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# ***GST Treatment of Cross-Border Transactions: changes to B2C and B2B supplies - new exposure draft released***

9 October 2015

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## ***In brief***

Treasury has released a second round of exposure draft legislation (ED) on the Government's integrity measure to extend the goods and services tax (GST) to imported digital products and services with effect from 1 July 2017. The ED also contains long awaited measures relating to GST on cross-border transactions between businesses and the 'connected with Australia' rules. While these latter provisions will have a direct impact for a number of non-residents that currently make supplies connected with Australia, the provisions will also impact Australian taxpayers especially in relation to the application of the reverse charge provisions.

Treasury has taken on board feedback from impacted taxpayers in relation to imported digital products and services, particularly from entities that have had practical experience of these rules in other jurisdictions. As a result of the feedback, the latest ED clarifies a number of issues in relation to the Australian consumer test and the operation of the intermediary provisions as well as some fundamental issues such as tax invoices and registration.

There is a further opportunity for consultation with submissions on this latest ED due 21 October 2015. Given the positive way Treasury has responded to the previous round of consultation, impacted taxpayers should consider the latest ED and consider any further issues that should be raised with Treasury.

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## ***In detail***

### ***GST and imported digital products and services***

Broadly, by way of background, the Government announced that it will introduce measures that would require non-resident suppliers to register, collect and remit GST on the digital products and services that they provide to Australian consumers.

The key changes to the earlier ED are broadly as follows:

- The latest ED makes it clear that the same GST registration threshold will apply to both residents and non-residents. That is, a \$75,000 for most entities and \$150,000 for non-profit entities.

- The requirement to take ‘all reasonable steps’ in relation to determining whether a recipient is not an Australian consumer has been changed to a requirement to take ‘reasonable steps’. There is no requirement to collect additional data in relation to this test if initial data provides you with a reasonable basis for forming a reasonable belief that the entity is not an Australian consumer. In relation to the GST registration element of this test, the draft explanatory memorandum states that a belief will not be reasonable if the supplier does not collect an Australian Business Number and a declaration that the customer is registered for GST. We expect this part of the legislation to cause the biggest practical challenges for taxpayers in terms of how they automate this process for customers.
- The references to whether a customer is ‘required to be registered’ for GST has been removed.
- Changes to ensure that financial supplies that would be input taxed if made by an Australian entity remain input taxed and likewise some GST-free supplies will also remain GST-free if made by a non-resident.
- There will be no requirement to issue a tax invoice in relation to supplies caught by these provisions. This is an important administrative concession based on experience in other jurisdictions.
- There have been a number of changes to the intermediary provisions mainly to clarify which entities will be liable. The term ‘electronic distribution services’ has been changed to ‘electronic distribution platform’ (EDP). The provisions now specifically exclude entities that merely facilitate electronic payments, provide for the transmission of communications or sell vouchers which are taxed on redemption in the definition of EDP. There is also now a tie breaker provision where several EDPs could be liable.
- Transitional rules have now been introduced. As a result, the portion of the supply taken to be made after 1 July 2017 will be subject to the proposed amendments in the same way as other supplies made at this time. There are also some ‘grandfathering provisions’ where suppliers have entered into longer fixed terms agreements prior to the Budget announcements.

The ED partly addresses concerns raised by industry in relation to gift cards by confirming that entities who sell Division 100 vouchers are not operators of an EDP. GST will therefore not be payable by them on the sale of such vouchers. This amendment will likely be welcomed by retailers and gift card distributors.

However, a number of digital content gift cards sold by Australian retailers do not fall within Division 100 and entities selling such cards may be liable for GST. The effect of this is that uncertainty still exists over who is required to account for GST in the distribution chain in relation to digital content gift cards. Further amendments may be necessary to simplify and harmonise the GST treatment of all digital content gift cards.

### ***GST and business to business cross-border changes***

This proposed measure aims to reduce the number of non-resident suppliers in cross-border business-to-business arrangements who are drawn into Australia’s GST system where there is little or no GST revenue impact. It is unfortunate that since these measures have not previously been subject to public consultation, the current consultation period is quite short. However, while the ED currently states that the provisions will be effective from date of Royal Assent, the Government has requested feedback on whether the start date should be aligned with the above digital changes (i.e July 2017). If so, this will provide some time for business to consider and address the changes.

In summary, the key aspects of the proposed measures are as follows:

- The test for when an entity is carrying on an enterprise in Australia will be modified.

- The ‘connected with Australia’ test will have a more limited application where supplies are made between businesses. The changes deal with both supplies between multiple non-residents and between a non-resident and a resident entity. There are specific provisions dealing with the installation of goods and leases of goods between non-residents.
- Due to changing the ‘connected with Australia’ test, there will be a greater application of the reverse charge provisions to Australian businesses that acquire services from offshore.
- GST-free treatment may be available to supplies made to non-residents but provided to entities in Australia.
- Non-residents will no longer be required to register for GST if they only make GST-free supplies (this is a provision which may not have a huge practical impact as it is our experience that the Commissioner of Taxation has not generally reviewed this requirement).
- Changes the calculation of the value of taxable importation by providing an uplift factor rather than requiring the actual value of transport etc. to be included.

### ***The takeaway***

In relation to the legislation applicable to imported digital products and services supplied to Australian consumers, Treasury has broadly responded positively to the feedback provided by taxpayers. While there will still be a significant amount of work to do in relation to the implementation of these provisions, the latest ED provides additional clarification of the operation of the provisions (although there are some administrative points that still need to be clarified).

There is also the bigger issue around how these provisions will be administered across the Asia-Pacific region. Japan and Korea have similar measures already in place and New Zealand has flagged the adoption of similar rules in 2016. Regional co-operation around collection will be important to help multinationals to comply in multiple territories.

The cross-border changes involving business to business supplies are designed to remove the requirement for many non-residents to register for GST. While these provisions will be welcomed by non-residents, Australian taxpayers will need to consider how these provisions may impact on their position e.g. the application of the reverse charge provisions.

### ***Let’s talk***

For a deeper discussion of how these issues might affect your business, please contact:

Peter Konidaris,  
National Indirect Taxes leader  
+61 (3) 8603 1168  
[peter.konidaris@au.pwc.com](mailto:peter.konidaris@au.pwc.com)

Adrian Abbott, Sydney  
+61 (2) 8266 5140  
[adrian.abbott@au.pwc.com](mailto:adrian.abbott@au.pwc.com)

Suzi Russell-Gilford, Sydney  
+61 (2) 8266 1057  
[suzi.russell-gilford@au.pwc.com](mailto:suzi.russell-gilford@au.pwc.com)

Matthew Strauch, Melbourne  
+61 (3) 8603 6952  
[matthew.strauch@au.pwc.com](mailto:matthew.strauch@au.pwc.com)

Ross Thorpe, Perth  
+61 (8) 9238 3117  
[ross.thorpe@au.pwc.com](mailto:ross.thorpe@au.pwc.com)

Michelle Tremain, Perth  
+61 (8) 9238 3403  
[michelle.tremain@au.pwc.com](mailto:michelle.tremain@au.pwc.com)

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