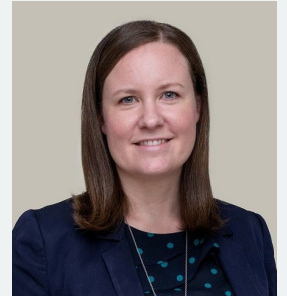


Partner Profile: Kimberly Jarvis

Kimberly Jarvis heads our Dispute Resolution and Litigation team. She has been a lawyer for more than 15 years, first as a commercial litigator, then as a Barrister specialising in relationship property law. Kimberly has been at Webb Farry since 2019 and a Partner since 2020.

Kimberly leads a thriving commercial litigation practice which involves large scale contractual, business, trust and estate disputes. She also has extensive experience in employment law, relationship property ("divorce") and international family law disputes, including Contracting Out Agreements ("pre-nups") for high net-worth individuals with complex asset structures when relationships are going well; to division of assets, care arrangements for children, and spousal maintenance disputes when they are not.



At its heart, Kimberly's practice is one of solving problems. Such problems touch on all aspects of her clients' lives. Those facing disputes tend to be in some of the most stressful situations they will encounter, and Kimberly enjoys helping to calmly steer them through to a satisfactory resolution, whether that be at early stages working with her Commercial Partners to resolve contractual and commercial disputes, right through to Court hearings where matters cannot be resolved through mediation or negotiation.

Kimberly has appeared in Courts throughout the country, up to and including the Supreme Court of New Zealand, where she successfully defended a multi-million dollar property contract dispute, and an employment case in the Court of Appeal which set precedents in terms of reinstatement and payment of lost wages claims.

Kimberly is often contacted by national news media including Stuff, RNZ National and the ODT to provide opinion on legislative updates. She is also an accomplished presenter in webinar, seminar and conference settings including a session at the 2023 New Zealand Law Society Otago Southland Conference.

Outside of work, Kimberly and her husband are kept busy with their two small children. She also enjoys running, and attending her monthly Book Club.

New GST Short Term Accommodation Tax Rules

By Bill Munro and Frank Coop

From 1 April 2024 there are legislative changes that will affect short term accommodation, food and beverage delivery and ride share apps ("electronic marketplaces") and how they pay GST.

Current GST rules

If you operate a short term rental (i.e. you rent out your holiday home or a room in your home on Airbnb or a similar provider), you may volunteer, but are not required to register for GST provided your total sales are no more than \$60,000 in a 12-month period. If your total sales exceed \$60,000 you must register for GST or will be deemed to be registered if you have not.

How electronic marketplaces are currently taxed

Electronic marketplaces like Airbnb and Bookabach currently only pay GST on their service fees. They essentially act as a third party, connecting a host to a guest and charge a service fee for facilitating the deal between the host and the guest. If the host is GST registered, then the host is responsible for payment of GST. If the host is not GST registered, then no GST is payable by the host.

New legislation

From 1 April 2024, GST must now be collected by all electronic marketplaces on all services provided. Airbnb and other providers are all caught under this new legislation and will be required to pay GST on all services provided to end-users through their marketplace, where the services are performed or received in New Zealand, regardless of the GST registration status of the host.

A way to understand this new law, is to think of it now as classifying an electronic marketplace like Airbnb as a giant hotel chain that must pay GST for providing accommodation, not just as a third party that connects a host to a guest.

Non-GST registered host: Flat Rate Credit

If a host is not GST registered, they remain unable to claim GST on expenses incurred, and the new flat-rate scheme will apply. This means of the 15% of GST collected by the electronic marketplace, 6.5% is passed on to the IRD, and the remaining 8.5% will pass to the host. This is in recognition of cost incurred when supplying the services. The Flat Rate Credit is not included in your income.

Example

A non-GST registered host lists a room in their home for \$100 a night. Airbnb as the electronic marketplace is required to add GST of 15% making the total \$115 a night. Airbnb will pay the IRD \$6.50 and pass the \$8.50 to the host who will treat this as excluded income.

