

Application of GST to supplies of digital products made to Australian recipients from non-resident suppliers -

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Electronic Commerce Industry Partnership

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Application of GST to supplies of digital products made to Australian recipients from non-resident suppliers

Nature

1. An Australian resident purchases digital products from an overseas (non-resident) supplier (for example, a webshop). The digital products are delivered via the internet to the recipient in Australia.

Issue

2. How is the supply of digital products to Australian residents from non-resident suppliers treated for GST purposes, where the supply is made via the internet?

Decision

3. Generally a supply of anything, other than goods or real property is not connected with Australia unless:

- the thing is done in Australia
- the supply is made through an enterprise carried on in Australia, or
- the supply is of a right to acquire something that would be connected with Australia.

If a supply is not connected with Australia it is not subject to GST.

4. The exception to this is the supply may, under subsection 84-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), be treated as a taxable supply and subject to GST if all of the following apply:

- the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise that the recipient carries on in Australia, but not solely for a creditable purpose
- the supply is for consideration
- the recipient is registered, or required to be registered
- the supply is not a taxable supply to the extent that it is GST-free or input taxed.

5. If the recipient acquires the thing solely for a creditable purpose it is not a taxable supply under paragraph 84-5(1)(c) of the GST Act. This is because if the recipient acquires the thing solely for a creditable purpose and the supply is a taxable supply, the recipient is entitled to an input tax credit equal to the GST payable on that supply.

6. Most private consumers in Australia will not meet the criteria in subsection 84-5(1) of the GST Act as they do not make acquisitions in the course of carrying on an enterprise in Australia. Therefore, most private consumers will receive a supply that is not connected with Australia and not subject to GST under subsection 84-5(1) of the GST Act.

7. Where a supply is treated as being a taxable supply because of section 84-5 of the GST Act, the GST is payable by the recipient of the supply and not the supplier. This is known as a 'reverse charge'. Where the recipient makes an acquisition that is partly creditable, the recipient is entitled to an input tax credit on the acquisition to the extent that it is used for a creditable purpose.

8. The following examples will use these basic facts, that:

- virus protection software is purchased from www.viruses-R-us.com, after payment the files are downloaded to the recipient's computer, and
- viruses-R-us.com is owned and operated by Maker Corp a US controlled and owned corporation. All of the equipment (servers etc) is located in the United States.

Example: Private consumer - J Briko

9. The recipient of the supply, J Briko, is a private consumer and is not registered or required to register for GST.

10. Under subsection 9-25(5) of the GST Act, the supply of the software is not connected with Australia because it is not 'done' in Australia and Maker Corp does not make the supply through an enterprise in Australia. Further the supply is not of a right to acquire something that would be connected with Australia.

11. In this instance paragraphs 84-5(1)(c) and 84-5(1)(e) of the GST Act are not satisfied as J Briko does not make the acquisition in carrying on an enterprise and is not registered or required to be registered for GST purposes. Therefore the supply of the software in this instance is not a taxable supply under Division 84 of the GST Act and J Briko is not required to 'reverse charge' any GST.

Example: Company - Useful Software Pty Ltd

12. The recipient of the supply, Useful Software Pty Ltd, is a company and acquires the supply solely for a creditable purpose.

13. Under subsection 9-25(5) of the GST Act, the supply of the software is not connected with Australia because it is not 'done' in Australia and Maker Corp does not make the supply through an enterprise in Australia. Further the supply is not of a right to acquire something that would be connected with Australia.

14. In this instance the requirements in paragraph 84-5(1)(c) of the GST Act are not satisfied as Useless Software Pty Ltd acquires the software solely for a creditable purpose. Therefore the supply is not a taxable supply under Division 84 of the GST Act and Useless Software Pty Ltd is not required to 'reverse charge' any GST.

15. If the item was to be considered a taxable supply Useless Software Pty Ltd would be entitled to an input credit equal to the amount of GST payable on the acquisition.

Example: Company - Hidden Bank Ltd

16. The recipient of the supply, Hidden Bank Ltd, is a company and the acquisition is not solely for a creditable purpose.

17. Under subsection 9-25(5) of the GST Act the supply of the software is not connected with Australia because it is not 'done' in Australia and Maker Corp does not make the supply through an enterprise in Australia. Further the supply is not of a right to acquire something that would be connected with Australia.

18. Hidden Bank Ltd acquires the supply for the purpose of making financial supplies in Australia. By virtue of subsection 11-15(2) of the GST Act, the acquisition made by Hidden Bank Ltd is not solely for a creditable purpose because the acquisition relates to making supplies that are input taxed. Therefore the supply meets the requirements of paragraph 84-5(1)(c) of the GST Act. In this example, it is assumed that the requirements in paragraphs 84-5(1)(d) and 84-5(1)(e) of the GST Act are also satisfied. As all the requirements of subsection 84-5(1) are met, the supply by Money Maker Corp is a taxable supply under section 84-5 of the GST Act.

19. Under section 84-10 of the GST Act Hidden Bank Ltd, the recipient of the supply, is liable to pay GST on the taxable supply.

Subsequent re-sale

20. Where the recipient of an offshore supply subsequently re-sells a thing other than goods or real property, this subsequent re-sale may have GST implications regardless of whether the recipient originally 'reverse charged' the GST on the supply or not by virtue of Division 84 in the GST Act.

21. GST is charged on taxable supplies, and under section 9-5 of the GST Act you make a taxable supply if:

- you make the supply for consideration
- the supply is made in the course or furtherance of an enterprise that you carry on
- the supply is connected with Australia, and
- you are registered or required to be registered.

However, the supply is not a taxable supply to the extent it is GST-free or input taxed.

22. Accordingly, where the recipient of an offshore supply (of a thing other than goods or real property) subsequently re-sells the thing and the requirements of section 9-5 of the GST Act are met, GST is payable on the supply.

Example

23. Useful Software Pty Ltd, a registered GST trader, purchases virus protection software from Maker Corp. This acquisition is made for a solely creditable purpose, therefore the supply is not a taxable supply in accordance with Division 84 of the GST Act.

24. Useful Software Pty Ltd subsequently re-sells the virus protection software to J Briko, the private consumer. In this instance Useful Software Pty Ltd makes a taxable supply to J Briko since the requirements of section 9-5 are met as:

- the supply is for consideration
- the supply is made in the course of an enterprise that Useful Software Pty Ltd carries on
- the supply is connected with Australia as Useful Software Pty Ltd makes the supply through an enterprise that it carries on in Australia, and
- Useful Software Pty Ltd is registered for GST.

25. In addition, the supply of software to J Briko is not GST-free or input taxed. Therefore Useful Software Pty Ltd must pay the GST on the taxable supply made to J Briko.