jan. 31, 2014).

[145] *GST CREDITS AND INCOME TAX DEDUCTIONS*, ATO, HTTPS://WWW.ATO.GOV.AU/BUSINESS/GST/CLAIMING-GST-CREDITS/GST-CREDITS-AND-INCOME-TAX-DEDUCTIONS/ (LAST UPDATED MAR. 27, 2014).

[146] Australian Government, What Transitional Arrangements Will be Put in Place for the Introduction of GST (Tax Reform: Not a New Tax a New Tax System, Fact Sheet No. 204, 2000), http://archive.treasury.gov.au/documents/168/RTF/AppA3.rtf.

> importance. Overall, the progressivity of the Australian tax system and the distribution of post-tax income appears to have remained remarkably stable over the period.[147]

There has recently been discussion about whether or not the GST base should be broadened (for example, to include fresh food, health, education, and childcare) or the rate increased from its current 10%.[148] However, the current government has said it will not make any changes to the system, and that it is a matter for the states to discuss.[149]

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[147] Neil Warren et al., *GST and the Changing Incidence of Australian Taxes: 1994-95 to 2001-02*, 3(1) EJLTAXR 117 (2005), http://www.austlii.edu.au/au/journals/eJlTaxR/2005/5.html.

[148] *See, e.g.*, Lenore Taylor, *Australia Should Increase Reliance on GST and Fuel Excise: Treasury Secretary*, THE GUARDIAN (Apr. 2, 2014), http://www.theguardian.com/world/2014/apr/02/australia-should-increase-reliance-on-gst-and-fuel-excise-treasury-secretary; Remy Davison, *Raise the GST: The Conversation We Have to Have?*, THE CONVERSATION (Apr. 4, 2014), http://theconversation.com/raise-the-gst-the-conversation-we-have-to-have-25202.

[149] *See* Jacob Greber et al., *Hockey Slaps Barnett Over GST*, FINANCIAL REVIEW (Sept. 20, 2013), http://www.afr.com/p/home/hockey_slaps_barnett_over_gst_E4gTfOWqCUwOba8BoEvUYM; Victoria Craw, *GST Reform in the Spotlight Following Federal Budget 2014*, NEWS.COM.AU (May 20, 2014), http://www.news.com.au/finance/economy/gst-reform-in-the-spotlight-following-federal-budget-2014/story-fn84fgcm-1226924262058; James Massola, *Federal and State Governments on GST Collision Course*, THE SYDNEY MORNING HERALD (May 14, 2014), http://www.smh.com.au/business/federal-budget/federal-and-state-governments-on-gst-collision-course-20140514-zrc5m.html.

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SUMMARY Canada has a federal Goods and Services Tax (GST) that is applied to most goods and services. It is regulated by Part IX of the Excise Tax Act. New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, and Prince Edward Island have combined their respective provincial sales taxes with the GST to create a harmonized sales tax (HST) in each of these provinces. GST is a value-added tax with a tax credit system. A supply of goods or services may be taxable, exempt, or zero-rated. A tax credit can only be claimed on taxable and zero-rated supplies. Supplies of property and services that are exempt from the GST/HST are listed under Schedule V of the Act. Some of the broad exempt categories include: real property, heath care services, educational services, child and personal care services, supplies by charities and public sector bodies, and financial services. A range of criteria and exclusions apply in relation to these categories.

I. Introduction

A federal Goods and Services Tax (GST) is levied on the supply of most goods and services in Canada. The GST rate is currently 5%,[1] effective January 1, 2008. The GST is regulated by Part IX of the Excise Tax Act.[2]

Prior to the introduction of the GST the main federal-level consumption tax was the Federal Sales Tax (FST). This was replaced by the GST on January 1, 1991.

The provinces of New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, and Prince Edward Island, referred to as the "participating provinces,"[3] have harmonized their provincial sales tax with the GST to create the Harmonized Sales Tax (HST).[4] The combined rate of the "integrated VAT-style tax in those provinces is 12–15% after adding the federal 5% GST rate."[5]

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[1] Excise Tax Act, R.S.C., 1985, c. E-14, § 165(1), http://laws-lois.justice.gc.ca/eng/acts/E-15/FullText.html.

[2] *Id.* pt. IX.

[3] *GST/HST – General Information*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html (last updated May 30, 2014).

[4] *Id.*

[5] Julie Rogers-Glabush, *Canada – Provincial Taxation Overview – Corporate Taxation* § 6 (Sales and Use Taxes), INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION [IBFD]: COUNTRY ANALYSES (CANADA), http://online.ibfd.org/kbase/ (by subscription) (last updated July 16, 2013).

II. Scope

A. Basic Scope

In Canada, supplies of goods and services may be one of three types: taxable, exempt, or zero-rated. Taxable supplies are goods and services that are supplied in the course of a commercial activity and are subject to GST. Zero-rated supplies are subject to GST but at a rate of 0%. The scope of GST "is not restricted to the provision of goods and services by way of sale but also includes other types of transactions."[6] A supply can include: "the sale, transfer, barter, exchange, licence, rental, lease, gift, and disposition of a property or a service."[7] The tax is paid by the consumer and businesses are responsible "for collecting and remitting it to the government. Businesses that are required to have a GST/HST registration number are called registrants."[8]

A taxable "person" for the purposes of GST/HST is broadly defined as an "individual, partnership, corporation, trust, estate, or a body that is a society, union, club, association, commission or other organization of any kind whatever."[9]

In essence, "all domestic transactions are subject to GST. The tax also applies to imported goods. Imported services are taxable only if the recipient of the service is not registered for GST purposes."[10]

GST/HST registrants can recover the GST/HST they paid or owe on purchases and expenses related to their commercial activities by claiming input tax credits (ITCs).[11]

B. Registration and Small Business Exemption

Complete registration requirements can be found in Division V (Subdivision D) of the Excise Tax Act.[12] It is mandatory for a business involved in commercial activity to register for GST/HST if its "total worldwide taxable supplies of goods and services exceed the small supplier limit of [Can]$30,000 in a single calendar quarter or in four consecutive calendar

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[6] *Canada: GST/HST Essentials*, KPMG, http://www.kpmg.com/global/en/issuesandinsights/articlespublications/vat-gst-essentials/pages/canada.aspx (last visited June 16, 2014).

[7] *Definitions for GST/HST*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/glssry-eng.html#supply (last updated Nov. 26, 2013).

[8] Farrow, *An Importer's Overview of Canadian GST & HST* (2014), http://www.farrow.com/documents/Importer-Overview-Canadian-GST-HST2.pdf.

[9] Excise Tax Act § 2(1).

[10] Julie Rogers-Glabush, *Canada - Corporate Taxation* § 8.3, IBFD: COUNTRY ANALYSES (CANADA), http://online.ibfd.org/kbase/ (by subscription) (last updated Mar. 24, 2014).

[11] *Input Tax Credits*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/itc-cti/menu-eng.html (last updated April 12, 2013)

[12] Excise Tax Act, div. V, subdiv. d.

quarters."[13] It is also mandatory for taxi or limousine operators whose fares are regulated by federal or provincial laws) to register for GST/HST purposes, even if their revenues do not exceed $30,000.[14]

A small supplier is defined by the Canada Revenue Agency as including

> charities, and other public service bodies, that are engaged in commercial activity with revenues from worldwide taxable supplies (not including sales of capital property and financial services) equal to or less than $50,000 in the current calendar quarter and over the preceding four consecutive calendar quarters. The threshold for businesses that are not public service bodies is $30,000. Charities are also small suppliers if they meet the gross revenue test of $250,000 or less.[15]

The Revenue Agency describes the circumstances in which entities are not required to register for GST as follows:

> You do **not** have to register if:
>
> - you are a small supplier (that does not carry on a taxi business);
> - your only commercial activity is the sale of real property, other than in the course of a business. Although you do not have to register for the GST/HST in this case, your sale of real property may still be taxable and you may have to charge and collect the tax. . . .; or
> - you are a non-resident who does not carry on business in Canada.[16]

Small suppliers who are not required to register can do so voluntarily.[17] However, an entity **cannot** register for GST/HST if it only provides exempt goods and services,[18] meaning it neither charges GST/HST on the sale or supply of its goods and services nor claims input tax credits for the GST/HST it pays on purchases.[19]

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[13] *Mandatory Registration*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rgstrng/mndtry-eng.html (last updated May 16, 2014).

[14] *Id.*

[15] *Definitions for GST/HST*, *supra* note 7; stipulated under Excise Act, § 148(1).

[16] CANADA REVENUE AGENCY, GENERAL INFORMATION FOR GST/HST REGISTRANTS 10 (rev'd Dec. 2010), *available at* https://www.ryanco.ca/Assets/Downloads/TaxDevelopments/2010-12/CRA%20RC4022%20Rev%2012-2010.pdf.

[17] *Voluntary Registration*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rgstrng/vlntry-eng.html (last updated May 16, 2014).

[18] *Mandatory Registration*, *supra* note 13.

[19] *Id.*

C. Exempt Supplies

Supplies of property and services that are exempt from the GST/HST are listed in Schedule V of the Excise Tax Act.[20] GST/HST is not charged for such supplies and input tax credits cannot be claimed. The major categories of exempt supplies include: real property, health care services, educational services, child and personal care services, legal aid services, supplies by charities and public sector bodies, financial services, and ferry, road, and bridge tolls. Within these broad categories, "supplies are further tested to meet certain qualifications to be treated in one of these categories."[21] In other words, many of these exemptions are subject to a number of complex exclusions.

