

14 July 2015

General Manager
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The Treasury
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By email: taxlawdesign@treasury.gov.au

Dear Sir/Madam

SUBMISSION: GST REMEDIAL ISSUES

1. Introduction

This submission on Schedule 1 of the exposure draft *Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015* has been prepared by Deloitte New Zealand on behalf of Vodafone New Zealand Limited. The submission concerns the proposed changes to *A New Tax System (Goods and Services Tax) Act 1999* which would tax digital products and other imported services supplied to Australian consumers by foreign entities.

2. Summary

As part of its budget package, the Australian Government has announced changes to *A New Tax System (Goods and Services Tax) Act 1999* (the “GST Act”) in respect of the digital products supplied to Australian consumers by non-residents.

We consider that there is a risk that the proposed rules may have an inadvertent adverse effect on suppliers of telecommunications services that are not resident in Australia – such as Vodafone New Zealand Limited (“Vodafone New Zealand”).

The proposed rules are intended to catch all services, such as digital downloads of content, that are provided by non-Australian suppliers to Australian consumers. However, the rules may have the unintended effect of requiring non-Australian telecommunications companies that are not currently registered for Australian GST to register for Australian GST. This could potentially require the non-resident telecommunications companies to track, and report via the BAS return process, significant amounts of GST free roaming supplies which they make to their New Zealand consumers who roam to Australia. This would be a fundamental change from the current situation, when non-resident telecommunications suppliers do not have to consider Australian GST on such services which occur while the non-Australian-resident customer is only in Australia on a short term basis.

In addition we note that such a change to the disclosure of GST and roaming charges would appear to be at odds with the 1988 Melbourne Agreement of the International Telecommunication Union, which Australia is a party to.

The Issue

Current GST treatment of telecommunications services supplied by non-residents

Generally, for a supply to be a taxable supply in Australia, it must be connected with the indirect tax zone (i.e. "Australia").

Under Division 85 of the GST Act, a telecommunication supply may be "connected with" Australia if the recipient of the supply will effectively use or enjoy the supply in Australia. This rule, however, does not apply if:

- the supplier makes the supply through an enterprise that is not carried on in Australia; and
- the Commissioner determines that collection of GST on that supply or class of supplies would not be administratively feasible.

Whether or not it is "administratively feasible" to collect GST is clarified in *A New Tax System (Goods and Services Tax) Act 1999 Telecommunication Supplies Determination (No. 1) 2000*.

Specifically, collection of GST on a telecommunication supply that the supplier makes through an enterprise that is not carried on in Australia is not administratively feasible where:

- the recipient of the supply is a telecommunications provider; or
- the supplier is not registered for GST.

New Zealand suppliers of telecommunication services (as well as telecommunications providers from other jurisdictions) would generally not be registered for GST in Australia, and therefore would not currently lodge a BAS return. It may require significant system changes to capture and report the information that a BAS return would require, even if the vast majority of the information required is in respect of GST free supplies.

Potential effect of the GST proposed rules

Under the proposed changes to the GST legislation, in addition to the operation of the current law, supplies of services (e.g. digital products such as music, movies, etc) would be treated as connected with Australia if the recipient of the services is not registered for GST and is an Australian resident.

As the result of the proposed GST rules, a non-resident supplier of telecommunication services may be required to register for GST in Australia and charge GST on supplies of certain services, such as digital services, either as principal or as an electronic distributor. For example, Vodafone New Zealand may sign up an Australian resident consumer as a Vodafone New Zealand customer (which could often happen in practice due to the free flow of people between Australia and New Zealand) who has provided a New Zealand billing address, as they are in fact residing on a temporary basis in New Zealand. It is likely to be extremely difficult in practice for Vodafone New Zealand to determine if supplies to a customer that signed up in New Zealand would be subject to the new rules. This difficulty would apply both at sign up and when later supplies are made, as the customers circumstances could change over time. Notwithstanding these difficulties, the new rules as currently drafted may require Vodafone New Zealand to register for GST in Australia.

The potential flow-on effect of any requirement to register for GST under the proposed rules is that the non-resident telecommunication supplier may also lose the “protection” of the Telecommunication Supplies Determination, as they now would be required to register for Australian GST. As a consequence, the non-resident telecommunication supplier may be faced with significant BAS reporting requirements, even if the vast majority of the information required is in respect of GST free supplies.

We consider that there are no policy, administrative or revenue reasons for Australian tax authorities to collect information regarding GST-free telecommunication supplies made by non-Australian telecommunications suppliers. Therefore the imposition of the onerous obligation on those non-Australian telecommunications suppliers to track and record the tax residency of customers and GST-free transactions in BAS would appear not be justified.

3. Our Submission

We request that you consider the proposed GST rules in the context of their potential wide-reaching impact on the GST treatment of supplies of telecommunication services and ensure they do not result in unintended consequences. Vodafone New Zealand would be happy to be involved in further discussions on the development of this legislation if required.

Yours faithfully
DELOITTE



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