Tax Tips Alert June 2019

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Options for taxing the digital economy: Government discussion document released

On 4 June 2019, the Government released its much-anticipated discussion document, *Options for taxing the digital economy*, which outlines proposals to implement a digital services tax.

In this special edition of Tax Tips, we provide highlights from the discussion document as well as our preliminary views on the proposed options.

Government discussion document

The discussion document outlines two options for taxing digital multinationals:

1. A separate digital services tax (DST) of 2% to 3% on gross turnover of certain highly digitalised businesses that are attributable to New Zealand.
2. Change to the current international income tax rules through an OECD-led process.

The Government has stated that it supports an internationally agreed OECD solution. However, if the OECD cannot make sufficient progress in 2019, it will “seriously consider a DST”. The Government has also stated that, should the OECD’s international solution be implemented, any DST that has been introduced in New Zealand will be repealed.

It is proposed that the DST will apply to gross turnover attributable to New Zealand from:

- intermediation platforms that facilitate the sale of goods or services between people
- social media platforms
- content sharing sites (photos, videos etc), and
- search engines and the sale of user data.

The DST will not apply to sales of goods or services (other than advertising or data) over the internet.

The Government’s view is that this narrow scope will ensure that only highly digitalised business models will be targeted. This is likely to mean some New Zealand companies will be in the scope of the DST but the Government does not expect this to have a significant impact.

The deadline for submissions is **18 July 2019**.

OECD position

Interestingly, the OECD announced on 31 May 2019 that it had adopted a "Programme of Work" laying out a process for reaching a new global agreement for taxing multinational enterprises with respect to digitalisation of the economy.

There is a significant amount of detail about where an internationally agreed digital tax could go – outlined through a series of questions that the OECD working group and other parties have been asked to address. However, generally, it seems more likely to be trending towards a profit-based system (in contrast to a gross revenue approach with the proposed DST above). If consensus is reached, the international tax system could be altered dramatically.

What does this mean?

As outlined in the Government's own discussion document, the digital economy is an important part of the New Zealand economy. Determining how to tax the digital economy is extremely difficult. It is hard to see an outcome that doesn't result, ultimately, in an increase in prices to the end customer.

The Tax Working Group (TWG) looked at the issue of taxing the digital economy. The TWG recommended that New Zealand should get ready to implement a digital services tax if a critical mass of other countries move in that direction and it is reasonably certain that New Zealand's export industries will not be materially impacted by any retaliatory measures.

At this stage, there is no indication that any of New Zealand's major trading partners (including China, Australia, or the US) are looking at implementing a unilateral DST. Other key jurisdictions also appear to be waiting for the OECD's guidance in this area and, arguably, so should New Zealand.

GST on low-value imported goods from 1 December 2019

On 31 May 2019, the Finance and Expenditure Select Committee (FEC) reported back to Parliament on the *Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill.*

The Bill introduces rules to impose GST at 15% on low-value imported goods (under NZD 1,000) – referred to in the Bill as "distantly taxable goods" – sold mainly to private consumers. Offshore sellers, marketplaces, or redeliverers will be liable if the sales exceed the annual GST registration threshold of NZD 60,000. Our previous publication discussed these rules in some detail.

In the media statement covering the DST announcement, the Minister of Revenue referenced the GST developments in the e-commerce area:

"The significance of the digital economy is only going to grow over the coming decades. We need to keep adapting to ensure multinationals who do business here are paying their fair share of tax.

We've passed legislation to collect ***GST on remote services****, and to ensure multinationals pay their fair share of tax if they have a physical presence in New Zealand, and we have legislation before Parliament to ensure we collect* ***GST on low-value imported goods****."*

The passage of GST law in relation to qualifying imported goods will achieve consistency with the GST rules in relation to remote services (in place since 1 October 2016).

Bearing in mind the Bill will most likely not be passed until July, the Government took on board the many submissions about the start date and decided for a start date of **1 December 2019** (originally this was proposed to be 1 October 2019). This will give impacted sellers and platforms two more months to get ready and make the relevant systems and business changes. As a result of the start date change, the first transitional return period will run from 1 December 2019 to 31 March 2020 (being a 4-month period). From 1 April 2020, returns can be filed quarterly.

The rules are very detailed and will be summarised in more depth in Inland Revenue's special report after the law is passed. Inland Revenue has already started an education campaign and has produced several helpful summaries of the new rules.

Some key features to note, as well as differences from the first version of the Bill (released in December 2018), are:

1. Under a special transitional rule, a supplier will be able to treat payments made after 1 December 2019 under contracts entered into before the application date as not subject to GST (for the term of the agreement up to 396 days) e.g. magazine subscriptions.
2. There will be more flexibility with the information that can be provided to NZ Customs to evidence proof of payment of GST.
3. Suppliers will be allowed to issue a single document that qualifies as a tax invoice and a GST receipt (a receipt is required as a new and central feature of the rules).
4. Suppliers who primarily sell goods to consumers (more than 50% by value) will have an "option" to charge GST on low-value business supplies. This is an exception to the general rule that B2B supplies are not covered by the new rules as most countries typically impose GST on low-value imported goods 'B2C' transactions.
5. To make compliance easier, suppliers will be able to charge GST on high-value goods (above NZD 1,000) as well as low-value goods if the total value of the items (under NZD 1,000) sold to NZ consumers is 75% or more.

Various drafting refinements have been made to the first version of the Bill but, as an overall comment, the new law will be detailed and tricky to interpret in parts. Care will be required. Refinements have also been made to the marketplace and redeliverer 'safe harbour' rules (under which agreements can be reached with the Commissioner) – this should provide more practical clarity as well as ability to use the concessions (which are somewhat limited).

Various practical issues will arise such as determining the NZD 1,000 value (e.g. what charges are in/out and FX fluctuations). In addition, NZ Customs will make several adjustments to its border and clearing processes and will publish guidance on the impact of the new rules. By way of comparison, offshore sellers and platforms who already have obligations under similar rules in Australia should not assume the New Zealand rules are the same – in some parts, the New Zealand rules are more flexible.

As an overall comment, the timeline is still very compact and impacted sellers need to start getting ready now. We will release a practical summary shortly of the main issues to consider under the new rules.

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