The Canada Revenue Agency's website also provides specific examples of exempt supplies of property and services, including:

- used residential housing;
- long-term residential accommodation (of one month or more), and residential condominium fees;
- most health, medical, and dental services performed by licensed physicians or dentists for medical reasons;
- child-care services (day-care services for less than 24 hours a day) for children 14 years old and younger;
- bridge, road, and ferry tolls (ferry tolls are taxed at 0% if the ferry service is to or from a place outside Canada);
- legal aid services;
- many educational services such as:
    - courses from a vocational school that leads to a certificate or a diploma to practice a trade or a vocation, or
    - tutoring services for an individual who takes a course approved for credit by a school authority or the service follows a curriculum designated by a school authority;
- music lessons;
- most services provided by financial institutions such as arrangements for a loan or mortgage;
- arranging for and issuing insurance policies by insurance companies, agents, and brokers;
- most goods and services provided by charities; and

[20] Excise Tax Act, sched. V.

[21] Muhammad Abbas & Arthur J. Cockfield, *Canada*, *in* THE FUTURE OF INDIRECT TAXATION 132 (Thomas Ecker et al. eds., 2012).

- certain goods and services provided by non-profit organizations, governments, and other public service bodies such as municipal transit services and standard residential services such as water distribution.[22]

D. Zero-Rated Supplies

Section 165(3) of the Excise Tax Act stipulates that "[t]he tax rate in respect of a taxable supply that is a zero-rated supply is 0%."[23] Zero-rated goods and services are listed under Schedule VI of the Act. They consist mostly of the following:

- Basic groceries such as milk, bread, and vegetables;
- Agricultural products such as grain, raw wool;
- Prescription drugs and drug-dispensing fees; and
- Medical devices such as hearing aids and artificial teeth.[24]

In addition, good and services that are typically a taxable supply are zero-rated if they are exported from Canada.[25]

A GST/HST registrant "can claim an input tax credit for the GST/HST paid or owed on expenses made to provide zero-rated sales or supplies."[26]

E. Reduced Rate Supplies

There are no reduced GST/HST rates in Canada.[27]

F. Treatment of Dual-Use Goods

The Excise Tax Act entitles a registrant to claim ITCs to the extent the supplies are used for commercial activities, i.e., on a "proportional basis."[28] Therefore, "supplies used exclusively in commercial activity entitle a registrant to full input tax credit claim."[29] A property or service is said to be used exclusively in commercial activities if 90% or more of it is used for that purpose.

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[22] *What We Mean by Taxable, Zero-rated, and Exempt Supplies?*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/txblxmpt-eng.html (last updated May 30, 2014).

[23] Excise Tax Act § 165(3).

[24] *What We Mean by Taxable, Zero-rated, and Exempt Supplies?*, *supra* note 22.

[25] Julie Rogers-Glabush, *supra* note 10, at § 8.6.

[26] *Zero-rated (0%) Goods and Services*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/zrrtd-eng.html (last updated Apr. 12, 2014).

[27] KPMG, *supra* note 6.

[28] Abbas & Cockfield, *supra* note 21, at 125.

[29] *Id.*

However, for financial institutions exclusive use must be 100%. No ITC can be claimed for supplies used exclusively for noncommercial purposes.[30]

III. Treatment of Certain Sectors/Supplies

A. Government

The GST rules for the public sector are very complex. Part VI of Schedule V of the Excise Tax Act provides a list of exemptions for supplies made through the public sector, which can apply to governments and municipalities and a wide range of other institutions and entities.[31] According to one global tax services firm, "[u]nlike the general charity exemption, for which supplies are presumed exempt unless an exception applies, unless a specific exemption can be identified, a supply made through a registrant public sector agency is presumed taxable."[32] Many of the exemptions apply generally "to all types of public sector organizations," whereas others target supplies made by federal, provincial, territorial, and municipal governments.[33]

Some of the exempt supplies that target government and municipalities specifically include the following:

- Standard government and municipal services (which can include law enforcement and fire fighting services, garbage collection, property registration, court documents, or other statutory filings, licenses, or permits);
- Mandatory municipal services;
- Optional municipal services;
- Water distribution and sewage systems; and
- Municipal transit services supplied to the public.[34]

Where public sector bodies "ordinarily make exempt supplies they are unable to claim input tax credit for the GST paid by them on their purchases. This irrecoverable tax is returned through rebates,"[35] which can be full or partial.

B. Nonprofits

Some of the exemptions and exclusions that apply to the public sector, including public institutions, public sector bodies, and public service bodies, also apply to nonprofits.

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[30] *Id.*

[31] Excise Act, sched. V, pt. VI.

[32] RYAN, VALUE-ADDED TAXATION IN CANADA: GST, HST, AND QST 321 (4th ed. 2011).

[33] *Id.* at 336.

[34] *Id.*

[35] Abbas & Cockfield, *supra* note 21, at 121.

Part V.1 of Schedule V of the Excise Tax Act has a specific exemption for supplies made by registered charities that excludes public institutions. There is a general assumption that supplies made by charities are exempt unless a "fairly complicated list of exclusions" apply. Some of the exclusions include the following:

- Supplies of property used in commercial activities
- Goods for resale
- Admissions to places of amusement
- Adult recreational activities
- Memberships
- Lottery tickets
- Sales of real property used in commercial activities
- Sale of a residential complex[36]

However, some of the following charity exemptions may override these exclusions:[37]

- Fund-raising events
- Other fund-raising activities
- Meal programs
- Supplies made at or below direct cost
- Relief of poverty, suffering, and distress

Special rules apply to charities with respect to input tax credits.[38] Charities must use a special net tax calculation method, whereby they remit 60% of the GST/HST they collect and claim ITCs only on certain items.[39] Moreover, they can claim the public service bodies' rebate for GST/HST they paid or owe and did not claim as an ITC, whether that tax relates to their taxable or exempt activities. However, a charity can elect not to use the net tax calculation if it decides "to use the general rules or the simplified method to calculate ITCs."[40]

Under the Excise Tax Act a public institution is a "registered charity" for income tax purposes if it is "also a school authority, public college, university, hospital authority or local authority

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[36] The complete list of charity exclusions can be found in the Excise Tax Act, sched. V, pt. V.1, § 1.

[37] RYAN, *supra* note 32, at 319.

[38] *Input Tax Credits for Charities*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/itc-cti/chrts/menu-eng.html (last updated Apr. 12, 2013).

[39] *Id.*

[40] *Id.*

determined to be a municipality."[41] Exemptions and exclusions particular to public institutions can be found in Part VI of Schedule V.

C. Financial Services

Financial services are exempt from GST/HST under Part VII of Schedule V of the Excise Tax Act, with the exception of those that are specifically zero-rated under Part IX of Schedule VI. The financial services that are zero-rated "generally deal with non-resident persons, property situated outside Canada and suppliers of precious metals."[42] The actual scope of the exemption and its application to "new products and cross-border transactions" has led to "extraordinary complexity and compliance challenges."[43]

It should be noted that apart from financial services, financial institutions also supply other services, both in Canada and internationally, that are taxable.

The issuing of insurance policies, and most other insurance services, is generally exempt from GST/HST. However, insurers are "generally not able to claim input tax credits (in effect, refunds) for any GST/HST payable by them."[44] The Canada Revenue Agency has provided memoranda on the treatment of insurance claims and the application of GST on services provided by insurance agencies. These include the following information:

> Generally, for purposes of the GST/HST, when an insurance company pays out benefits to compensate a claimant under the terms of an insurance policy, it is providing a financial service that is exempt. A financial service is defined, in part, to include the payment or receipt of money as benefits in respect of a financial instrument. The definition of "financial instrument" includes an insurance policy.[45]
>
> Insurance agents or brokers may be employees of an insurance company, an insurance agency or a brokerage firm, or they may be self-employed persons. They may be involved solely in offering insurance policies, or they may provide a variety of services including risk management, consulting or advisory services. Therefore, it is a question of fact whether they make supplies for GST/HST purposes, and whether those supplies are exempt, taxable or zero-rated.[46]

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[41] RYAN, *supra* note 32, at 298.

[42] Canada Revenue Agency, GST/HST Treatment of Insurance Claims (GST/HST Memorandum 17.16, Mar. 2001), http://www.cra-arc.gc.ca/E/pub/gm/17-16/17-16-e.html (last updated Aug. 6, 2002).

[43] *Finance Review of GST Rules for Financial Services 'Broadly' Revenue Neutral*, THE CANADIAN PRESS (June 9, 2013), http://www.macleans.ca/general/finance-review-of-gst-rules-for-financial-services-broadly-revenue-neutral/.

[44] Stuart Carruthers & Ellen M. Snow, *Insurance and Reinsurance in Canada: Overview*, PRACTICAL LAW (Apr. 1, 2014), http://us.practicallaw.com/2-501-7810.

[45] GST/HST Memorandum 17.16, *supra* note 42.

[46] Canada Revenue Agency, *Insurance Agents and Brokers* (GST/HST Memorandum 17.9, June 2013), http://www.cra-arc.gc.ca/E/pub/gm/17-9/17-9-e.html.

Insurance companies have reportedly faced significant challenges in relation to rule changes over the last few years that have impacted GST/HST.[47] For example, issues have surrounded the taxation of the loading portion of non-arm's length, cross-border transactions.[48]

D. Commercial Property

The making of any supply by way of a sale of real property, including commercial real property, "is a commercial activity and is taxable" unless the supply is specifically exempted under the Excise Tax Act.[49]

Most exemptions for sales of real property are provided in Part I of Schedule V of the Act. Generally, these exemptions apply to

- sales of previously occupied residential complexes,
- sales of certain types of leased land,
- sales of farmland to related persons, and
- sales of real property made by an individual or a personal trust with certain exceptions.

