



**Australian Government**

# Tax Laws Amendment (GST treatment of Cross-Border Transactions) Bill 2015

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Consultation paper

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# TAX LAWS AMENDMENT (GST TREATMENT OF CROSS-BORDER TRANSACTIONS) BILL 2015

## PURPOSE OF THIS DOCUMENT

The Government has previously consulted on an exposure draft of the Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015 and explanatory material. These materials were released for consultation on Budget night, 12 May 2015 and closed on 7 July 2015.

As a result of feedback from consultation, changes have been made to the content of the above exposure draft. In addition, the exposure draft now also incorporates the announced but unenacted measure regarding GST cross border transactions and the 'connected with Australia' rules. Moving forward, the bill containing both measures will be known as the Tax Laws Amendment (GST treatment of Cross-Border Transactions) Bill 2015.

The purpose of this document is to outline and briefly discuss the major changes between the original exposure draft of the Tax Law Amendment (Tax Integrity: GST and Digital Products) Bill 2015 and the second iteration of the draft in the Tax Laws Amendment (GST Treatment of Cross-Border Transactions) Bill 2015.

As the Government has not previously consulted on the GST cross border transactions 'connected with Australia' rules measure, it is not discussed in detail in this document.

## BACKGROUND

The Tax Laws Amendment (GST treatment of Cross-Border Transactions) Bill 2015 contains two measures that were previously separate:

- an integrity measure to apply the Goods and Services Tax (GST) to currently untaxed cross border supplies of digital products and services imported by consumers from 1 July 2017. The Government announced this measure as part of the 2015-16 Budget.
- an announced but unenacted measure, to revise the treatment of GST cross border transactions, especially under the 'connected with Australia' rules. The key objective of this measure is to simplify the GST cross-border business-to-business rules so that non-residents are not unnecessarily drawn into the GST system.

The above two measures complement each other and both are broadly consistent with the OECD International VAT/GST Guidelines (the OECD Guidelines). Given the related issues that arise in these measures, consultation of both measures is progressing in parallel.

## POLICY INTENT

### Goods and Services Tax (GST) integrity measure

This measure was announced in the 2015-16 Budget, and aims to apply the GST to currently untaxed imports of digital products and other services to consumers. This measure will help level the playing field between domestic and international suppliers.

- Non-resident suppliers would register, collect and remit GST on the digital products and services that they provide to Australian consumers. They would have the option of complying through a limited or full registration and remittance system.

On Budget night, the Government released for consultation an exposure draft of the Tax Law Amendment (Tax integrity: GST and digital products) Bill 2015 and associated explanatory material. A first round of public consultation on these documents was open for eight weeks and closed on 7 July 2015.

### **GST cross-border transactions ‘connected with Australia’ rules**

On 14 December 2013, the Government announced it would proceed with a number of announced but unenacted measures including the GST cross-border transactions ‘connected with Australia’ rules.

This measure aims to reduce the number of non-resident suppliers in cross border business-to-business arrangements who are drawn into the GST system.

- Where the recipient business would otherwise be entitled to a full GST credit, the measure removes non-resident suppliers from Australia’s GST system.
- Where only a partial GST credit would have been allowed, the measure seeks to ‘reverse charge’ the GST. ‘Reverse charge’ means shifting the GST liability from a supplier to the recipient business.

The Government has not previously consulted on draft legislation for this proposal, hence this document does not cover any recent changes made to the draft legislation.

All references to the GST Act refer to *A New Tax System (Goods and Services Tax) Act 1999*.

All references to the first iteration of the draft refer to the Exposure Draft of the Tax Law Amendment (Tax Integrity: GST and Digital Products) Bill 2015 and Explanatory Material released on 12 May 2015.

All references to the second iteration of the draft refer to the Tax Laws Amendment (GST treatment of Cross-Border Transactions) Bill 2015.