GST registered host

For a GST registered host, the transaction will be considered zero-rated. You no longer need to pay GST as it is paid by the marketplace. Accordingly, you will need to include the supply listed services through an online marketplace in your GST return.

Example

A GST registered host lists a holiday house for \$2,000 on Airbnb, the electronic marketplace. Airbnb is required to add GST of 15% making the house \$2,300 a night. Airbnb will then pay the IRD the \$300. The host includes \$2,000 income as zero-rated supply in their GST return.

Exemptions

Large commercial enterprises who offer over 2000 nights of short stay accommodation via the electronic marketplace are able to enter into an agreement with the marketplace, to opt-out of the new rules. This means they continue to be responsible for their own GST obligations.

Final thoughts

We are likely to see accommodation prices for electronic marketplaces increase as the portion of extra GST is passed onto consumers.

In regards to the host, a non-GST registered host will need to consider this increase in price when thinking about the pricing of their short term accommodation. For a GST registered host, there should be no change to your back pocket.

For further information around these new rules, please contact one of our Tax Team.



Understanding Retention Changes Construction Contracts (Retention Money) Amendment Act 2023

By Lauren Brent

The retention process within construction contracts has often been contentious. Recent changes in the Construction Contracts (Retention Money) Amendment Act 2023 ("Act") have sought to provide more protection and certainty for contractors and subcontractors where retention monies are held under a construction contract.

Parties under a commercial construction contract entered into (or renewed) after 5 October 2023 will need to comply with the new regime in the Act, which provides the following key changes.

What do you need to know?

Retention money now automatically held on trust

One of the essential elements, is that retention money paid is automatically held "on trust" by the party who is entitled to hold the retention money ("Party A") for the benefit of the party for which the retention is withheld.

Party A will often be the Principal or Head contractor, withholding funds for a retention from a Subcontractor.

Requirements for holding retention money

Party A must hold the retention money in a separate bank account. The bank account must:

- be with a registered New Zealand Bank; and
- be used solely for holding retention money (but may intermingle retention sums withheld from multiple parties).

Party A must advise the relevant Bank that the account is for the purpose of holding retention money in trust.

The Act does allow for Party A to instruct a third party such as a lawyer, chartered accountant or trustee company to hold retention money in their trust account pursuant to the regime of the Act. Party A will be entitled to any interest earned on the retention money if the bank account used is an interest earning account.

The retentions regime does provide an alternative, where Party A may use a "complying instrument" for holding the retention money such as a bank guarantee, bond or insurance instrument.

Reporting

While Party A holds the retention money, they must keep accounting records relating to the retention money. The records must be individualised for each retention beneficiary on the status of their retention money. Party A must report at

least every three months, and the records must be available for inspection at a reasonable time and without charge.

The accounting records must include:

- details of the bank account the retention money is held in;
- the total amount of the retention money;
- the construction contract the retention money relates to;
- the date the amount was retained;
- details of all payments into and out of the account; and
- advise whether the bank account holds money for any other parties.

Penalties

The Act introduces significant changes for failing to comply with the requirements of the retentions regime. Failure to hold retention money within a compliant bank account (or complying instrument) is an offence and punishable with a fine of up to \$200,000 per offence. Where the party convicted is a company, each director also commits an offence and is liable for a fine of up to \$50,000 per offence.

Party A may be able to defend this charge brought against them if they can prove that:

- it (or a director) took all reasonable steps to ensure it complied with the Act; or
- it acted in good faith and honestly and reasonably believed that the use of the money was permitted.

Where Party A uses retention money for a purpose other than permitted by the construction contract, or where Party A does not meet the records and reporting requirements, a fine not exceeding \$50,000 can be imposed.

Interested in understanding the effects for you?

All principals or contractors who are responsible for holding retention money under a commercial construction contract should ensure that they understand the changes introduced by the Construction Contracts (Retention Money) Amendment Act 2023 and have taken steps to introduce the necessary processes to comply with the requirements of the Act.

If you have any questions or wish to better understand your rights and obligations as to retentions please contact us.

Contact

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