A lease, license, or similar arrangement with respect to commercial real property is a taxable supply "unless specifically exempted, e.g., certain supplies by way of lease made by a public service body (PSB)."[50]

E. Residential Property

According to the Canada Revenue Agency, "[a]s a general rule, a supply of real property situated in Canada, including residential property, is taxable unless the transaction is specifically exempted."[51] Most exemptions and exclusions that affect residential real property are listed in Part 1 of Schedule V of the Excise Tax Act. These are "directed mainly at exempting supplies of used residential real property and long-term residential rents."[52] For example, a residential complex or a residential unit in a residential complex "is exempt if the complex or unit is to be

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[47] KPMG, *Insurance Companies – Face More GST Challenges and Increased Tax Audits* (Canadian Tax Advisor, Feb. 25, 2014), http://www.kpmg.com/ca/en/issuesandinsights/articlespublications/canadiantaxadviser/pages/insurance%20companies%20-%20face%20more%20gst%20challenges%20and%20increased%20tax%20audits.aspx.

[48] Allan Gelkopf & Zvi Halpern-Shavim, *Canada: Scrutinizing "Loading": Assessing GST/HST For Financial Services?*, MONDAQ (June 4, 2013), http://www.mondaq.com/canada/x/242812/sales+taxes+VAT+GST/Scrutinizing+Loading+Assessing+GSTHST+For+Financial+Services.

[49] Canada Revenue Agency, Commercial Real Property – Sales and Rentals (GST/HST Memorandum 19.4.1, Aug. 1999), http://www.cra-arc.gc.ca/E/pub/gm/19-4-1/19-4-1-e.html.

[50] *Id.*

[51] Canada Revenue Agency, Residential Real Property-Sales (GST/HST Memorandum 19.2.1, Feb. 1998), http://www.cra-arc.gc.ca/E/pub/gm/19-2-1/19-2-1-e.html.

[52] RYAN, *supra* note 32, at 273.

used by an individual as a place of residence or lodging and if the rental period is a period of continuous occupancy or right of occupancy of one month or more to the same individual."[53]

F. Land

All supplies of land situated in Canada are subject to GST/HST, unless explicitly exempted.[54] Moreover, "a supply of the use or right to use real property by way of lease, licence or similar arrangement is treated for GST/HST purposes as a supply of real property."[55] In general, exempt sales of land are sales of

- personal-use land made by an individual or a personal trust,
- land acquired for personal use that was previously farmland,
- leased land currently used together with a residential unit as a place of residence for individuals, and
- a residential trailer park.[56]

As stated above, most of the exemptions that apply to sales of land are listed in Part I of Schedule V of the Excise Tax *Act*. Additional exemptions can be found in Part VI of Schedule V (in particular sections 10, 25, and 28), which "may apply to sales of land made by a public service body." Exemptions found in Part V.1 of Schedule V (in particular sections 1 and 5) "may apply to sales of land made by charities."[57]

G. Educational Institutions

Most educational services are exempt from GST under Part III of Schedule V of the Excise Tax Act. This includes "virtually everything associated with primary or secondary education, including tutoring."[58] As stated above, most universities in Canada are charities for the purposes of the GST/HST, and therefore their supplies are generally exempt. Most other educational services are exempt, except for those that are purely recreational in nature. University and college meal plans are also exempt.[59]

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[53] *Id.*

[54] Canada Revenue Agency, Land and Associated Real Property (GST/HST Memorandum 19.5, Oct. 2001), http://www.cra-arc.gc.ca/E/pub/gm/19-5/19-5-e.html.

[55] Canada Revenue Agency, Real Property and the GST/HST (GST/HST Memorandum 19.1, Oct. 1997), http://www.cra-arc.gc.ca/E/pub/gm/19-1/19-1-e.html#P216_13784.

[56] GST/HST Memorandum 19.5, *supra* note 54.

[57] *Id*.

[58] Public Works and Government Services Canada, Supply Manual: 4.4. Annex: Supplies Exempt from Goods and Services Tax/Harmonized Sales Tax, https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/annex/4/4 (last updated Nov. 29, 2012).

[59] *Id.*

H. Health Institutions

Most health and dental services are exempt under Part II of Schedule V of the Act. Note that services performed for medical or reconstructive purposes are exempt but services performed for cosmetic reasons are not. Some of the services that are exempt include the following:

i. hospital and nursing home services;
ii. medical devices prescribed by a medical practitioner;
iii. diagnostics, treatments and other health care services prescribed by a medical practitioner;
iv. ambulance services;
v. nursing services;
vi. dental hygienist services.[60]

As noted above, many supplies of prescription drugs and medical devices are zero-rated. Services that are not exempt under the health care services category could be exempt if the supplier is a charity or public institution.[61]

An organization that the Canada Revenue Agency designates as a hospital authority "can claim a rebate of **83%** of the GST and the **federal** part of the HST paid or payable on its purchases used to provide certain health care services. They may also be able to claim the rebate for the tax incurred in operating a facility where these services are provided."[62]

IV. Special Transactions/Adjustment

A. Barters or Like-kind Exchanges

According to the Canada Revenue Agency,

> [s]ince a barter transaction is two supplies (one from each party) with two suppliers and two recipients, a supply could be exempt, taxable, or zero-rated. For that reason, each supplier/recipient must deal with the transactions from their own point of view to find out whether they have to charge, collect, or pay GST/HST on the supply, and whether any input tax credit is available in connection with any GST/HST payable on the supply.[63]

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[60] *Id.*

[61] Abbas & Cockfield, *supra* note 21, at 289.

[62] *Health Care Rebate (for Certain Activities Other than the Operation of a Public Hospital)*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rbts/hlthcr/menu-eng.html (last updated Mar. 28, 2013).

[63] *Barter Transactions and Barter-exchange Networks*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/ntwrks-eng.html (last updated Apr. 12, 2013).

When supplied by a GST/HST registrant, "tax applies on the exchange value of the barter unit accepted as payment for the goods and services provided for the units."[64]

The Agency also states that

> [t]he administrator of a barter-exchange network may apply to have the network designated for GST/HST purposes. Members of a designated barter-exchange network do not have to pay tax on barter units accepted in exchange for their supplies of goods or services. However, if registrants, they would continue to charge tax on their taxable supplies of goods and services provided for the barter units.[65]

B. Fringe Benefits

Salaries, wages, commissions, and other monetary remuneration are not subject to the GST/HST. However, nonmonetary forms of compensating employees, like fringe benefits, "which give rise to taxable benefits under the *Income Tax Act* may be subject to the GST/HST."[66]

V. Administration

A. General Method of Reporting

Most registrants are required to file their GST/HST returns electronically "for all reporting periods that end on or after July 1, 2010."[67] GST/HST NETFILE "is an Internet-based filing service that allows eligible registrants to file their goods and services tax/harmonized sales tax (GST/HST) returns and eligible rebates directly to the Canada Revenue Agency (CRA) over the Internet."[68]

For each reporting period, the GST/HST return that the registrant sends must show "the amount of GST/HST they have charged or collected from their customers and the amount of GST/HST they paid or owe to their suppliers."[69]

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[64] *Id.*

[65] *Id.*

[66] Canada Revenue Agency, Taxable Benefits (Other than Automobile Benefits) (GST/HST Memorandum 9.1, Nov. 2011), http://www.cra-arc.gc.ca/E/pub/gm/9-1/9-1-e.html.

[67] *GST/HST Returns*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/rtrns/menu-eng.html (last updated July 23, 2013).

[68] *About GST/HST NETFILE*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/esrvc-srvce/tx/bsnss/gsthst-tpstch-ntfl/bt-eng.html (last updated Oct. 21, 2013).

[69] *Reporting Periods*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rgstrng/rprtng-eng.html (last updated Jan. 13, 2014).

B. Frequency of Filing Return

The frequency with which a registrant must file a return in a year depends on the annual sales of a registrant. The Canada Revenue Agency refers to these periods as reporting periods and provides the following guidance:

> [A Registrant's] reporting period is based on the **total** of
>
> - annual taxable supplies of goods and services made in Canada;
> - zero-rated supplies of goods and services; and
> - annual taxable supplies of all [of the registrant's] associates.[70]

Below is a chart from the Canada Revenue Agency on reporting periods based on the annual taxable supplies of the registrant:[71]

Assigned and Optional Reporting Periods

Annual Taxable Supplies	Assigned Reporting Period	Optional Reporting Period
$1,500,000 or less	Annual	Monthly or Quarterly
More than $1,500,000 up to $6,000,000	Quarterly	Monthly
More than $6,000,000	Monthly	Nil
Charities	Annual	Monthly or Quarterly
Listed Financial Institutions (except if deemed to be a listed financial institution)	Annual	Monthly or Quarterly

C. Options for Paying

There are several ways, including electronically, that registrants can pay GST/HST installments or remittances depending on the amount and type of payment being made. "My Payment" is a self-service option that allows individuals and businesses to make payments online, using the Canada Revenue Agency's website, from an account at a participating Canadian financial institution.[72] Other methods of payment include payments through a financial institution, by mail, or by wire transfer.[73]

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[70] *Id.* (emphasis in original).

[71] *Id.*

[72] *Payments and Instalments*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/pymnts/menu-eng.html (last updated Apr. 12, 2013).

