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# ***GST & imported digital services: learnings from offshore***

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## ***In brief***

Australia has joined a growing list of countries that have introduced, or will introduce, measures to apply goods and services tax (GST) to the supply of digital products and services from overseas suppliers to resident consumers.

It is expected that the detail of the measures will be implemented by broad legislation supported by detailed guidance and practical examples developed in consultation with industry, revenue authorities and advisors. Australian legislators and regulators should take notice of the experience of other jurisdictions in detailing the Australian measures. Consistency and harmony across jurisdictions is essential to assist with compliance. A further measure which may assist in compliance is a regional registration similar to the Value Added Tax (VAT) Mini One Stop Shop (VAT MOSS) in the European Union (EU).

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## ***In detail***

The initial drafting of the Australian GST law did not anticipate the massive growth in the supply of digital products from overseas such as movies, games and e-books, and accordingly this presents a large (and growing) gap in supplies captured by the GST law.

The current GST system means that supplies of digital products from offshore suppliers do not fall within the 'connected with Australia' test in the GST law. Accordingly, suppliers of digital products in Australia have to account for GST while off-shore suppliers do not. Legislative measures are currently proposed in Australia that are aimed at ensuring there is a level playing field for the supplies of digital products and services in Australia in relation to GST and are consistent with broader Organisation for Economic Co-operation and Development (OECD) developments. The new measures apply from 1 July 2017.

In many circumstances, responsibility for the GST liability that arises under the proposed amendments will be shifted from the supplier to an intermediary (operator of an 'electronic distribution service'). Shifting responsibility for the GST liability to operators is stated to minimise compliance costs as operators are generally better placed to comply. However, this additional collection responsibility may add significant compliance costs for the intermediary. The electronic distribution service provisions appear to be a carbon copy of equivalent EU rules.

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## ***Determining whether a customer is an ‘Australian consumer’***

The proposed changes involve extending the meaning of ‘connected with Australia’ to include supplies made to ‘Australian consumers’. An Australian consumer is broadly defined as an Australian resident that is not registered or required to be registered for GST. The new measures will therefore not apply to ‘business to business’ transactions (i.e. customers registered or required to be registered for GST).

The draft explanatory material released notes that the Australian Taxation Office (ATO) will work with taxpayers to agree the steps needed to be taken to determine whether a customer is an ‘Australian consumer’. This is of high importance in order for businesses to be aware of what systems and processes are required to comply with the changes. Additionally, customer experience can be negatively impacted if too much information is required to be collected at the point of sale or during customer on-boarding.

It is relevant to consider whether to use an approach of ‘presumptions’ and ‘proxies’ (such as in the EU) or to have something more akin to a fair and reasonable test to allow taxpayers to customise their approach based on the data they have available. Should assumptions and proxies be used, questions should be asked as to what these should be and how should they interact with each other. The EU experience with two non-contradictory pieces of information has been hard to implement. Further, experience to date has demonstrated that information obtained from customers as part of the purchase process is more reliable than asking specific VAT/GST questions. This is something that the ATO will need to consider when developing the appropriate tests in Australia.

In Australia there are many instances where an ‘Australian customer’ holds an Australian Business Number (ABN) but is not registered or required to be registered for GST. There may be difficulty differentiating between GST registered and non-registered businesses in real time.

The exposure draft law requires suppliers take ‘all’ reasonable steps to assess whether a customer is an Australian consumer, including the GST status of the customer. Further guidance on what this entails is required so suppliers of digital products are aware of how to meet their compliance obligations.

## ***Regional GST registration?***

The new measures may require the non-resident supplier to register and account for GST. In this regard, the draft law contemplates a simplified registration mechanism with a view to promoting compliance. Additionally, there is the possibility of regional registration through agreements with other countries such as New Zealand and Japan. This can further reduce compliance costs similar to the VAT MOSS regime in the EU. As the number of countries that are introducing these types of measures increase, there is an increasing attractiveness to regional registrations to assist with compliance. With 160 VAT regimes in the world, multi-national companies do not want to deal with 160 VAT registrations.

## ***Learnings from other jurisdictions***

Lessons learned from the EU experience can provide guidance for legislators and businesses in implementing and complying with the Australian regime. In the EU these measures have given rise to practical issues for businesses to resolve in particular:

- determining a customer’s location (for example information such as billing address, credit card details, IP address may not be consistent)
- implementing required IT systems and processes (one aspect of this is the retention of customer data to support the tax treatment)
- establishing whether a customer is a business (and therefore not subject to the EU provisions)
- VAT liability for electronic distribution service operators

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- understanding local VAT rules
  - registering for VAT – many suppliers have taken up the option to use the VAT MOSS
  - meeting invoicing requirements (some of the EU countries have different rules), and
  - price setting policies (can you show a VAT exclusive price and then add the appropriate VAT rate – there are 75 different rates in the EU).

### ***The takeaway***

It is expected that the detail of the measures will be refined by way of regulations and ATO administrative guidance. This is similar to the approach in the EU, that is, implementing broad and ‘future proof’ primary legislation supported by detailed guidance and practical examples developed in regular consultation with industry, revenue authorities and advisors.

Australian legislators and regulators should take notice of the experience of other jurisdictions in detailing the Australian measures, much of which still needs to be formulated. Consistency and harmony across jurisdictions is preferred but care should also be taken to avoid, where possible, issues from that have arisen in other jurisdictions.

### ***Let’s talk***

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

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