

# ***GST Direct:***

Bringing you the latest GST  
and Customs developments

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***GST***

## Australia moves to impose GST on the digital economy

*The debate about the imposition of GST on digital services provided by foreign suppliers continues. Several countries are now making changes to their GST rules to ensure such services are adequately taxed and Australia is the latest to join this list.*

As previously signalled and as part of the Australian Federal Budget 2015/2016, the Australian Government announced that it will change the law to ensure digital products and services provided to Australian consumers receive the same GST treatment whether they are provided by Australian or foreign suppliers. The Government also released draft legislation for consultation at the same time.

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 except a person or business that is registered for GST. Therefore, the new measures will **not** apply to 'business to business' transactions. Under specific rules, an intermediary will be liable for GST and not the contractual supplier. The intermediary rules are tricky and still developing.

It is possible that changes will be made to aspects of the draft rules after submissions close on 7 July 2015.

The draft legislation also allows for new regulations to provide simplified rules for registration, tax periods, and GST returns for entities that will be subject to the proposed amendments.

The draft explanatory material notes that the proposed changes will result in supplies of:

- a) digital products, such as streaming or downloading of movies, music, apps, games, and e-books
- b) other services such as consultancy and professional services,

being subject to GST if supplied by a foreign seller to an Australian consumer (as defined above).

It is proposed that the new rules will apply to supplies made on or after 1 July 2017.

The new measures are not expected to result in significant revenue for Australia but they are consistent with the Australian Government's desire to address concerns about the taxation of multinational businesses. The new measures are also in line with guidelines from the OECD's Base Erosion and Profit Shifting project as well as recent law changes in several other jurisdictions.

### **New Zealand – latest development**

The Minister of Revenue, Todd McClay, has indicated that New Zealand is still actively considering the issue of GST and the digital economy. In the Minister's view, requiring foreign suppliers to face the same GST obligations as those faced by local suppliers is a matter of fairness. The Minister is particularly interested in exploring the possibility of establishing a single registration scheme for Australia and New Zealand so that foreign suppliers of services would only need to register once to pay GST in both countries.

We understand the Government intends to release a consultation document outlining the proposed changes to the GST rules in the near future.

We expect officials and the New Zealand Customs Service (NZCS) to give further consideration to the issue of low-value imported goods and the options for reform in this area. Ensuring the efficient collection of GST/duty at the border is the key consideration here.



## ***GST and crowdfunding***

*Crowdfunding, via websites such as Kickstarter and Pledge Me, is becoming an increasingly popular way of funding small to medium enterprises (SMEs) seeking alternative sources of capital.*

One form of crowdfunding is rewards-based. Under this model, a developing business will offer some sort of reward in return for capital contributions. The rewards can range from low value gifts to valuable products or services.

These arrangements are a form of 'barter' and it is well accepted that they are susceptible to being taxed under any form of GST/VAT.

GST will increase the cost of funding via this method and this should be taken into account by any businesses thinking about adopting a crowdfunding strategy.

***Businesses should consider any GST issues before entering into such transactions.***



## ***GST and inbound tour operators***

*The case of **ID Tours New Zealand Limited v Commissioner of IR** (High Court, March 2015) highlights the importance of clearly documenting commercial relationships and that the failure to do so could result in adverse GST outcomes.*

Broadly, ID Tours compiled tour packages using its industry knowledge and expertise to get the best value for the best price. It then offered the tour packages to non-resident tour operators and cruise ship operators.

Inland Revenue took the view that ID Tours was buying the goods and services making up the tour packages and 'on-selling' them for a margin. Under this approach, the sale of the tour packages is standard rated and ID Tours, in effect, pays GST on its margin at 15%.

ID Tours took the view that, at all times, it acted as the agent of the non-resident tour operator. ID Tours didn't derive a margin but, instead, derived a commission for organising/arranging the tour packages. Under this approach, the commission is zero-rated.

The crucial issue was the capacity in which ID Tours acted when acquiring the goods and services comprising the tour packages.

ID Tours did not produce any documentation in support of its agency argument. Therefore, the High Court looked at the payment process, whereby the overseas operator paid ID Tours the costs of the local tour packages. Upon receipt of payment from the overseas operator, ID Tours paid the various suppliers. From this, the Court concluded that there were two separate contracts: one between ID Tours and the local suppliers and the other between ID Tours and the overseas operators. In relation to the agency argument, the Court said that the *"...evidence is insufficient to satisfy the onus on the appellant in absence of any documentary evidence in support."*

In other words, the lack of documentary evidence in support of the agency argument was fatal to the taxpayer's case.

