

Article Information

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New tax for foreign retailers supplying goods to Australian customers

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Last week legislation was introduced into Parliament which if passed will see many offshore retailers now liable for GST in Australia. Under the proposed measures, GST will be levied against foreign suppliers who sell low value goods (being goods with a customs value of AUD\$1,000 or less) into Australia.

The measures are intended to provide competitive neutrality for domestic retailers who have historically been at a disadvantage against foreign retailers selling equivalent goods online to Australian customers exclusive of GST.

If passed, the new measures will take effect from 1 July 2017. The amendments will coincide with the introduction of GST on inbound intangibles (i.e. the 'Netflix tax') also due to commence on 1 July 2017.

Will Fennell, Special Counsel, provides a summary of the proposed measures.

Summary of the proposed measures:

- A supplier of "low value" goods will incur an Australian GST liability if the supplied goods are brought to Australia with the assistance of the supplier. The supplier can either deliver the goods to Australia, or procure, arrange or facilitate their delivery to Australia.
- The supplier must have a GST turnover threshold (which broadly considers current and projected sales into Australia) of \$75,000 or more for GST to apply (or \$150,000 for non-profit bodies).
- Goods are "low value" if the customs value of the goods is AUD\$1,000 or less, but does not include tobacco or alcoholic beverages. GST will still apply where multiple low value goods are purchased in one order, even if the total order amount is over AUD\$1,000.
- Under the GST law, the 'supplier' is generally liable for GST. However, an entity may also be treated as the supplier if the entity is the operator of an **electronic distribution platform** through which the supply is made, or the entity is a **redeliverer** of the goods. In those cases, the operator or redeliverer is liable to pay the GST. An entity is liable as operator or as redeliverer if it delivers the goods into Australia, or procures, arranges or facilitates the delivery of the goods into Australia.
- An entity is a **redeliverer** if it provides offshore mail or shopping services in relation to the goods, takes delivery or arranges another entity to take delivery of the goods outside Australia and then assists the recipient to bring the goods to Australia. As a consequential amendment, international transport services provided by redeliverers are not GST free.
- If there are multiple redeliverers, generally the first redeliverer to deal with the customer is liable for the GST.
- GST is only levied under these provisions where the recipient is a "consumer" of the supply. This essentially means that the recipient is not GST registered, or is GST registered but doesn't acquire the thing for use in its enterprise. The legislation contains a safe harbour for suppliers where the customer provides its ABN and a declaration that it is GST registered. A reverse charge mechanism also applies where the recipient misrepresents that the supply is being made to a consumer.
- GST will not apply if the supplier has taken reasonable steps to obtain information about whether the supply would be a taxable importation, and, reasonably believes that the supply would be a taxable importation.
- Suppliers are not required to issue tax invoices or adjustment notes for these supplies, but suppliers must give customers notice of the amount of GST payable in relation to the supply.

- A new limited registration system will be in place which allows non-residents to become “**limited registration entities**”. Limited registration entities are not entitled to input tax credits for acquisitions and importations, and must have quarterly tax periods.

Foreign suppliers that will be subject to the new provisions will need to review and update their systems to ensure that GST is collected in relation to all relevant transactions from 1 July 2017. This will include online retailers who deliver to Australia updating their online checkout processes accordingly (for example adjusting the sale price for Australian GST based on the customer’s location, value of the goods and the status of the customer).

Additionally, given that the provisions can apply to a range of entities involved along the supply chain including a seller, an electronic distribution platform operator, a reseller or a customer, clear contractual documentation between each of those entities is required to ensure that the GST impost falls in the right hands. For some retailers this will involve a substantial amount of work to be done before 1 July 2017.

If you have any questions or require any assistance, please contact Will by email at wfennell@piperalderman.com.au or by telephone on +618 8205 3477.