

# **Goods and Services Tax Amendment Act 1989**

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## **Contents**

	Page
Title	1
1 Short Title and commencement	1
2 Interpretation	2
3 Value of supply of goods and services	2
4 Imposition of goods and services tax on imports	3
5 Accounting basis	3
6 Calculation of tax payable	3
7 Allocation of taxable supplies following investigation by Commissioner	4
8 Adjustments	5
9 Relief from tax where new start grant made in respect of drought relief	6
10 Group of companies	7

## **An Act to amend the Goods and Services Tax Act 1985**

**BE IT ENACTED** by the Parliament of New Zealand as follows:

### **1 Short Title and commencement**

- (1) This Act may be cited as the Goods and Services Tax Amendment Act 1989, and shall be read together with and deemed part of the Goods and Services Tax Act 1985 (hereinafter referred to as the principal Act).

- (2) Except as otherwise provided in this Act, this Act shall come into force on the day on which it receives the Royal assent and shall apply to supplies made on or after that date.

## 2 Interpretation

- (1) Section 2(1) of the principal Act is hereby amended by omitting from the definition of the term “associated persons” the words “and includes any 2 persons, one of whom is a trustee for the other, and any 2 persons who are relatives as defined in section 2 of that Act.”, and substituting the words “and includes—

“(a) Any 2 persons, one of whom is a trustee for the other:

“(b) Any 2 persons who are relatives as defined in section 2 of the Income Tax Act 1976:

“(c) Any company and any person where the person is associated with another person who is associated with the company:”.

- (2) Section 2(1) of the principal Act is hereby further amended by omitting from paragraph (c) of the definition of the term “input tax” the words “not being a taxable supply”, and substituting the words “being a supply by way of sale that is not a taxable supply”.

- (3) Section 2(1) of the principal Act is hereby further amended by inserting in the proviso to the definition of the term “input tax” (as amended by section 2(5) of the Goods and Services Tax Amendment Act 1986), after the words “associated persons,”, the words “or the supply is not the only matter to which the consideration relates,”.

- (4) Section 2(1) of the principal Act is hereby further amended by adding to the definition of the term “secondhand goods” (as substituted by section 2(1) of the Goods and Services Tax Amendment Act 1988) the word “; or”, and the following paragraph:

“(c) Livestock:”.

## 3 Value of supply of goods and services

- (1) Section 10 of the principal Act is hereby amended by repealing subsection (3) (as amended by section 8(2) and (3) of the Goods and Services Tax Amendment Act 1986), and substituting the following subsections:

“(3) Subject to subsections (3a) and (8) of this section, where—

“(a) A supply is made by a person for no consideration or for a consideration in money that is less than the open market value of that supply; and

“(b) The supplier and the recipient are associated persons; and

“(c) The supply is not a fringe benefit that the supplier has, or is deemed to have, provided or granted pursuant to Part Xb of the Income Tax

Act 1976 to the recipient, being a person employed under a contract of service by the supplier,—

the consideration in money for the supply shall be deemed to be the open market value of that supply.

“(3a) Subsection (3) of this section shall not apply to any supply made by a registered person where the recipient of the supply is entitled, under section 20(3) of this Act, to make a deduction in respect of that supply.”

- (2) Section 10(5) of the principal Act (as amended by section 8(5)(a) of the Goods and Services Tax Amendment Act 1986) is hereby amended by omitting the word “taxable”.
- (3) Section 8 of the Goods and Services Tax Amendment Act 1986 is hereby consequentially amended by repealing subsections (2) and (3).
- (4) Subsections (1) and (3) of this section shall come into force on the 1st day of April 1989 and shall apply to supplies made on or after that date.

#### **4 Imposition of goods and services tax on imports**

- (1) Section 12(1) of the principal Act is hereby amended by omitting the words “(not being goods the supply of which is exempt from tax pursuant to section 14 of this Act)” (as inserted by section 10(1) of the Goods and Services Tax Amendment Act 1986), and substituting the words “(not being fine metal)”.
- (2) Section 12(6)(a) of the principal Act is hereby amended by inserting, after the words “The terms”, the words “‘fine metal’,”.
- (3) Section 10(1) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed.
- (4) This section shall come into force on the date on which this Act receives the Royal assent, and shall apply to the importation of goods on or after that date.