It is interesting to look at the decision delivered a year earlier in the UK Supreme Court in *The Commissioners for Her Majesty's Revenue and Customs v Secret Hotels2 Ltd*. Secret Hotels2 Ltd marketed and arranged the sale of holiday accommodation through its website to both travel agents and holidaymakers. The First Tier Tribunal and the Court of Appeal both held that Secret Hotels2 was supplying accommodation and acting as a 'principal'. On appeal to the Supreme Court, it was held that Secret Hotels2 was an agent, which resulted in a significant proportion of supplies not being subject to VAT.

Secret Hotels2 had documented terms in the form of an Accommodation Agreement and website terms, which both referred to an agency arrangement. Notwithstanding this, Her Majesty's Revenue and Customs attempted to argue that actual practice was at odds with the documented terms and, on this basis, they attempted to argue there was no agency.

The key learning from these cases is that, in any industry where the contractual relationships have a material bearing on a tax cost, it is crucial to document those relationships and to act in a manner that is consistent with the documented terms.

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# *Customs*

## New border clearance levy

*In Budget 2015, the Government announced the introduction of a new Border Clearance Levy payable by travellers arriving in and departing from New Zealand by air or sea, with effect for travel from 1 January 2016.*

The Ministry for Primary Industries (MPI) and the NZCS are seeking submissions on the design and implementation of the levy. Submissions close on 28 July 2015.

### Background

The principle behind the levy is that it is more equitable for travellers to meet the cost for border clearance activities. Currently, the \$100m per annum spent on border clearance activities has been funded by the taxpayer.

The move to a 'user pays' system will also enable the funding for border clearance activities to increase as travel activity increases, future proofing funding for the Government. The levy is expected to fully cover the cost of passenger border clearance by 2017/2018.

### What is being proposed?

Under the proposals, the indicative levy rates for commercial flight travellers are \$22 per trip (\$16 per arrival and \$6 per departure, inclusive of GST). Higher rates may apply for cruise ship (\$26.22) and other travellers (\$21.85) to reflect the additional biosecurity or other risk assessments required.

For commercial flights and cruise ships travellers, it is proposed that the levy will be reflected in the fare price, with the airline and cruise ship operators being responsible for passing this on to the Government. For all other travellers (e.g. those arriving by private yacht), the levy will be applied directly on the travellers on arrival at or departure from New Zealand.

### Consultation

The consultation document and supporting information can be found on the [MPI website](#). Alternatively, if you would like to make a submission, please let us know if we can assist.



## Australia's Trusted Trader Programme

*The Australian Customs and Border Protection Service (ACBPS) is embarking on a new initiative known as the Trusted Trader Programme (TTP).*

The TTP is designed to improve the efficiency and reduce the costs in the international supply chains of Australian importers and exporters under a so-called "Trusted Trader" arrangement. Benefits available under the programme include:

- faster border clearance, processing and release of shipments
- reduced interventions at the border for trusted entities
- mutual recognition arrangements in export markets meaning better access and reduced delivery timeframes
- deferred and/or streamlining of reporting
- deferred payments of duty and other border taxes and charges.

Under this initiative, it is expected that a Trusted Trader business will experience reduced direct and indirect costs, lower administrative burden, and improved speed to destination.

Stage one of the TTP commences on 1 July 2015 with a pilot scheme for exporters. On 1 January 2016, the importer pilot scheme will commence with full implementation by July 2016. Currently, ACBPS is seeking approximately 40 businesses to participate in the pilot schemes which will ultimately offer additional flexibility and benefits to participants.

It is interesting to see Australia's move to implement the TTP. While New Zealand has the Secure Exports Scheme in place, the current Customs and Excise Act review presents an opportunity to consider whether a legislative regime for a Trusted Trader initiative could work in New Zealand.

***The Trusted Trader Programme will operate as a voluntary scheme for eligible businesses.***



# Contact us

If you have any questions regarding the issues covered in this publication, please contact your normal PwC advisor or a member of our GST team. Our team can help you by delivering practical GST and Customs solutions and effectively managing your indirect taxes risk.

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