[73] *Make a Payment*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/mkpymnt-eng.html (last updated Feb. 14, 2014).

If the GST/HST payment is **$50,000 or more**, the registrant must pay electronically or at a financial institution.[74]

D. Transparency Measures

A registrant must let customers know if the GST/HST is being applied to their purchases. This can be reflected on "cash register receipts, invoices, or contracts to inform your customers, or you can post signs at your place of business."[75]

For taxable supplies (except zero-rated supplies), a registrant has to show

- that the total amount paid or payable for a supply includes the GST/HST;
- the amount paid or payable for the supply and show the amount of the GST/HST payable on the supply separately; or
- the GST/HST rate that applies to the supply. If HST applies to the supply, show the total HST rate. Do not show the federal and provincial parts of the HST separately.[76]

VI. Interaction with Other Taxes

A. State and Local Taxes

As noted above, New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, and Prince Edward Island have combined their respective provincial sales taxes with the GST to create a harmonized sales tax (HST) in each of these provinces. A separate Provincial Sales Tax (PST) is calculated in the provinces of British Columbia, Manitoba, Saskatchewan, and Quebec. According to the Canada Business Network "PST, like GST, is calculated on the retail price only. The two taxes are then added to the retail price for your total."[77]

In Quebec, the Quebec Sales Tax (QST) was charged on the total amount including the GST prior to January 1, 2013.

HST is collected by the Canada Revenue Agency, which then sends the appropriate share to the participating provinces, except Quebec which administers the GST/HST through Revenu Québec.[78]

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[74] *Payments and Instalments*, *supra* note 72.

[75] *Invoice Requirements*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/bspsbch/itc-cti/nvc-eng.html (last updated May 16, 2014).

[76] *Id.*

[77] *Overview of Charging and Collecting Sales Tax*, CANADA BUSINESS NETWORK, http://www.canadabusiness.ca/eng/page/2651/ (last updated Apr. 28, 2014).

[78] *GST/HST – General Information*, *supra* note 3.

The HST allows participating provinces to save on the administrative costs of their PSTs. Moreover, the federal government pays "compensation to provinces as an incentive for adopting the HST."[79]

B. Excise Taxes

The federal government charges GST/HST on the total sale amount "after the manufacturers and retailers have priced in all their costs plus their profit margins and after the federal and provincial (and, in some cases, municipal) governments have added their excise taxes."[80]

C. Deductibility of GST from Income Taxes

According to the Canada Revenue Agency, "[a]s a rule, you can deduct any reasonable current expense you paid or will have to pay to earn business income. The expenses you can deduct include any GST/HST you incur on these expenses less the amount of any input tax credit claimed."[81]

VII. Transition/Progressivity Issues

A. Transition to GST

Division IX of Part IX of the Act has transitional rules that were intended to establish an orderly transition from the federal sales tax to the GST. These rules include provisions for the transfer of tangible personal property.

B. Progressivity

There have been two reductions to GST in Canada. The GST was first introduced at a rate of 7% but this was reduced to 6% in 2006 and 5% in 2008.[82] From the beginning food has been exempt from GST. In essence, "the regressive element in the GST is addressed by the federal government through measures like zero-rating and exempting certain essential supplies, and providing refundable tax credits within the income tax system."[83]

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[79] Abbas & Cockfield, *supra* note 21, at 110.

[80] Marc-André Pigeon, *Federal Taxes on Gasoline and Heating Fuels*, LIBRARY OF PARLIAMENT (Sept. 16, 2005), http://www.parl.gc.ca/Content/LOP/researchpublications/prb0525-e.htm.

[81] *Business Expenses*, CANADA REVENUE AGENCY, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/slprtnr/bsnssxpnss/menu-eng.html (Feb. 14, 2014).

[82] *Tables of GST and QST Rates*, REVENU QUÉBEC, http://www.revenuquebec.ca/en/entreprise/taxes/tvq_tps/historique-taux-tps-tvq.aspx (last updated Dec. 31, 2012).

[83] Abbas & Cockfield, *supra* note 21, at 110.

New Zealand

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SUMMARY New Zealand has a broad-based consumption tax, known as the Goods and Services Tax (GST), that applies to nearly all goods and services supplied in New Zealand as well as most imported goods. GST is collected by registered persons at all points in the supply chain, and such persons may claim credits for the GST paid on expenses connected with producing taxable supplies. Entities, including nonprofit organizations, public bodies, and health and education institutions, must register for GST if they have an annual turnover of more than NZ$60,000 (approximately US$52,000) from taxable activities. There are relatively few exempt or zero-rated goods and services. Where a good or service is used for both taxable and nontaxable purposes, apportionment calculations are used to adjust the input tax credits claimed for the purchase and associated expenses. Residential accommodation is an exempt supply, for example, but if part of the dwelling is used for business purposes, then a GST credit can be claimed for the portion used. There are different options available to businesses in terms of the frequency at which they file returns and the accounting basis used.

When the GST rate was increased to 15% in 2010, this was accompanied by reductions in both personal and company tax rates, as well as increases in the levels of government assistance provided to families and individuals through tax credits and benefit payments.

I. Introduction

A broad-based Goods and Services Tax (GST) has applied to the supply of most goods and services in New Zealand since October 1, 1986.[1] When introduced, the GST rate was 10%. This was increased to 12.5% in 1989, and then to 15% in 2010.[2]

GST applies at every stage of the production and distribution process of taxable goods and services. GST-registered persons (including both natural and legal persons) collect GST on behalf of the government by building it into the price of goods and services they supply. Such persons can claim input tax credits for GST paid on goods or services that they purchase for business purposes.[3] The difference between the GST paid and GST collected by a registered

[1] Goods and Services Tax Act 1985, s 8 (GST Act), http://www.legislation.govt.nz/act/public/1985/0141/latest/whole.html. For an overview of the New Zealand GST system, see David I. White & Eugen Trombitas, *New Zealand*, *in* RECENT TRENDS IN VAT AND GST SYSTEMS AROUND THE WORLD 356–97 (Thomas Ecker et al. eds., EUCOTAX Series on European Taxation vol. 32, 2012).

[2] *See Taxation (Budget Measures) Act 2010: GST Rate Increase*, INLAND REVENUE DEPARTMENT (IRD) (Aug. 13, 2010), http://www.ird.govt.nz/technical-tax/legislation/2010/2010-27/leg-2010-27-gst-rate-increase/.

[3] GST Act, s 20(3).

person, as calculated in their GST return for the relevant period, will result in either a refund or an amount payable to the government.[4]

The imposition and administration of the tax are governed by the Goods and Services Tax Act 1985 (GST Act). The Tax Administration Act 1994 and Income Tax Act 1997 are also relevant to some aspects of the administration of GST.[5] GST is administered by the Inland Revenue Department (IRD). GST on imported goods is collected by the New Zealand Customs Service.

II. Scope

A. Basic Scope

There are four types of GST supplies: taxable, exempt, zero-rated, and special.[6] Under section 8 of the GST Act, GST must be charged "on the supply (but not including an exempt supply) in New Zealand of goods and services . . . by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply."[7] Taxable activity is defined in section 6 as

> (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
>
> (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority.[8]

In essence, GST applies "to all taxable goods (which include land and buildings) and services supplied in New Zealand by a registered person and to all imported goods, regardless of who imports them."[9] Excluded from taxable activities are activities "carried on essentially as a private recreational pursuit or hobby"; the making of exempt supplies; and any engagement, occupation, or employment under any contract of service, as a company director, or pursuant to certain official appointments.[10]

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[4] *An Introduction to GST*, BUSINESS.GOVT.NZ, http://www.business.govt.nz/tax-and-reporting/business-tax-levies/an-introduction-to-gst (last updated May 16, 2014); *GST (Goods and Services Tax): About GST*, IRD, http://www.ird.govt.nz/gst/gst-registering/gst-about/ (last updated Apr. 21, 2011). GST Act, s 20(3).

[5] Tax Administration Act 1994, http://www.legislation.govt.nz/act/public/1994/0166/latest/DLM348343.html; Income Tax Act 2007, http://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1512301.html.

[6] *An Introduction to GST*, *supra* note 4.

[7] GST Act, s 8(1).

[8] *Id.* s 6(1).

[9] Kevin Holmes, *New Zealand – Corporate Taxation* ¶ 13.1, INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION [IBFD]: COUNTRY ANALYSES, http://online.ibfd.org/kbase (by subscription) (last visited June 16, 2014).

[10] GST Act, s 6(3).

B. Registration and Small Business Exemption

Under section 51 of the GST Act, a supplier of goods or services with an annual turnover of more than NZ$60,000 (approximately US$52,000) must become a registered person.[11] Entities with a lower turnover may voluntarily register.[12] There may be some benefits to doing so, for example, in the following situations:

- If your expenses are greater than your income in the early phase of your business, then registering for GST may mean you can claim GST refunds.
- If you are an exporter, you will be able to claim GST on your expenses but your exports will be zero-rated, so you will be in a GST refund position.[13]

C. Exempt Supplies

Exempt supplies are listed in section 14 of the GST Act. They include the following:[14]

- Donated goods and services that are later sold by nonprofit bodies
- Certain financial services
- Rent for a residential dwelling
- Residential accommodation under a head lease (e.g., leases for large multi-tenanted buildings)
- Supply of fine metals
- Penalty interest charged on overdue accounts

D. Zero-Rated Supplies

Section 11 of the GST Act sets out a list of goods for which a 0% rate must be charged in certain situations. Sections 11A, 11AB, and 11B relate to the zero-rating of particular services. Zero-rated goods and services must still be recorded on a person's GST returns,[15] and an input tax credit can be claimed for GST paid in producing the supplies.[16]

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[11] *Id.* s 51.

