

GOODS AND SERVICES TAX IN AUSTRALIA TO APPLY TO OFFSHORE DIGITAL SUPPLIES (AND MORE)

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Australia Tax Alert

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Draft Goods and Services Tax (GST) legislation has been released which seeks to level the playing field by ensuring that digital products and services provided to Australian consumers are subject to GST, whether provided by an Australian or offshore provider.

BACKGROUND TO AMENDMENTS

The amendments have been prompted by the growth in digital content being supplied from offshore to Australian consumers and the consequent erosion of the GST tax base, as well as the pricing disadvantage imposed on Australian suppliers of digital content who are subject to GST.

Similar amendments have been made to indirect tax laws in Norway, Japan and the European Union to bring offshore supplies of digital content into the tax net.

CURRENT LAW

Under the current law, an offshore provider of digital products and services (for example, streaming content provided by Netflix, or ebooks provided by Amazon) is only subject to GST where the provision is a 'taxable importation' or a 'taxable supply'.

A taxable importation must be of goods. Goods are currently defined to exclude intangible property, such as digital content.

A taxable supply can only occur where the supply is 'connected with Australia', which broadly means the supply must occur in Australia, the supplier carries on business in Australia or the supply is to an Australian business. Consequently, supplies to Australian private consumers from an offshore supplier generally escape the GST net.

AMENDED LAW

The amending legislation will include supplies of digital content to an Australian consumer (essentially an Australian resident not carrying on business) as supplies connected with Australia. If the offshore supplier is required to register for GST as a result of making such supplies, the supplies will be taxable supplies and subject to GST.

In some instances the liability will be shifted from the supplier to the operator of an electronic distribution service, where the operator is involved in one or more of the key elements of the supply, such as making the supply, collecting payment or setting terms and conditions of the supply.

An offshore supplier who takes reasonable steps to ascertain whether a recipient of the supply is an Australian consumer, reasonably concludes that the recipient is not an Australian consumer and is not liable for GST, even if the recipient turns out to be an Australian consumer. The Australian Taxation Office is expected to consult with industry and issue guidelines on what is considered to be reasonable information gathering steps.

SCOPE OF AMENDMENTS

The amendments are aimed at bringing offshore supplies of downloaded and streaming content, such as video, music, games, ebooks, and apps within the GST net.

However, the amendments also apply to offshore supplies of other intangible services, such as consultancy and professional services, and supplies of software.

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