

# EXPOSURE DRAFT

2013-2014-2015

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015**

**No.     , 2015**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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# EXPOSURE DRAFT

1  
2 **A Bill for an Act to amend the law relating to**  
3 **taxation, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (Tax Integrity:*  
7 *GST and Digital Products) Act 2015.*

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day this Act receives the Royal Assent.	

14 Note: This table relates only to the provisions of this Act as originally  
15 enacted. It will not be amended to deal with any later amendments of  
16 this Act.

- 17 (2) Any information in column 3 of the table is not part of this Act.  
18 Information may be inserted in this column, or information in it  
19 may be edited, in any published version of this Act.

20 **3 Schedules**

21 Legislation that is specified in a Schedule to this Act is amended or  
22 repealed as set out in the applicable items in the Schedule  
23 concerned, and any other item in a Schedule to this Act has effect  
24 according to its terms.

# EXPOSURE DRAFT

**Schedule 1** Tax integrity: extending GST to digital products and other services imported by consumers

**Part 1** Main amendments

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1 **Schedule 1—Tax integrity: extending GST to**  
2 **digital products and other services**  
3 **imported by consumers**

4 **Part 1—Main amendments**

5 *A New Tax System (Goods and Services Tax) Act 1999*

6 **1 At the end of subsection 9-25(5) (before the example)**

7 Add:

8 ; or (d) the \*recipient of the supply is an \*Australian consumer.

9 **2 At the end of subsection 9-25(5) (after the example)**

10 Add:

11 Note: A supply that is connected with the indirect tax zone under this  
12 subsection might be GST-free if it is consumed outside the indirect tax  
13 zone: see section 38-190. For more rules about supplies that are  
14 GST-free, see Division 38.

15 **3 At the end of section 9-25**

16 Add:

17 *Meaning of Australian consumer*

18 (7) An entity is an *Australian consumer* of a supply made to the entity  
19 if:

20 (a) the entity is an \*Australian resident (other than an entity that  
21 is an Australian resident solely because the definition of  
22 *Australia* in the \*ITAA 1997 includes the external  
23 Territories); and

24 (b) the entity:

25 (i) is not \*registered or \*required to be registered; or

26 (ii) if the entity is registered or required to be registered—  
27 the entity does not acquire the thing supplied solely or  
28 partly for the purpose of an \*enterprise that the entity  
29 \*carries on.

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Tax integrity: extending GST to digital products and other services imported by  
consumers **Schedule 1**  
Main amendments **Part 1**

1 Note: Suppliers must take reasonable steps to ascertain whether recipients  
2 are Australian consumers: see section 84-100.

## 3 **4 At the end of Division 84**

4 Add:

## 5 **Subdivision 84-B—Electronic distribution services**

### 6 **84-45 What this Subdivision is about**

7 This Subdivision deals with electronic supplies made from offshore  
8 to Australian consumers through electronic distribution services.

9 The operator of the electronic distribution service is treated as the  
10 supplier. The result is that the operator, instead of the supplier,  
11 counts the supplies towards their GST turnover and pays the GST  
12 on the supplies.

### 13 **84-50 Supplies to which this Subdivision applies**

14 This Subdivision applies to an \*inbound intangible consumer  
15 supply that is made through an \*electronic distribution service  
16 unless all of the following are satisfied:

- 17 (a) an \*invoice issued in relation to the supply identifies the  
18 supply and identifies the supplier as the supplier of the  
19 supply;
- 20 (b) the supplier is identified as the supplier of the supply, and as  
21 the entity responsible for paying GST, in the contractual  
22 arrangements for:
- 23 (i) the making of the supply; and  
24 (ii) the provision of access to the electronic distribution  
25 service;
- 26 (c) the operator of the electronic distribution service:
- 27 (i) does not authorise the charge to the \*recipient for the  
28 supply; and  
29 (ii) does not authorise the delivery of the supply; and

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**Schedule 1** Tax integrity: extending GST to digital products and other services imported by consumers

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- 1 (iii) does not set the terms and conditions under which the  
2 supply is made.

## 3 **84-55 Operator of electronic distribution service treated as supplier**

4 The operator of the \*electronic distribution service through which  
5 the supply is made, instead of the supplier, is treated:

- 6 (a) as being the supplier of, and as making, the supply; and  
7 (b) as having made the supply for the \*consideration for which it  
8 was made; and  
9 (c) as having made the supply in the course or furtherance of an  
10 \*enterprise that the operator \*carries on.

11 Note: As a consequence, GST on the supply is payable by the operator of the  
12 electronic distribution service.

## 13 **84-60 Meaning of *inbound intangible consumer supply***

- 14 (1) A supply of anything other than goods or \*real property is an  
15 *inbound intangible consumer supply* if the \*recipient is an  
16 \*Australian consumer, unless:  
17 (a) the thing is done wholly in the indirect tax zone; or  
18 (b) the supplier makes the supply wholly through an \*enterprise  
19 that the supplier \*carries on in the indirect tax zone.  
20 (2) Disregard section 84-55 in determining whether paragraph (1)(b)  
21 applies.

## 22 **84-65 Meaning of *electronic distribution service***

23 A service (including a website, internet portal, gateway, store or  
24 marketplace) is an *electronic distribution service* if:

- 25 (a) the service allows entities to make supplies available to  
26 end-users; and  
27 (b) the service is delivered by means of \*electronic  
28 communication; and  
29 (c) the supplies are to be made by means of electronic  
30 communication.



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Tax integrity: extending GST to digital products and other services imported by  
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## 1 Subdivision 84-C—Modifications for inbound intangible 2 consumer supplies

### 3 84-95 What this Subdivision is about

4 This Subdivision is about modifications relating to intangible  
5 supplies made from offshore to Australian consumers.