## **GOODS AND SERVICES TAX (GST) INTEGRITY MEASURE**

### **CONSULTATION ON THE FIRST ITERATION OF THE GST INTEGRITY MEASURE**

An eight week consultation period was held on the first iteration of the GST integrity measure from Budget night 12 May 2015 to 7 July 2015. Valuable information and input was obtained from the submissions received.

In addition to the written submissions received, Treasury conducted significant consultation with representatives of international businesses who will be affected by this measure and undertook several face to face meetings with interested stakeholders. The OECD were also engaged in the consultation process, and provided feedback on the initial draft.

Both the written and verbal consultations included hearing the experiences of international businesses with other international jurisdictions that have implemented or intend to implement similar regimes.

As a result of the submissions, several changes have been made. The second iteration of the explanatory materials contains greater detail on how the law is intended to operate and the second iteration of the draft legislation includes a number of additional and amended provisions to address important aspects of the regime which were not included in the first iteration, such as a registration threshold.

### **POLICY DESIGN**

This section outlines the most significant changes from the first iteration of the draft legislation (released on 12 May 2015) of the GST integrity measure.

#### **GST REGISTRATION THRESHOLD**

The first iteration of the draft legislation did not include a specific GST registration threshold. However, it did include a power for the GST registration threshold to be modified by regulation for taxpayers in the indirect tax zone (which is Australia, excluding the areas where GST does not apply such as external Territories). In the second iteration, this power has been removed. The accompanying explanatory material makes clear that the same GST registration threshold will apply for all residents and non-residents: \$75,000 for most entities and \$150,000 for non-profit entities.

Proposing the same registration threshold for GST ensures consistency and fairness across residents and non-residents, and does not add extra complexity to the law.

#### **REASONABLE STEPS AND AUSTRALIAN CONSUMER**

One of the key amendments proposed in the first iteration of the draft legislation is to make supplies to Australian consumers connected to the indirect tax zone (Australia, excluding the areas where GST does not apply such as external Territories) and potentially subject to GST. Recognising the difficulties for overseas suppliers to identify whether a customer is an Australian consumer, the first iteration of the draft provided that suppliers would be protected if after taking 'all reasonable steps' they believed a customer was not an Australian consumer. Concerns were raised during consultation regarding the steps that would be required to be considered 'all reasonable steps'. There were also concerns that the previous drafting could require suppliers relying on ordinary business systems to

collect additional data. In the second iteration of the draft, the requirement to take ‘all reasonable steps’, has been changed to a requirement to take ‘reasonable steps’. This means that entities will be protected if they rely upon automatically gathered business data as the basis for a reasonable belief about residence.

## **SALES TO AUSTRALIAN BUSINESSES**

In this context, concerns were also raised around how suppliers may be able to determine if a customer is an Australian business.

The second iteration has removed references to whether a customer is ‘required to be registered’ for GST as a relevant consideration for suppliers to consider. This has been clarified to require a supplier in taking reasonable steps to determine whether a customer, is not an Australian consumer, to obtain a declaration or information indicating the recipient is registered for GST, in addition to obtaining an ABN.

## **LIMITED REGISTRATION AND ACCESS TO INPUT TAX CREDITS ON FULL REGISTRATION**

The first iteration of the draft included provisions allowing an entity to elect for limited registration. Choosing to register under a simplified system would result in the entity not being entitled to input tax credits.

The second iteration provides more clarity around the processes for becoming and ceasing to be a limited registration entity. Importantly, it makes clear that an entity that elected for limited registration and subsequently withdraws this election is entitled to claim input tax credits back to the later of the time they became registered for GST or the start of the financial year preceding the election for limited registration.

## **FINANCIAL SUPPLIES**

Domestically, there are a number of supplies under the GST Act that are taxed differently. This includes ‘financial supplies’, which are input taxed.

