

GST Direct:

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and Customs developments

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GST law reform on offshore online purchases 1

The Taxation (Residential Land Withholding Tax, GST and Online Services, and Student Loans) Bill (the November Taxation Bill) was tabled on 16 November 2015. The November Taxation Bill proposes to move New Zealand in line with international best practice.

The November Taxation Bill has tabled draft law that will impose GST on **digital products** (e.g. music, movie and game downloads) and other **services** (e.g. webinars, e-learning, publishing and consultancy) purchased online from offshore sellers by New Zealand consumers. The new law will require the offshore seller to register and pay GST from **1 October 2016**.

This development follows on from the August 2015 discussion document dealing with the GST treatment of **digital products and services**.

In relation to **imported goods**, the Government has indicated that various issues exist in relation to devising an effective solution for low value goods imports (covered by the current so-called \$400 threshold or the minimum duties/taxes \$60 concession). Progress has been made on a solution for collecting duty/GST on imported goods in the most efficient way. As discussed below, a discussion document on this issue is expected by April 2016.

The development in relation to GST on cross-border intangibles and services demonstrates that our Government and policy makers have a desire to keep our GST system current for the digital economy. This is in line with international best practice, recent OECD guidelines and developments in Australia, Europe, Japan, South Korea and South Africa. The law reform also addresses matters of sound tax policy, tax leakage (estimated to be at least \$40 million per annum in relation to cross border services and growing) and fairness.

The new GST rules are a significant development and will affect many businesses and consumers. Businesses impacted by the new rules need to start planning now.

Rules in relation to remote services

Key points:

- a. Services and intangibles supplied remotely by an offshore supplier to NZ-resident consumers will be treated as performed in New Zealand and therefore subject to GST.
- b. The new rules will only apply to business-to-consumer (B2C) transactions and not to business-to-business (B2B) transactions.
- c. From 1 October 2016, offshore sellers will be required to register and return GST if their supplies of services to NZ-resident consumers exceed NZ\$60,000 in a 12-month period.
- d. The offshore sellers will be required to pay GST on a quarterly basis from 1 April 2017. The first return will be for a special 6-month period from 1 October 2016 to 31 March 2017 (with an option to file 2-monthly returns during this period).
- e. The GST registration will be a “pay only” system as most offshore sellers will not have any NZ costs. However, if the offshore seller is already GST-registered they should be able to use their current GST registration and filing procedures.
- f. The tax invoice rules will be relaxed for offshore sellers impacted by the rules. There will be an exception for small supplies (i.e. less than \$1,000) if the offshore seller incorrectly charged the NZ business GST in the first place and did not issue a tax invoice.
- g. A wide definition of “services” is proposed, which includes both digital services and more traditional services.
- h. In some situations, an “electronic marketplace” or intermediary will be required to register instead of the principal offshore seller.

Identifying NZ customers:

To make it easier to identify NZ customers the offshore sellers will be able to rely on proxy information already held in relation to their customer (e.g. billing address, SIM country code, Internet Protocol (IP) address). This should help reduce compliance costs. New Zealand has modelled this aspect of the rules on the European experience.

In Europe, experience has shown that the most commonly used proxies have been:

- IP address;
- credit card bank identification number (BIN);
- phone number (i.e. the country code of the number from which the services were ordered).

Default GST rule:

For services that 'could' be received by a GST-registered NZ customer or an unregistered customer, a default rule is proposed that will impose GST unless the NZ recipient can provide confirmation of their GST status to the offshore seller.

Electronic marketplaces and intermediaries:

Many offshore online purchases are made via intermediaries or distributors (e.g. an app developer may make their app available on a mobile app store). The draft law has introduced new rules - based on a series of tests about the purchasing process - to shift the GST collection burden away from the supplier (or contractual offshore seller) onto the intermediary in the supply chain (the "electronic distribution service"). This will capture most online (or electronic) marketplace arrangements.

