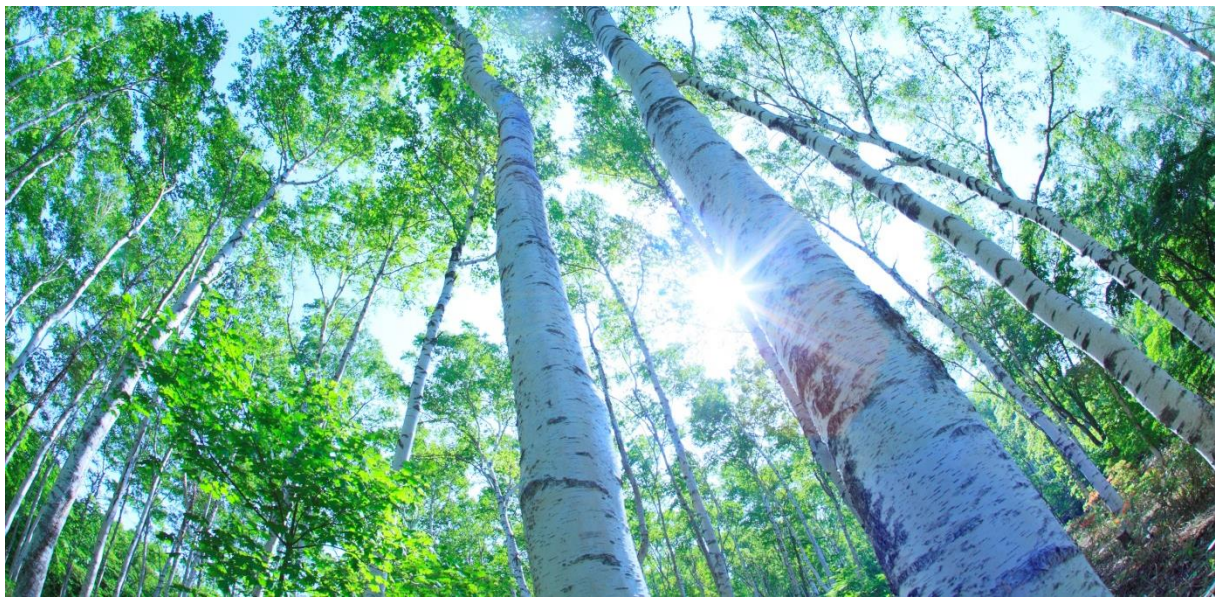


Tax insights

GST on intangible imports



Snapshot

During the 2015-16 Federal Budget the Government confirmed the release of Exposure Draft bill that proposes to apply GST to a broad range of intangibles supplied from outside Australia.

Broadly, these measures will seek to impose GST on intangible supplies made to Australian 'private' consumers by offshore businesses. In many cases, such transactions do not currently attract GST.

Contrary to earlier media reporting, the proposed measures are not limited to digital products, but would encompass a variety of intangibles such as services, rights, intellectual property and others.

The proposed measures seek to create a level playing field for GST

between Australian and offshore suppliers of intangibles.

The expected revenue generated over the forward estimates is \$350m.

The outcomes are achieved by broadening the former 'connected with Australia' test (now called the 'connected with the indirect tax zone' test). Where the recipient of the supply (the consumer) is an Australian resident and not registered or required to be registered for GST, the necessary connection exists and the supply potentially attracts GST (subject to the usual qualifications, e.g. the GST-free rules).

However, entities will not be liable for GST where they have taken reasonable steps to obtain information and after doing so hold a reasonable belief that the consumer is not an 'Australian

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consumer'. This could well encourage behaviours aimed at concealing consumer residency (for example, the use of Virtual Private Networks in internet-based transactions).

Regulations will play an important role in determining certain administrative and substantive matters, such as whether there is any minimum GST registration threshold that will apply to offshore suppliers of intangibles, and the frequency of GST returns required.

Draft regulations are not currently available, but are expected to be determined following consultation.

The Exposure Draft legislation seems to foreshadow a limited GST registration/reporting scheme to minimise compliance costs, where only liabilities (and not input tax credits) are being reported.

Relevant to certain 'digital' supplies, the liability for GST can be imposed on entities other than the supplier. This is aimed at more effective tax enforcement and collection, with the liability potentially falling on the operator of an 'electronic distribution service' through which the supply is made.

The commentary in the Explanatory Memorandum seems to imply that an 'electronic distribution service' would usually be large electronic market and store operators. However, the concept of electronic distribution service is broadly drawn in the Exposure Draft and may unintentionally capture other participants in the service provision (arguably including ISPs).

The Exposure Draft legislation brings into focus

- the identification of the recipient in the context of intangible supplies (which can be difficult in practice);
- the means of sufficiently establishing consumer tax residency and location;
- the place of 'effective use or enjoyment' as used for determining the GST-free status of supplies; and
- the limits of regulation-making powers to over-ride provisions of the GST law.

Timeline

The proposed measures are drafted to commence from 1 July 2017.

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