[12] *Id.* s 51(3).

[13] *An Introduction to GST*, *supra* note 4.

[14] *GST (Goods and Services Tax): Exempt Supplies*, IRD (Apr. 17, 2007), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-exempt/.

[15] *An Introduction to GST*, *supra* note 4.

[16] IBFD, *supra* note 9, at ¶ 13.7.

Supplies that are zero-rated include:[17]

- Duty-free goods
- Exported goods
- Certain exported services
- Exported vessels (ships)
- Certain financial services to GST-registered recipients
- Supplies to foreign-based pleasure craft
- Goods not in New Zealand at the time of supply or delivery to the final recipient
- Domestic transport of household goods
- Certain imported services
- Internet sales to overseas customers
- The first sale of refined fine metal by a supplier to a dealer as an investment item
- Any amount received for agreeing to refrain from carrying out a taxable activity outside New Zealand
- Sale of a taxable activity as a going concern
- Services performed outside New Zealand
- Income from tools used to manufacture goods for export
- Goods and services directly related to temporary imports (e.g., repairs and maintenance)
- Transport of goods to and from New Zealand
- Transport of people to and from New Zealand
- Certain land transactions between two GST-registered persons where the recipient will use the land to make taxable supplies
- Services of a telecommunications service supplied to an overseas telecommunications supplier
- Certain transactions involving local authorities

E. Reduced Rate Supplies

Special rules apply in relation to long-term accommodation and related domestic goods and services at certain residential establishments that have the effect of lowering the rate of GST. GST is charged for the full value of the first four weeks of stay in a hotel or other commercial dwelling, after which time GST is charged on only 60% of the value of the domestic goods or

[17] *GST (Goods and Services Tax): Zero-Rated Supplies*, IRD (Jan. 31, 2014), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-zero/.

services (an effective GST rate of 9%). Where there is an agreement at the outset that the stay will be for more than four weeks, such as in a rest home or boarding hostel, GST is charged on 60% of the value of the goods or services from the start of the stay.[18]

F. Treatment of Dual-Use Goods

GST-registered persons who purchase and use particular supplies for both taxable purposes and private or exempt purposes can use GST apportionment rules to claim input tax credits.[19] For example, one apportionment method is direct attribution, which involves looking at the percentage split between the use of a product or service for a taxable purpose and nontaxable purpose.[20] This would be used "if part of a home is set aside for business use, for example, as an office. The percentage of the office floor area compared with the whole house area is used to apportion the house expenses."[21] In terms of motor vehicles, the IRD explains that

> [i]f a motor vehicle is used for both private and business purposes you must keep a logbook for a minimum of three months to work out the business and private use of the motor vehicle.
>
> You can use the result of this three-month record to make claims for the business share of your vehicle expenses over the next three years. This is provided that your business use of the vehicle doesn't change by more than 20%. If this happens, you'll have to keep a logbook again for another three-month period.[22]

1. Concurrent Uses of Land

Special rules related to the concurrent use of land for taxable and exempt activities apply under section 21E of the GST Act—for example, where a property developer supplies a house as a dwelling for a few months while also advertising it for sale. The consideration for the taxable supply is divided by the total consideration for the supply in order to find the percentage of actual taxable use of the property during the adjustment period.[23]

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[18] *GST (Goods and Services Tax): GST on Special Supplies (a – e)*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-special/special-supplies-a-d.html.

[19] *GST (Goods and Services Tax): Apportioning Input Tax When Goods and Services Are Acquired*, IRD (Mar. 30, 2011), http://www.ird.govt.nz/gst/additional-calcs/change-adjust/apportion/; *GST Obligations*, BUSINESS.GOVT.NZ, http://www.business.govt.nz/tax-and-reporting/business-tax-levies/gst-obligations (last updated June 10, 2013).

[20] *GST (Goods and Services Tax): Apportionment Methods*, IRD (Apr. 17, 2007), http://www.ird.govt.nz/gst/additional-calcs/calc-apportionment/.

[21] *Id. See also Business Income Tax: Claiming Business Expenses: Using Your Home for the Business*, IRD (Mar. 18, 2014), http://www.ird.govt.nz/business-income-tax/expenses/homebus-exp/.

[22] *GST (Goods and Services Tax): Apportionment Methods*, *supra* note 20.

[23] IRD, GST GUIDE: WORKING WITH GST 29–30 (IR 375, May 2014), http://www.ird.govt.nz/resources/f/2/f24f29004ba3d52fb085bd9ef8e4b077/ir375.pdf.

2. Holiday Homes, Boats, and Aircraft

Special rules also apply under section 20G of the GST Act to the treatment of GST input tax for certain mixed-use assets, specifically holiday homes, and boats and aircraft, that involve the application of a formula based on income-earning days and private use days.[24] These rules only apply to assets acquired after July 17, 2013 (for holiday homes) or April 1, 2014 (for boats and aircraft). A deduction can be claimed when the asset is acquired as well as when goods or services related to the use of the asset are subsequently acquired, to the extent that they will be used for making taxable supplies.[25]

3. Changes in Use

Upon the acquisition of a good a service, the apportionment and claim for input tax is based on the intended use of the supply. Under sections 21 to 21D of the GST Act, an adjustment is required when a change-in-use occurs in relation to the good or service during an adjustment period. The first adjustment period starts at the time of acquisition and ends at either the registered person's next balance date or the balance date that falls at least twelve months after the acquisition date, depending on what the person chooses. The next and subsequent adjustment period is the twelve months in line with the person's annual balance date. There is a maximum number of adjustment periods available based on the value of the goods or services or by reference to the estimated useful life of an asset as specified in IRD's tax depreciation rate determinations. No adjustment-period limit applies in relation to land.[26]

No adjustment for change-in-use is required when the percentage of use of a good or service for making taxable supplies does not change in an adjustment period, or does not change by more than 10% and the value of the adjustment is less than NZ$1,000 (approximately US$870).[27]

A registered person can also make a final adjustment upon disposing of the good or service, which allows for a claim for input tax that has not been previously claimed.[28]

III. Treatment of Certain Sectors/Supplies

A. Government

For the purposes of the GST Act, "[p]ublic bodies are clearly intended to be totally equalised with entrepreneurs engaged in taxable activities."[29] Government appropriations are stated as

[24] *GST (Goods and Services Tax): GST Adjustment for Mixed Use Assets*, IRD (Oct. 18, 2013), http://www.ird.govt.nz/gst/additional-calcs/change-adjust/mixed-use/.

[25] GST GUIDE: WORKING WITH GST, *supra* note 23, at 31–32.

[26] *GST (Goods and Services Tax): Adjustment for Change-in-Use*, IRD (Mar. 30, 2011), http://www.ird.govt.nz/gst/additional-calcs/change-adjust/adjust-change/.

[27] *Id.*

[28] *Id.*

[29] OSKAR HENKOW, THE VAT/GST TREATMENT OF PUBLIC BODIES 151 (2013).

GST exclusive, which "reflects the fact that GST is not generally an expense to the Crown and is consistent with the basis on which fiscal forecasts and financial statements are presented."[30] Receivables and payables, however, are reported in agency financial statements as being inclusive of GST. In accordance with instructions from the Treasury,[31] statements of accounting policies in departmental financial statements include wording stating that

> GST is returned on revenue received on behalf of the Crown, where applicable. However, an input tax deduction is not claimed on non-departmental expenditure.[32] Instead, the amount of GST applicable to non-departmental expenditure is recognised as a separate expense and eliminated against GST revenue on consolidation of the Financial Statements of the Government.[33]

1. Government as Purchaser

The permanent authority for government agencies to pay GST in relation to meeting expenses or capital expenditure incurred in accordance with an appropriation is provided by section 6(b) of the Public Finance Act 1989.[34] As indicated above, agencies do not claim input tax credits for such expenses. The Treasury states that "[i]f departments claimed input tax credits for non-departmental payments, this would cause compliance and administration costs for departments, without resulting in any net financial benefit for them. It would also make no difference to the Crown's consolidated fiscal position.[35]

2. Government as Seller

In general, "all non-departmental receipts other than taxation receipts, investment income or loan repayments are payments for taxable supplies so are liable for GST."[36] Section 5(6) of the GST Act states that, for the purposes of the Act, "every public authority is deemed to supply goods and services where, within the meaning of the Public Finance Act 1989, any amount is brought to charge by the public authority as revenue from the Crown for the supply of outputs."[37]

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[30] THE TREASURY, A GUIDE TO THE PUBLIC FINANCE ACT (Appropriations: Budget Process) (Aug. 24, 2005), http://www.treasury.govt.nz/publications/guidance/publicfinance/pfaguide/06.htm.

[31] TREASURY INSTRUCTIONS 2013, at 4.2.3 (July 25, 2013), http://www.treasury.govt.nz/publications/guidance/instructions/2013/18.htm.

[32] The Public Finance Act 1989 defines nondepartmental expenses and capital expenditure as those incurred on behalf of the Crown other than by a department or Office of Parliament. Public Finance Act 1989, s 2, http://www.legislation.govt.nz/act/public/1989/0044/latest/DLM160809.html.

