LCG 2016/1A1 - Addendum - GST and carrying on an enterprise in the indirect tax zone (Australia)

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Addendum

Draft Law Companion Guideline

GST and carrying on an enterprise in the indirect tax zone (Australia)

This Addendum amends Draft Law Companion Guideline LCG 2016/D1 to finalise it following the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* receiving royal assent on 5 May 2016.

LCG 2016/D1 is amended as follows:

1. Page status (all pages)

At the top of all pages, omit:

Page status: **draft only – for comment**

insert:

Page status: **legally binding**

2. First page header and all footers

Omit 'Draft Law Companion Guideline LCG 2016/D1'; substitute 'Law Companion Guideline LCG 2016/1'.

3. Preamble

Omit the preamble; substitute:

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

This Law Companion Guideline describes how the Commissioner will apply the law in the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*. If you rely on this Guideline in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters it covers if it does not correctly state how a relevant provision applies to you.

4. Table of contents

Omit:

What this draft Guideline is about	1
Date of effect	12
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Insert:

What this Guideline is about	1
Date of effect	11A

5. Paragraph 1

(a) Omit all occurrences of 'draft' from the paragraph (including heading).

(b) In the first dot point at first occurrence, omit 'Bill'; substitute 'Act'.

(c) In the first dot point, omit 'the Bill'; substitute 'the Amending Act'

6. Paragraph 2

Omit 'draft' from the paragraph.

7. Paragraph 3

In the first sentence omit 'is outlined'; substitute 'appears'.

8. Footnote 1

Omit the footnote, substitute:

> [1] All legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) as amended by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* (Amending Act) unless context otherwise dictates.

9. Footnote 2

Omit 'draft' from the footnote.

10. Paragraph 7

(a) Omit 'draft' from the paragraph.

(b) In the first sentence, omit 'happy'; substitute 'available'.

11. Paragraph 8

Omit 'Bill' at all occurrences; substitute 'Amending Act'.

12. Paragraph 11

(a) Omit 'draft' from the paragraph.

(b) Omit the last sentence; substitute 'It also briefly considers other changes to the GST Act in Schedule 1 and the other changes in Schedule 2.'

(c) After the paragraph insert:

'**Date of effect**

11A. This Guideline is a public ruling with effect from 5 May 2016, having regard to the application dates set out in the Amending Act.'

13. Paragraph 12

Omit the paragraph; substitute

'The application dates for the changes to the GST Act under Schedules 1 and 2 of the Amending Act are not the same'.

14. Paragraph 13

After 'Schedule 1', insert 'of the Amending Act[5A]'

15. Paragraph 14

Omit the paragraph; substitute:

Schedule 2 of the Amending Act[5B] (which includes the amendment to the test for carrying on an enterprise in Australia) applies in working out net amounts for tax periods starting on or after 1 October 2016.

16. Paragraph 15

In the second dot point, omit 'Bill'; substitute 'Amending Act'.

17. Paragraph 16

(a) At the end of the first sentence omit ', which'; substitute '. This'.

(b) In the third sentence after 'aspects' insert; 'considered'.

18. Paragraph 19

Omit the paragraph, substitute:

'The entity may need to review any existing arrangements it has with resident agents (as the GST liability on a supply through a GST enterprise presence must be imposed on the non-resident principal instead of the resident agent)[8]. However, where the requirements of section 57-7 are met, the resident agent will remain liable for GST.'

19. Paragraph 20

(a) Omit 'draft' from the paragraph.

(b) In the first sentence omit '13'; substitute '11'.

(c) In the last sentence omit 'cannot'; substitute 'could not'.

[5A] Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016.

[5B] *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*.

[8] Refer paragraph 57-5(3)(b) and paragraphs 88 to 91 of this Guideline.

20. Paragraph 21

Omit the paragraph, substitute:

> 'The consequences mentioned in paragraphs 19 to 21 of this Guideline are discussed in more detail in paragraphs 74 to 100 of this Guideline'.

21. Paragraph 22

Omit the paragraph, substitute:

> 'The following paragraphs deal with the requirements for an entity to establish that they have a GST enterprise presence. These are that the enterprise must be carried on:
>
> - in Australia (that is, in the *indirect tax zone*, see paragraphs 25 to 27 of this Guideline)
> - by one or more *relevant individuals* (see paragraphs 28 to 36 of this Guideline)
> - in a *fixed place* (see paragraphs 37 to 45 of this Guideline), or
>
> in one or more places for 183 days or more, or the entity must intend to carry it on for 183 days or more (see paragraphs 47 to 74 of this Guideline).'

22. Paragraph 23

Omit 'draft' from the paragraph.

23. Paragraph 28

From the second dot point, omit 'and'; substitute 'or'.

24. Paragraph 30

Omit 'have'; substitute 'take'.

25. Paragraph 33

At the end of the paragraph, insert: '*which is located in Australia*'.

26. Paragraph 34

Omit the paragraph; substitute:

> '*GlobalBuild does not have any employees in Australia and subcontracts the work to SydneyBuild, a company that is not a labour hire firm. SydneyBuild allocates its Sydney-based employees to AusCo's project.'*

27. Paragraph 35

At the end of the second sentence, insert: '*in Australia*'.

28. Paragraph 36

Omit 'consideration'; substitute 'issue'.

29. Paragraph 39

In the first sentence, omit: '183 day rule (discussed at paragraph 48 of this draft Guideline),'; substitute: '183 day rule[17A]'.

30. Paragraph 55

In the second sentence, omit '*represent*'; substitute '*add up to*'.

31. Paragraph 58

Omit 'are relevant in deciding'; substitute 'will determine'.

32. Paragraph 74

Omit 'Bill'; substitute 'Amending Act'.

33. Paragraph 84

Omit 'to the Bill'; substitute 'of the Amending Act'.

34. Paragraph 85

In the second dot point, after 'either', insert ':'.

35. Paragraph 86

At the end of the first dot point, insert ','.

36. Footnote 27

At the end of the footnote, insert:

> 'for the purposes of working out net amounts for tax periods starting on or after 1 July 2017.'

37. Paragraph 89

Omit the paragraph; substitute:

> 'Prior to the Amending Act, any GST on taxable supplies supplied by a non resident through a resident agent is payable by the resident agent, regardless of whether the non resident was carrying on an enterprise in Australia.'

38. Paragraph 90

Omit 'draft' from the paragraph.

[17A] Refer paragraph 49 of this Guideline.

39. Paragraph 91

Omit ‘now’ from the paragraph.

40. Paragraph 101

Omit heading and contents.

41. Legislative references

Omit:

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 Sch 1

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 Sch 1 Pt 3

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 Sch 2

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 Sch 2 Pt 5

Substitute;

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016 Sch 1

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016 Sch 1 Pt 3

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016 Sch 2

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016 Sch 2 Pt 5

This Addendum applies on and from 5 May 2016.

Commissioner of Taxation
26 May 2016

ATO references	
ATOlaw topic(s)	Goods and services tax ~~ International ~~ Other Goods and services tax ~~ General rules and concepts ~~ Enterprise ~~ Course or furtherance

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