#### **5 Accounting basis**

Section 19(3)(a)(i) of the principal Act is hereby amended by omitting the expression “section 53(c)”, and substituting the expression “section 53(cb)”.

#### **6 Calculation of tax payable**

- (1) Section 20(3)(a)(i) of the principal Act is hereby amended by inserting, after the word “services”, the words “(not being a supply of secondhand goods to which paragraph (c) of the definition of the term input tax’ in section 2(1) of this Act applies),”.
- (2) Section 20(3)(a) of the principal Act is hereby amended by inserting, after subparagraph (i), the following subparagraph:

“(ia) In relation to the supply of secondhand goods to which paragraph (c) of the definition of the term ‘input tax’ in section 2(1) of this Act applies, to the extent that a payment in respect of that supply has been made during that taxable period:”.

## 7 Allocation of taxable supplies following investigation by Commissioner

- (1) The principal Act is hereby amended by inserting, after section 20a, the following section:

### “20b

- “(1) For the purposes of this section—

“‘Discrepancy’ means any understatement or overstatement of the taxable supplies made or received by a registered person calculated or otherwise ascertained in respect of any specified period:

“‘Specified period’ means any period, being a period that extends over more than a single taxable period, to which a discrepancy relates:

“‘Tax discrepancy’, in relation to a discrepancy, means an amount equal to the tax fraction (being the tax fraction applicable to the taxable period, or any part of a taxable period, in relation to which the discrepancy has been deemed to have occurred) of the amount of the taxable supplies made or received by a registered person that have been understated or overstated.

- “(2) For the purposes of this Act, in any case where, upon investigation by the Commissioner of the liability of a registered person for tax, the Commissioner has calculated or otherwise ascertained a discrepancy in relation to any specified period then,—

“(a) Subject to paragraphs (b) and (c) of this subsection, the amount of the discrepancy shall be deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout that specified period, and those taxable supplies shall be deemed to have been so made or received by the registered person in the taxable periods, or parts thereof, included in the specified period:

“(b) Subject to paragraph (c) of this subsection, where the Commissioner is satisfied that the registered person did not carry on the taxable activity for any part of any specified period, the amount of the discrepancy shall be deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout the part of the specified period in which the taxable activity was carried on, and those taxable supplies shall be deemed to be so made or received by the registered person in the taxable periods, or parts thereof, in which the taxable activity was carried on during the specified period:

“(c) Where the registered person satisfies the Commissioner that it would be appropriate for the amount of the discrepancy to be allocated on a basis otherwise than in accordance with paragraph (a) or paragraph (b) of this subsection, the amount of the discrepancy shall be allocated on that basis, and the amount so allocated shall be deemed to be taxable supplies made or received (as the case may be) by the registered person in the

taxable periods, or parts thereof, to which the discrepancy has been so allocated.

“(3) For the purposes of section 20 of this Act, where a discrepancy has been deemed pursuant to this section to be taxable supplies made or received by a registered person in respect of any taxable period or any part of a taxable period, the tax discrepancy calculated in respect of the discrepancy shall be deemed to be output tax or, as the case may be, input tax in respect of that taxable period or part of a taxable period.”

(2) This section shall come into force on the date on which this Act receives the Royal assent, and shall apply to any assessment issued on or after that date.

## 8 Adjustments

(1) Section 21(3) of the principal Act is hereby amended by omitting the words “Notwithstanding anything in this section”, and substituting the words “Subject to subsection (3a) of this section, but notwithstanding any other provision of this section”.

(2) Section 21(3) of the principal Act (as amended by section 18(5) of the Goods and Services Tax Amendment Act 1986) is hereby further amended by repealing both provisos.

(3) Section 21 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3a) Subsection (3) of this section shall not apply in respect of any fringe benefit to the extent that—

“(a) It has arisen by virtue of any supply of goods and services that is an exempt supply under section 14 of this Act; or

“(b) It has arisen by virtue of any supply of goods and services that is a supply charged with tax at the rate of zero percent pursuant to section 11 of this Act; or

“(c) It is, or is deemed to be, provided or granted by a registered person in the course of making exempt supplies; or

“(d) It has arisen by virtue of any payment made in a lump sum by way of a bonus, gratuity, or retiring allowance that is deemed not to be assessable income under section 68 of the Income Tax Act 1976; or

“(e) It has arisen by virtue of any redundancy payment (as defined in section 68(1) of the Income Tax Act 1976) made in a lump sum.”