[33] *See, e.g.*, DEPARTMENT OF THE PRIME MINISTER AND CABINET, ANNUAL REPORT 2013, Statement of Accounting Policies for the Year Ended 30 June 2013, http://www.dpmc.govt.nz/dpmc/publications/ar-2013/1708-nondept-notes.

[34] Public Finance Act 1989, s 6(b).

[35] THE TREASURY, TREASURY CIRCULAR 2005/11, GUIDANCE ON GST FOR NON-DEPARTMENTAL OPERATIONS 7 (July 14, 2005), http://www.treasury.govt.nz/publications/guidance/circulars/pdfs/tc-2005-11.pdf.

[36] *Id.* at 5.

[37] GST Act, s 5(6).

As noted in the above statement, GST on revenue received on behalf of the Crown is returned. Agencies that receive non-departmental revenue for taxable supplies and services therefore must register for GST and complete a GST return for such revenue.[38]

3. Government Grants

The Treasury states that "[a]ny payment in the nature of a grant or subsidy made on behalf of the Crown to any person in relation to their taxable activity is deemed to be consideration for a supply of goods and services. As a result, grants paid to a registered person in relation to their taxable activity are subject to GST."[39]

Therefore, if the recipient of a grant or subsidy from a government agency is registered for GST, then the amount of the grant or subsidy is considered to include GST. This excludes grants intended for overseas use for international development, where the GST-registered person would only need to return GST "on the portion of the grant that is allocated for administration and capacity building in New Zealand."[40]

B. Nonprofits

1. Nonprofits as Purchaser and Seller

The standard GST rules apply in relation to the taxable activities of nonprofit organizations, including the registration[41] and return[42] requirements. Certain income of nonprofits is liable for GST, such as that obtained through subscriptions, grants and subsidies, trading activities, raffles, admission fees, sale of purchased goods, sale of assets or equipment, certain insurance receipts, venue or equipment hire, rent on commercial properties, advertising or sponsorship, and gaming machines.[43] As indicated above, income received by nonprofits from selling donated goods and services is exempt from GST.

GST-registered nonprofits may claim input tax credits on expenses gained from income that is either liable or not liable for GST. Such credits cannot be claimed on expenses gained from income that is exempt from GST. For example, expenses associated with income from a trading activity or donations would be eligible for an input tax credit, but those related to receiving rent for a residential property could not be claimed as this is exempt income.[44]

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[38] TREASURY CIRCULAR 2005/11, *supra* note 35, at 1 & 6.

[39] *Id.* at 9.

[40] *GST (Goods and Services Tax): GST on Special Supplies (f – k)*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-special/special-supplies-f-i.html (scroll to "Grants and subsidies").

[41] *Non-profit Organisations: Registering for GST*, IRD (Apr. 21, 2010), http://www.ird.govt.nz/non-profit/np-gst/register-gst/.

[42] *Non-profit Organisations: GST and Income Tax Returns*, IRD (Mar. 1, 2010), http://www.ird.govt.nz/non-profit/np-records/returns/.

[43] *Non-profit Organisations: Find Out What is Liable for GST and Income Tax*, IRD (Mar. 1, 2010), http://www.ird.govt.nz/non-profit/np-gst/liable-gst/

[44] *Id.*

2. Donations

Unconditional gifts and bequests are not liable for GST. "Unconditional gifts to any non-profit body" are specifically excluded from the definition of "consideration" under the GST Act.[45] The GST Act defines "unconditional gift" as a payment made voluntarily to a nonprofit body and for which "no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment, or any other person where that person and the other person are associated persons."[46]

Some grants, especially if given by charitable trusts, may also be considered unconditional gifts or donations for the purposes of GST.[47] As noted above, input tax credits can be claimed by nonprofits for expenses related to income that is not liable for GST.

Entities cannot claim GST input tax credits for making any donations.[48]

C. Financial Services

As noted above, certain financial services are either exempt or zero-rated supplies under the GST system. Exempt supplies include the following:

- paying or collecting any amount of interest
- mortgages and other loans
- bank fees
- securities (eg, stocks and shares)
- providing credit under a credit contract
- exchanging currency (eg, changing US$ into NZ$)
- arranging or agreeing to do any of the above (eg, mortgage broking)
- financial options
- deliverable future contracts
- non-deliverable future contracts[49]

IRD guidance states as follows:

> Financial planning fees cover all types of fees charged by financial advisors for financial planning services they provide. These fees are for initial planning, implementation, administration, monitoring, evaluation, replanning and switching.

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[45] GST Act, s 2(1).

[46] *Id.*

[47] *Non-profit Organisations: Find Out What is Liable for GST and Income Tax*, *supra* note 43.

[48] *Business Income Tax: Paying Tax: Deduction for Donations*, IRD (Dec. 16, 2008), http://www.ird.govt.nz/business-income-tax/paying-tax/rebates/.

[49] IRD, GST PLUS: WORKING OUT SPECIFIC GST ISSUES 6 (IR 546, Apr. 2014), http://www.ird.govt.nz/resources/a/b/ab271380442039b9989d9a4e9c145ab7/ir546.pdf.

> GST applies to services relating to initial planning, monitoring, evaluation and replanning. Services relating to implementation fees, administration fees and switching fees are financial services and exempt from GST.[50]

Financial intermediation services (including deposit-taking intermediation and brokerage services) provided to GST-registered persons may be zero-rated, rather than exempt, supplies. This is the case only where at least 75% of the recipient's supplies are comprised of taxable supplies in a twelve month period.[51]

D. Insurance and Reinsurance

GST is charged on the premiums for certain types of insurance, including for fire, general coverage, and loss of earnings.[52] However, if the good that is being insured is located outside New Zealand, the premium would be zero-rated.[53] Insuring or arranging insurance for goods being transported to or from New Zealand is also zero-rated.[54]

Contributions to employee life insurance policies are zero-rated supplies.

A GST-registered insurer can claim input tax credits for insurance payments to policy-holders and other payments for claims on policies. GST credits cannot be claimed for payments made under life insurance policies.[55]

GST-registered persons who receive an insurance payment related to their taxable activity must include the GST content as an adjustment in their return that covers the period during which the payment was received. However, a person does not need to account for payments received for loss of earnings or under life insurance policies.[56]

E. Commercial Property

The supply of property for commercial use is subject to GST. The rental paid by a GST-registered person for a property used for the purpose of making taxable supplies is a business expense and therefore an input tax credit can be claimed.

As noted above, the supply of accommodation in a commercial dwelling, such as a hotel or rest home, is subject to special rules related to the length of stay.

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[50] *Id.*

[51] *Id.* at 9.

[52] *GST (Goods and Services Tax): GST on Special Supplies (f – k)*, *supra* note 40 (scroll to "Insurance").

[53] GST PLUS: WORKING OUT SPECIFIC GST ISSUES, *supra* note 49, at 8.

[54] *Id.* at 9.

[55] *GST (Goods and Services Tax): GST on Special Supplies (f – k)*, *supra* note 40 (scroll to "Insurance").

[56] *Id.*

F. Residential Property

Selling a family or private home generally has no tax consequence.[57] There is also no GST on the rent for a residential dwelling,[58] and a landlord cannot claim input tax credits on the purchase of or expenses incurred for a residential property.[59] In addition, "[i]f a residential dwelling is sold as part of a taxable activity, and it was rented for at least five years beforehand, the sale is an exempt supply."[60]

Persons in the business of residential property speculation or development (that is, where there is a regular and continuous taxable activity involving the building or buying of property and selling for profit) may register for GST and claim input tax credits.[61] If a credit is claimed when a property is purchased, the person then needs to include GST in the sale price when the property is sold.[62] In addition, speculators or dealers who claim a credit when they buy a property and subsequently rent the property to a residential tenant must make an adjustment in their GST return, since this is an exempt activity.[63]

Apartments sold as a going concern with management leases and guaranteed rental arrangements are zero-rated for GST if certain conditions are met, including that both parties to the transaction are GST-registered.[64]

G. Land

As indicated above, special zero-rating rules apply under the GST Act to the supply of land. "Land" is defined for the purposes of these rules as including an estate or interest in land, a right that gives rise to an interest in land, and an option to acquire land or an estate or interest in land.[65] The definition excludes mortgages and leases for dwellings, and the rules also exclude commercial leases for which the supply is made periodically and "25% or less of the total amount is payable in advance or all at once."[66]

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[57] *Residential Property: Is Selling Your Home Ever Taxable?*, IRD (July 30, 2010), http://www.ird.govt.nz/property/property-family-home/selling-your-home-taxable/.

[58] *Residential Property: What About GST?*, IRD (July 30, 2010), http://www.ird.govt.nz/property/property-rental/what-about-gst/.

[59] *GST (Goods and Services Tax): Exempt Supplies – Renting a Residential Dwelling*, IRD (Apr. 17, 2007), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-exempt/#rrd.

[60] *Id.*

[61] IRD, TAX AND YOUR PROPERTY TRANSACTIONS 8 (IR 361, Apr. 2011), http://www.ird.govt.nz/resources/1/8/183605804358bfcf96fa964e9c145ab7/ir361.pdf.

[62] *Id.* at 21.

[63] *Id.* at 13.

[64] *Id.* at 19.

[65] GST Act, s 2(1).

[66] *Technical Tax Area: Taxation (GST and Remedial Matters) Act 2010: Changes to the GST Rules: Zero-Rating Land Transactions*, IRD (Mar. 11, 2011), http://www.ird.govt.nz/technical-tax/legislation/2010/2010-130/2010-130-changes-gst/leg-2010-130-gst-zero-rating.html.