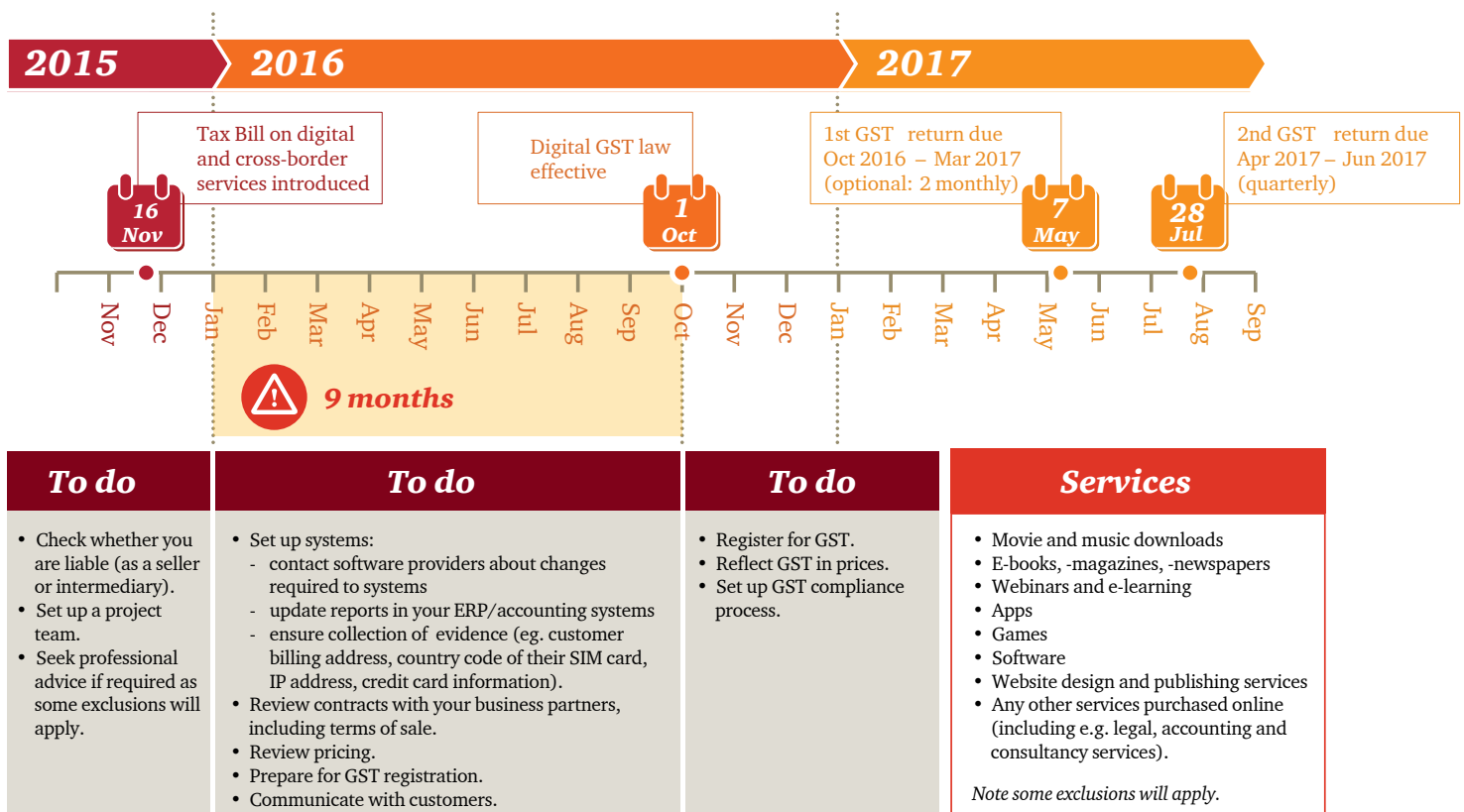
In Europe, establishing whether an intermediary or agent is liable has proved to be a challenge. In New Zealand, there will be some exceptions from the intermediary rules and tiebreaker rules. This will prevent double GST obligations.