### 6 84-100 Entities must take reasonable steps to find out information 7 about Australian consumers

8 The \*GST law applies in relation to an entity (the *first entity*) as if  
9 another entity (the *consumer*) was not an \*Australian consumer if:

- 10 (a) the first entity takes all reasonable steps to obtain information  
11 about whether or not the consumer is an Australian  
12 consumer; and  
13 (b) after doing so, the first entity reasonably believes that the  
14 consumer is not an Australian consumer.

### 15 84-105 Opting out of input tax credits

- 16 (1) An acquisition made by an entity is not a \*creditable acquisition if  
17 an election under subsection (2) is in effect for the entity when the  
18 acquisition is made.
- 19 (2) An entity may, by notifying the Commissioner in the \*approved  
20 form, elect to have limited registration apply to the entity for a  
21 \*financial year if:  
22 (a) the entity makes, or intends to make, 1 or more \*inbound  
23 intangible consumer supplies in the year; and  
24 (b) the entity is a \*non-resident; and  
25 (c) the entity is \*registered or \*required to be registered.
- 26 (3) An election under subsection (2):  
27 (a) takes effect from the start of the \* financial year specified in  
28 the election; and

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**Schedule 1** Tax integrity: extending GST to digital products and other services imported by consumers

**Part 1** Main amendments

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1 (b) must be made before the end of the entity's first \*tax period  
2 that starts in the \*financial year.

3 (4) This section has effect despite section 11-5 (which is about what is  
4 a creditable acquisition).

## 5 **84-110 Modified administrative rules**

6 The regulations may modify the operation of the provisions of this  
7 Act relating to the following, so far as the provisions apply in  
8 relation to suppliers of \*inbound intangible consumer supplies:

- 9 (a) who is \*required to be registered, or who may be \*registered;  
10 (b) \*registration;  
11 (c) \*tax periods;  
12 (d) \*GST returns.

## 13 **5 Paragraph 188-15(3)(b)**

14 Repeal the paragraph, substitute:

- 15 (b) any supply that is connected with the indirect tax zone  
16 because of paragraph 9-25(5)(c), unless:  
17 (i) the supply is made to an \*Australian consumer; and  
18 (ii) the supply is not \*GST-free; and  
19 (iii) the thing to be acquired under the right or option is not  
20 goods or \*real property; and

## 21 **6 Subsection 188-15(3)**

22 At the end of the subsection, add:

- 23 ; and (d) any supply that is connected with the indirect tax zone  
24 because of paragraph 9-25(5)(d) and is GST-free.

## 25 **7 Paragraph 188-20(3)(b)**

26 Repeal the paragraph, substitute:

- 27 (b) any supply that is connected with the indirect tax zone  
28 because of paragraph 9-25(5)(c), unless:  
29 (i) the supply is made to an \*Australian consumer; and  
30 (ii) the supply is not \*GST-free; and
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Tax integrity: extending GST to digital products and other services imported by  
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Main amendments **Part 1**

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1 (iii) the thing to be acquired under the right or option is not  
2 goods or \*real property; and

3 **8 Subsection 188-20(3)**

4 At the end of the subsection, add:  
5 ; and (d) any supply that is connected with the indirect tax zone  
6 because of paragraph 9-25(5)(d) and is GST-free.

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**Schedule 1** Tax integrity: extending GST to digital products and other services imported by consumers

**Part 2** Consequential amendments

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1 **Part 2—Consequential amendments**

2 *A New Tax System (Goods and Services Tax) Act 1999*

3 **9 Section 13-1 (note 2)**

4 Omit “Division 84”, substitute “Subdivision 84-A”.

5 **10 Subparagraph 48-40(2)(a)(i)**

6 Omit “Division 84”, substitute “section 84-5”.

7 **11 Subsection 48-45(3)**

8 Omit “Division 84”, substitute “section 84-5”.

9 **12 Paragraph 58-10(2)(b)**

10 Omit “84”, substitute “section 84-5”.

11 **13 Paragraph 83-5(2)(a)**

12 Omit “Division 84”, substitute “section 84-5”.

13 **14 Before section 84-1**

14 Insert:

15 **Subdivision 84-A—Intangible supplies from offshore that are**  
16 **taxable supplies under this Subdivision**

17 **15 Section 84-1 (heading)**

18 Omit “Division”, substitute “Subdivision”.

19 **16 Section 84-1**

20 Omit “Division” (wherever occurring), substitute “Subdivision”.

21 **17 Section 84-5 (heading)**

22 Omit “Division”, substitute “Subdivision”.

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Tax integrity: extending GST to digital products and other services imported by  
consumers **Schedule 1**  
Consequential amendments **Part 2**

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1 **18 Section 84-14**

2 Omit “This Division”, substitute “This Subdivision”.

3 **19 Section 195-1**

4 Insert:

5 *Australian consumer* has the meaning given by subsection 9-25(7)  
6 and affected by section 84-100.

7 **20 Section 195-1 (note at the end of the definition of**  
8 ***creditable acquisition*)**

9 After “78-30”, insert “, 84-105”.

10 **21 Section 195-1**

11 Insert:

12 *electronic communication* has the same meaning as in the  
13 *Electronic Transactions Act 1999*.

14 *electronic distribution service* has the meaning given by  
15 section 84-65.

16 *inbound intangible consumer supply* has the meaning given by  
17 section 84-60.

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**Schedule 1** Tax integrity: extending GST to digital products and other services imported by consumers

**Part 3** Application

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1 **Part 3—Application**

2 **22 Application**

3 The amendments made by this Schedule apply in relation to supplies  
4 made on or after 1 July 2017.