A supply by a GST-registered person that wholly or partly includes land may only be zero-rated under section 11(1)(mb) of the GST Act if specific conditions are met at the time of settlement of the transaction: the supply is made to another registered person, the recipient "acquires the goods with the intention of using them for making taxable supplies," and "it is not intended to be used as a principal place of residence by the recipient and any person associated with them."[67] A purchaser is required under section 78F of the GST Act to provide a written statement to the supplier regarding these matters at or before settlement.[68] The supplier may rely on this statement to determine the tax treatment of the supply.[69]

H. Educational Institutions

There are four types of education centers in New Zealand for the purposes of tax law:[70]

- Centers bound by the Education Act 1989, which are operated by boards of trustees and include state schools, private integrated schools, composite schools, Kura Kaupapa Maori schools, and special education schools.
- Centers operated as charitable organizations.
- Centers operated as nonprofit bodies.
- Centers run as businesses for profit.

As the Education Act 1989 gives New Zealand citizens aged five to nineteen the right to free education at any state schools, and therefore the education does not depend on the payment of school fees, any voluntary school fees paid to public institutions are considered unconditional gifts and are not subject to GST.[71] However, university tuition fees, attendance dues paid to integrated schools, and activity fees and fees paid by foreign students, are subject to GST.[72]

The IRD-issued guidance for education centers states the following:

> If your centre runs a taxable activity with an annual turnover (total income before expenses) of [NZ]$60,000 [approximately US$52,000] or more, it must register with us for GST.

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[67] *GST (Goods and Services Tax): Zero-Rated Supplies – Land Transactions*, IRD (Jan. 31, 2014), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-zero/#landtrans.

[68] GST Act, s 78F(2).

[69] *Id.* s 78F(3).

[70] *Industry Guidelines: Types of Education Centres*, IRD (Jan. 31, 2005), http://www.ird.govt.nz/industry-guidelines/education-centres/education-types.html.

[71] IRD, EDUCATION CENTRES: A TAX GUIDE FOR ORGANISATIONS THAT PROVIDE EDUCATION 15 (IR 253, Nov. 2010), http://www.ird.govt.nz/resources/3/4/34d49c804ba3cf578773bf9ef8e4b077/ir253.pdf.

[72] *Id.* at 16.

> Registered centres collect GST and pay it to us. They can also claim back any GST they incur as part of their business.
>
> To work out turnover, only include income liable for GST. Don't include income that isn't liable for GST or is exempt. For example, include income from Ministry of Education grants and subsidies, tuition fees and attendance dues, but not income from donations or koha, school fees, residential rent and interest.[73]

The IRD recently issued a Revenue Alert relating to the treatment of additional payments made to private education centers or childcare centers, including whether such payments are liable to GST. It stated that "[a]s the payments are made by parents (or close relatives) in return for (or in the expectation of) education services Inland Revenue considers the payments are "consideration" for a supply of services under the GST Act and so are liable to GST."[74] It therefore does not consider these payments to be "unconditional gifts" under the GST Act, unlike voluntary fees paid to public institutions.

I. Health Institutions

New Zealand has a universal public health care system that involves a wide range of providers. The system includes primary health organizations[75] that are directly funded by twenty district health boards that receive a funding allocation under the national health budget.[76] In addition, various nongovernment organizations receive funding from both the Ministry of Health and district health boards.[77] There is also a private health care sector with hospitals that mainly offer elective surgeries.[78]

As with any government, nonprofit, or private entity, health care providers must register for GST, build it into their pricing for the supply of taxable goods and services, and submit GST returns for their taxable activities.

Private hospitals and rest homes may apportion between domestic and nondomestic goods and services using rates that are generally accepted by IRD. They can also use a factual basis for apportionment. The apportionment rates accepted by IRD can be simplified to composite rates of GST, being 12.3% for rest homes and 12.9% for private hospitals.[79]

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[73] *Id.* at 9. Income that is liable, not liable, and exempt from GST is listed on page 14 of the guide.

[74] *Technical Tax Area: Revenue Alert 14/01*, IRD (issued May 16, 2014), http://www.ird.govt.nz/technical-tax/revenue-alerts/revenue-alert-ra1401.html.

[75] *Primary Health Organisations*, MINISTRY OF HEALTH, http://www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/primary-health-organisations (last updated Sept. 5, 2011).

[76] *District Health Boards*, MINISTRY OF HEALTH, http://www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/district-health-boards (last updated Jan. 14, 2014).

[77] *Non-governmental Organisations*, MINISTRY OF HEALTH, http://www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/non-governmental-organisations (last updated Mar. 19, 2011).

[78] *See, e.g.*, NEW ZEALAND PRIVATE SURGICAL HOSPITALS ASSOCIATION INC., http://www.nzpsha.org.nz/ (last visited June 12, 2014).

[79] *GST (Goods and Services Tax): GST on Special Supplies (a – e)*, *supra* note 18.

IV. Special Transactions/Adjustment

A. Barters or Like-Kind Exchanges

"Consideration" has a broad meaning under the GST Act and need not involve money.[80] In terms of calculating the total turnover of taxable supplies to determine registration requirements, the IRD states that

> [i]n most businesses, the annual turnover will be the total value of your sales and income, including any:
>
> - grants or subsidies received
> - barter transactions, and
> - imported services.[81]

The IRD guidance on calculating GST adjustments on sales and income includes the following information on barter transactions:

> Sometimes, goods and services are exchanged for other goods or services, or a combination of goods, services and money. This is called barter.
>
> If the exchange is for other goods and services, you must account for 3/23 of the open (current) market value of whatever you received in return for your supply.
>
> When part of the exchange is in money, you must include:
>
> - 3/23 of the open (current) market value of the goods and services you received as an adjustment in Box 9 of your GST return, and
> - the money received in Box 5 of your GST return.
>
> This rule applies regardless of your accounting basis.
>
> Sometimes, when you receive goods and services in full (or part-exchange) for your supplies, you and the other person work out a dollar value for the exchange. A common example would be trade-ins. In this case, you must include this agreed value, plus any money involved, in Box 5 of your GST return.[82]

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[80] *GST (Goods and Services Tax): Glossary of GST Terms – Consideration*, IRD (Apr. 5, 2011), http://www.ird.govt.nz/gst/info-help/glossary/#con.

[81] *GST (Goods and Services Tax): Who Needs to Register?*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/gst-registering/register-who/.

[82] *GST (Goods and Services Tax): Calculate GST Adjustments on Sales and Income*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-adjust/calc-sales/sales-income.html.

B. Fringe Benefits

Fringe benefits "are generally subject to GST because the employer is considered to be making a supply of goods and services to the employee."[83] GST must be charged unless the benefit is an exempt or zero-rated supply, "or the employer's activity is that of making exempt supplies."[84] The GST-registered person providing the benefit can claim credits for any GST that was paid when the benefit was acquired. The GST on a fringe benefit is entered as a separate adjustment on the employer's fringe benefit tax return.[85]

V. Administration

A. General Method of Reporting

1. Frequency of Returns

There are three options for the frequency at which a GST-registered person must file returns: monthly, two-monthly, or six-monthly.[86] These are also referred to as the "taxable period." If an option is not selected upon registration, the IRD will apply the two-monthly option.[87] Persons can apply to use the six-month option "if their taxable supplies in a 12-month period are no more, and are not likely to be more, than [NZ]$500,000 [approximately US$433,000]."[88] The return frequency must be one month "if the person's taxable supplies in a 12-month period are more, or are likely to be more, than [NZ]$24,000,000 [approximately US$20,782,000]."[89]

2. Options for Paying

When registering for GST, a person also chooses one of three accounting bases for claiming and returning GST: invoice, payments, or hybrid.[90] If an option is not selected, IRD will put the person on the invoice basis, which can be used by any registered person.[91] Any registered person can also use the hybrid basis. A registered person can only use the payments basis if the person is a nonprofit body, or a nonresident, or if

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[83] *Technical Tax Area: GST on Fringe Benefits*, IRD (Nov. 8, 2006), http://www.ird.govt.nz/technical-tax/legislation/2006/2006-81/2006-81-gst-fbt/. *See also Fringe Benefit Tax: Goods and Services Tax Issues*, IRD (Sept. 29, 201), http://www.ird.govt.nz/fbt/gst-issues/relatedtaxissues-fbtandgst.html; GST Act, s 21I.

[84] *Technical Tax Area: GST on Fringe Benefits*, *supra* note 83.

[85] *GST (Goods and Services Tax): Calculate GST Adjustments on Fringe Benefits*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-adjust/adjust-fbt/.

[86] GST Act, s 15(1).

[87] GST GUIDE: WORKING WITH GST, *supra* note 23, at 6.

[88] GST Act, s 15(2).

[89] *Id.* s 15(4).

[90] *Id.* s 19.

[91] GST GUIDE: WORKING WITH GST, *supra* note 23, at 6.

- the total amount of sales in the last 12 months was [NZ]$2 million [approximately US$1.7 million] or less; or
- the total amount of sales is unlikely to be more than [NZ]$2 million in any 12-month period, beginning on the first day of any month.[92]

Under the invoice basis, a registered person accounts for GST at the end of the taxable period during which an invoice was issued to a customer or received from a supplier. The person will pay the IRD the amount of GST shown on the invoices given to customers (whether or not payment has been received from the customer), and will claim a credit for the amount of GST shown on tax invoices the person has received from suppliers (regardless of whether a payment has been made to the supplier or not).[93] The invoice basis must be used to account for the tax payable for the supply of a good or service for a consideration of more than NZ$225,000 (approximately US$195,000).[94]

Under the payments basis, a person accounts for GST at the end of the taxable period when the payment has been made or received.