Key issues for offshore sellers:

Offshore sellers will need to plan for the new offshore seller registration (OSR) system. The start date of 1 October 2016 is not far away.

See our timeline below covering the key areas to take into account.

Timeline – New digital and cross-border services GST rules



Our observations:

- a. Many offshore businesses have indicated they will require at least **9 months** to implement the necessary changes so it is good to see a commencement date of **1 October 2016**.
- b. Affected businesses need to start thinking about systems changes, contract reviews, pricing issues and customer interactions sooner rather than later especially if they use an agent or intermediary.
- c. Many offshore businesses have indicated a desire to comply with the new rules provided that GST registration and compliance are relatively straightforward.
- d. The existence of a GST registration threshold (NZ\$60,000 annual sales) is positive because it will help smaller businesses avoid unnecessary compliance burdens. The lack of a registration threshold has been a challenge under Europe's digital services VAT rules.
- e. It is pleasing to see the existing GST exemptions (e.g. financial services) and zero-rating treatments will be preserved.
- f. The GST Act applies a 'net value' approach to certain transactions such as **gambling** and **insurance**. Special rules are proposed in the draft law in relation to aspects of transactions involving offshore sellers of gambling and insurance services.
- g. The existing reverse charge rules for imported services in a B2B context have been retained with some modifications – the main application of the reverse charge is for businesses that make some GST-exempt supplies.
- h. The proposed new rules are extremely broad. They will cover supplies of digital products and other services imported by consumers, such as streaming or downloading of movies, music, apps, games, e-books, e-subscriptions, web design, publishing, training as well as consultancy and professional services. In essence any services that can be purchased on the internet or delivered by email.
- i. An offshore seller that is only liable for NZ GST under the remote services GST rules will not be required to have a fully functional NZ bank account in order to obtain an IRD number. This will ensure that GST registration and compliance is as smooth as possible.
- j. There are practical concessions that will help with business systems, e.g. relaxed tax invoice rule, ability to express price in foreign currency.

A number of submissions were received by officials and significant effort has gone into producing a best fit solution for New Zealand's GST system. We are pleased to see New Zealand has ultimately decided to apply the new GST rules to B2C transactions and not to B2B transactions. However, offshore sellers will have the option to zero-rate supplies to NZ business recipients – this will allow offshore sellers to recover any GST charged on NZ costs.



Inland Revenue's team is working on making the new registration and compliance process as smooth as possible.

Further thinking to be done on low value imported goods:

The solution for low value goods imports raises different challenges and more complex dimensions. The Government recognises that ensuring low value imported goods is adequately taxed in New Zealand is an important issue for New Zealand retailers. This is particularly important to ensure there is a level playing field between domestic sellers and their offshore counterparts. However, the Government is not prepared to move the cost or the inconvenience of collecting duties and GST onto the consumer.

For this reason, New Zealand Customs Service has been asked to consider collection options that will streamline the collection of duties and GST as well as work through the various logistical issues that could arise. A discussion document is expected to be released in **April 2016** which will outline the options and seek feedback on the practical implications of those options.

The current minimum duties/taxes concession is set at \$60 (or goods price ranging between \$225 - \$400). Historically, this concession recognises that the cost of collecting taxes may exceed the actual tax collected. It's a concession designed to achieve the balance between tax integrity (i.e. taxing like with like) and efficiency of tax collection. Australia has recently indicated it is prepared to consider an offshore seller registration system for imports of low value goods.

The Government recognises that ensuring low value imported goods is adequately taxed in New Zealand is an important issue for New Zealand retailers.



Contact us

If you have any questions regarding the issues covered in this publication, please contact your usual PwC adviser 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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