The treatment of financial supplies is linked to the supplier meeting certain domestic regulatory requirements. For example, the supply (for example fees) of a bank account will only be a financial supply where it is provided by an authorised deposit-taking institution or an entity entitled to conduct banking business under the law of a State or Territory. Similarly, the supply of an interest in a superannuation fund will only be a financial supply if the superannuation fund satisfies Australian regulatory requirements.

Where foreign entities satisfy these domestic requirements, their supplies will receive the same input tax treatment as equivalent domestic supplies. However, in practice foreign entities may not currently (or may not choose to) meet domestic regulatory requirements as they do not operate in Australia.

As foreign supplies may be unlikely to meet domestic regularity requirements, a number of commonly used financial supplies (for example, transaction accounts) would have been taxable. This would have posed significant compliance and administrative difficulties.

The first iteration of the draft did not include any special provisions relating to the treatment of such financial supplies. To address this issue, this second iteration of the draft proposes to amend the definition of financial supply to include foreign intermediation supplies. Foreign intermediation supplies would be input taxed and include:

- an account made available by a non-resident entity that is authorised to carry on banking business (within the meaning of the *Banking Act 1959*) in a foreign country in the course of this banking business; and
- a foreign superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

## **SUPPLIES RELATING TO HEALTH AND EDUCATION AND OTHER CONCESSIONALLY TAXED SUPPLIES**

Division 38 of the GST Act outlines the supplies that are GST-free supplies, including a broad range of supplies relating to health and education. There are also a number of other special rules providing for concessional treatment elsewhere in the GST Act.

These provisions will also apply to any non-residents providing eligible supplies to Australian consumers. In some cases, the treatment of these supplies may be dependent on suppliers meeting regulatory or other requirements. These provisions will apply in the same way to residents and non-residents.

## **ELECTRONIC DISTRIBUTION PLATFORMS (EDP)**

In the first iteration of the draft, the term ‘electronic distribution service’ was used. This has been changed to ‘electronic distribution platform’ to better express the intended scope of the term.

The term is not intended to capture 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. The intention is to capture services through which the supply is offered and made.

The second iteration of the draft also clarifies how the rules around the liability to EDP operates where several entities operating an EDP may be involved in the making of a supply. Broadly, these rules will ensure that only one operator of an EDP (generally the operator that first receives payment from the customer) is liable in relation to a particular supply.

However, to allow entities to mutually agree more commercially convenient outcomes, where there are multiple entities that would be considered to be the operator of EPDs through which the supply was made, the operators will be able to shift the liability to any of the other EDP operators by written agreement between the EDP operators.

## **TRANSITIONAL RULES**

The first iteration of the draft did not outline any transitional rules. In consultations, stakeholders have raised concerns this may result in uncertainty and suggested it would be beneficial to include transitional rules, similar to those included when the GST was first introduced.

The second iteration of the draft now includes transitional rules and clearer application provisions.

Under the clarified application rule, the amendments will now apply to supplies that are attributable to tax periods starting on or after 1 July 2017. This ensures taxpayers do not need to consider when supplies are actually made and potentially revise returns for earlier tax periods.

Under transitional rules, if a supply is made progressively over a period, the supply should be taken to be made uniformly over the period and attributable to each tax period to the extent it is treated as being made in that period. 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.

The transitional rule will not apply to the supply of a warranty, if the value of the warranty was included in the price of the supply to which it relates, to taxable supplies covered by the existing GST rules for periodic supplies in Division 156 or to long term leases.

In addition, supplies that were entered into before 7.30 pm AEST on 12 May 2015 will not be affected by this measure if the agreement fixes the consideration for the supply, to the extent that the supply or part of the supply is made before the earlier of 1 July 2019 and the first day after 12 May 2015 on which a review opportunity arises. This ensures that suppliers that have entered into longer fixed term agreements before the announcement of the measure will not be adversely affected.

## **FOR CONSULTATION**

Please refer to [www.treasury.gov.au](http://www.treasury.gov.au) for details on how to make a submission on this topic.

Closing date for submissions is **Wednesday, 21 October 2015**.