Under the hybrid basis, a person accounts for GST on sales and income using the income basis, and for GST on expenses and purchases when a payment is actually made. The IRD states that "[t]his method isn't used as much as the other two because it can get complicated."[95]

B. Transparency Measures

Under section 24 of the GST Act, GST-registered persons must provide tax invoices to GST-registered customers for sales of more than NZ$50 (approximately US$45).[96] A receipt, such as a cash register receipt, may be issued instead of a tax invoice for sales less than NZ$50.[97] The contents of the tax invoice may depend on the amount of the sale, with the legislation setting out the particulars required generally for invoices,[98] and a subset that can be included in invoices for supplies of less than NZ$1,000 (approximately US$870).[99] The general requirement is that a tax invoice contains the following:

(a) the words "tax invoice" in a prominent place:
(b) the name and registration number of the supplier:
(c) the name and address of the recipient:
(d) the date upon which the tax invoice is issued:
(e) a description of the goods and services supplied:

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[92] *Id. See also* GST Act, s 19A.

[93] GST GUIDE: WORKING WITH GST, *supra* note 23, at 6.

[94] GST Act, s 19D.

[95] GST GUIDE: WORKING WITH GST, *supra* note 23, at 6.

[96] GST Act, s 24.

[97] GST GUIDE: WORKING WITH GST, *supra* note 23, at 9; GST Act, s 24(5).

[98] GST Act, s 24(3).

[99] *Id.* s 24(4).

(f) the quantity or volume of the goods and services supplied:
(g) either—
(i) the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for the supply; or
(ii) where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of the tax.[100]

VI. Interaction with Other Taxes

A. State and Local Sales and Other Taxes

No sales taxes are collected by subnational authorities in New Zealand. Local authorities fund their activities primarily through collecting rates from landowners, which are based on the value of their property.[101] Local authority rates are categorized as a special supply under the GST Act.[102] As rates are the "price paid for consumption of services provided by local authorities," they are eligible for GST.[103] Local authorities, as registered persons, account for GST for all payments of rates. GST-registered ratepayers "may claim GST for the payment of rates for premises used in a taxable activity."[104]

B. Excise Taxes

Excise or excise-equivalent duties are applied to particular locally manufactured and imported goods.[105] Excisable goods under the Customs and Excise Act 1996 include motor vehicle fuel, alcoholic beverages, and tobacco products.[106] GST is charged on the excise duty.[107] GST is then charged on the total price of the supply to consumers, including the excise component.[108]

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[100] *Id.* s 24(3).

[101] *Council Funding*, LOCALCOUNCILS.GOVT.NZ, http://www.localcouncils.govt.nz/lgip.nsf/wpgurl/About-Local-Government-Local-Government-In-New-Zealand-Council-funding (last visited June 12, 2014).

[102] *GST (Goods and Services Tax): GST on Special Supplies (l – p)*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-spec-supplies/calc-special/special-supplies-l-p.html (scroll to "Local authority rates").

[103] *Rate Increases: Questions and Answers – 21. Why is There GST on Rates?*, DEPARTMENT OF INTERNAL AFFAIRS, http://www.dia.govt.nz/diawebsite.nsf/ad46619e19fa042bcc256a8a0001c7b4/2cae914feb23ef49cc25782600163532!OpenDocument#twentyone (last visited June 12, 2014).

[104] *GST (Goods and Services Tax): GST on Special Supplies (l – p)*, *supra* note 102.

[105] *The Working Tariff Document*, NEW ZEALAND CUSTOMS SERVICE, http://www.customs.govt.nz/news/resources/tariff/theworkingtariffdocument/Pages/default.aspx (last updated Feb. 1, 2013); Customs and Excise Act 1996, http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM377337.html.

[106] *Excisable Goods*, NEW ZEALAND CUSTOMS SERVICE, http://www.customs.govt.nz/manufacturing/excisableanddutyfreegoods/excisablegoods/Pages/default.aspx (last updated Mar. 15, 2012).

[107] *GST (Goods and Services Tax): Calculate GST Adjustments on Purchases and Expenses*, IRD (Sept. 29, 2010), http://www.ird.govt.nz/gst/additional-calcs/calc-adjust/calc-expense/ (scroll to "GST content shown on New Zealand Customs invoices"); GST GUIDE: WORKING WITH GST, *supra* note 23, at 32.

[108] This approach has been highlighted in recent years with respect to taxes on gasoline. *See Petrol Tax*, AA, http://www.aa.co.nz/cars/maintenance/fuel-prices-and-types/petrol/ (last visited June 12, 2014); John Polkinghorne,

C. Deductibility of GST from Income Taxes

As a credit is available for GST paid on business expenses when registered persons submit GST returns, no additional deduction for GST can be claimed in that person's income tax returns. In essence, in terms of deducting business expenses from income,

- If you're registered for GST, your income tax return will **exclude** GST on your income and expenses (GST is accounted for in your GST return).
- If you're not registered for GST, your income tax return will **include** GST on your expenses only.[109]

VII. Transition/Progressivity Issues

When introduced, GST was applied to most consumer products supplied in New Zealand by registered persons. There were no measures to counteract particular tax burdens related to GST, including in relation to large consumer durables. There are also no apparent proposals to increase the progressivity of GST within the system itself, such as by zero-rating or exempting additional supplies or allowing for deductions for some individuals.[110] IRD noted in 2011 that

> [w]hen considering progressivity and redistribution it makes little sense to look at New Zealand's tax system in isolation. A substantial amount of redistribution in New Zealand takes place through transfer payments and, in particular, Working for Families.[111] For the most recent year data are available, tax progressivity for a single individual without children seems broadly consistent with OECD averages. But there are big differences in average tax rates for households with and without children. A single income earner household with two children pays a very much lower average tax rate than a single income earner household with no children. The difference between these households is bigger in New Zealand than for any other OECD country. This reflects the fact that much redistribution in New Zealand is targeted at households with children. This is arguably a relatively targeted and hence cost-effective way of redistributing income.[112]

When the GST rate was increased from 12.5% to 15% in 2010, compensation for price increases was provided to people receiving tax credits under the Working for Families program. These

AA Needs to Rethink GST Proposal, TRANSPORTBLOG (Dec. 5, 2013), http://transportblog.co.nz/2013/12/05/aa-need-to-rethink-gst-proposal/.

[109] *Tools for Business: Income and Expenses*, IRD (Apr. 3, 2012), http://www.ird.govt.nz/tool-for-business/tfb-text/whats-next/income-expenses/ (emphasis in original).

[110] For recent analysis of the option of zero-rating foods for GST in New Zealand, see Christopher Ball et al., Food Expenditure and GST in New Zealand (Apr. 8, 2014), http://www.treasury.govt.nz/publications/research-policy/wp/2014/14-07.

[111] For information on the Working for Families tax credit program, see WORKING FOR FAMILIES, http://www.workingforfamilies.govt.nz/ (last visited June 12, 2014).

[112] IRD, BRIEFING FOR THE INCOMING MINISTER OF REVENUE – 2011, ch 2 ("The New Zealand tax system and how it compares internationally"), http://www.ird.govt.nz/aboutir/reports/briefing/briefing-2011/bim-11/bim-2011-tax-system.html.

credits were increased by 2.02% from the same date that the new GST rate went into effect.[113] Other types of benefits were also subject to a Temporary GST Assistance payment at the 2.02% rate.[114] In addition, the Family Tax Credit and other assistance payments are indexed to the Consumer Price Index, so future price impacts would also result in an adjustment. The IRD also noted that several major household expenses are exempt from GST, including "rent for private premises, mortgage payments, school donations and some credit service charges."[115]

Changes to the rate of GST are not directly tied to changes in income tax rates. However, New Zealand has reduced the income tax rates for individuals and businesses in recent years. In particular, the increase in the GST rate in 2010 was accompanied by a reduction in personal income tax rates. It was noted that, as a result of these reductions, "the majority of taxpayers will see their after tax incomes rise by an amount greater than anticipated GST-related price increases."[116]

The company tax rate was reduced from 30% to 28% from the start of the 2011/12 tax year.[117] It had previously been reduced from 33% to 30% from the 2008/09 tax year.[118]

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[113] *See Technical Tax Area: Taxation (Budget Measures) Act 2010: GST Rate Increase*, IRD (Aug. 13, 2010), http://www.ird.govt.nz/technical-tax/legislation/2010/2010-27/leg-2010-27-gst-rate-increase/.

[114] *Budget 2010 – Tax Package Overview*, MINISTRY OF SOCIAL DEVELOPMENT, https://www.msd.govt.nz/about-msd-and-our-work/newsroom/factsheets/budget/2010/tax-package-overview.html (last visited June 12, 2014).

[115] *Technical Tax Area: Taxation (Budget Measures) Act 2010: GST Rate Increase*, *supra* note 113.

[116] *Budget 2010 – Tax Package Overview*, *supra* note 114.

[117] *1 April Tax Changes in New Zealand*, BUSINESS.GOVT.NZ, http://www.business.govt.nz/news-and-features/newsarchive/march-2011/1-april-tax-changes-in-new-zealand (last updated Aug. 1, 2012).

[118] *Technical Tax Area: Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007: Changes to the Company Tax Rate*, IRD (Mar. 17, 2008), http://www.ird.govt.nz/technical-tax/legislation/2007/2007-19/2007-19-comp-changes/.