(4) Section 21 of the principal Act is hereby further amended by adding the following subsection:

“(6) Where any goods and services that are deemed by section 5(3) of this Act to be supplied to a person who ceases to be a registered person are subsequently applied by that person, or by a partnership (as defined in section 57 of this Act) of which that person is a partner, for the purpose of milking taxable supplies,—

- “(a) Those goods and services shall, for the purposes of subsection (5) of this section, be deemed to have been acquired or produced by that person at the time of that deemed supply other than for the principal purpose of making taxable supplies; and
- “(b) That subsection shall apply as if no deduction had, before the time of that deemed supply, been made by that person in respect of or in relation to those goods and services pursuant to section 20(3) of this Act.”

- (5) Section 18(5) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed.
- (6) Subsections (1), (2), (3), and (5) of this section shall be deemed to have come into force on the 1st day of October 1988 and shall apply in respect of any fringe benefit provided or granted, or deemed to have been provided or granted, by a registered person on or after that date.
- (7) Subsection (4) of this section shall be deemed to have come into force on the 3rd day of December 1985 and shall apply to supplies made on or after that date.

## **9 Relief from tax where new start grant made in respect of drought relief**

- (1) The principal Act is hereby amended by inserting, after section 48, the following section:

### **“48a**

- “(1) In this section, ‘new start grant’ means a grant of money that is paid to a person in respect of drought relief by the Government of New Zealand with the approval of the New Zealand Rural Trust, and is designated by the Minister of Agriculture as a new start grant.
- “(2) Where, in respect of a taxable activity, a registered person—
- “(a) Has received a new start grant; and
- “(b) Has furnished all returns required under this Act; and
- “(c) Is liable for tax in respect of—
- “(i) The new start grant; or
- “(ii) The taxable activity (including its termination),—
- the Commissioner shall remit any amount of tax payable by that registered person that relates to that new start grant and that taxable activity.
- “(3) Where, in relation to a taxable activity in respect of which a person has received a new start grant,—
- “(a) Any registered person is a person or entity associated with the person who received the new start grant within the meaning of section 64fb(3) of the Income Tax Act 1976; and
- “(b) That registered person is liable for tax in respect of—

“(i) The taxable activity (including its termination); or

“(ii) Land on which the taxable activity was carried on (including its sale or other disposal); and

“(c) That registered person has furnished all returns required under this Act,—

the Commissioner may, having regard to the matters referred to in section 64fb(3) of the Income Tax Act 1976, remit in whole or in part any amount of tax payable by that registered person that relates to that taxable activity on that land.”

- (2) This section shall be deemed to have come into force on the 4th day of November 1988.

## 10 Group of companies

- (1) Section 55(7) of the principal Act is hereby amended by repealing paragraph (c) (as amended by section 29(2) of the Goods and Services Tax Amendment Act 1986), and substituting the following paragraph:

“(c) Subject to paragraphs (db) and (dc) of this subsection, any taxable supply of goods and services by a member of the group to another member of the group may be disregarded; and”.

- (2) Section 55(7) of the principal Act is hereby further amended by inserting, after paragraph (da), the following paragraphs:

“(db) To the extent that goods and services applied by any member of a group for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose other than that of making taxable supplies, that first-mentioned application of those goods and services shall, for the purposes of section 21(1) of this Act, be deemed to have been made by the representative member of that group; and

“(dc) To the extent that goods and services acquired or produced on or after the 1st day of October 1986 by any member of a group other than for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose of making taxable supplies, that acquisition or production of those goods and services shall, for the purposes of section 21(5) of this Act, be deemed to have been made by the representative member of that group; and”.

- (3) Section 29(2) of the Goods and Services Tax Amendment Act 1986 is hereby consequentially repealed.

This Act is administered in the Inland Revenue Department.