

# Goods and Services Tax (GST) on Imported Services and Digital Products into Australia

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## Introduction

From 1 July 2017, Australia imposed a 10% Goods and Services Tax (GST) on the sale of services and digital products supplied by overseas businesses to Australian consumers.

The recently passed Australian legislation has widened the GST net through extension of the definition of when a supply is considered connected with the recipient's country, and therefore subject to tax.

Australian businesses, whose sales were already subject to GST, had been lobbying the government for years against the commercial advantage enjoyed by foreign suppliers, whose imported services and digital products were deemed exempt from GST.

The new tax has been designed to restore a level playing field for domestic suppliers. It has extended supplies subject to GST to include not only imported digital services and products such as e-books and streaming of music and films, but also any intangible supply (digital or otherwise), including insurance, legal and accounting services.

The change in law requires overseas merchants that sell services or digital products (or electronic distribution platform operators who facilitate these sales), and have an Australian GST turnover of AUD 75,000 or more, to charge GST on sales to consumers in Australia.

Businesses that meet the AUD 75,000 registration threshold need to:

- register for GST;
- charge GST on sales of imported services and digital products (unless those services or products are GST-free); and,
- remit the GST to the Australian Taxation Office (ATO) by lodging returns.

In the first 12 months following the introduction of the law, the Australian Tax Office has been taking a measured approach to compliance. It has been supporting those businesses that are not fully compliant but have demonstrated they are taking reasonable steps to meet their legal obligations.

However, from 1 July 2018 the compliance approach is changing. Businesses that have still not met their GST obligations will be issued substantial penalties, as well as facing other punitive consequences, including backdated interest charges and additional administrative penalties.

In this white paper we take a look at the details, including:

- How services and digital products were treated prior to July 2017;
- The change in law from 1 July 2017;
- The definition of services and digital products;
- Who is responsible for charging GST;
- The GST registration requirements and options;
- The consequences of non-compliance; and,
- The steps businesses affected by the changes should be taking now.

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An overseas supplier selling services or digital products into Australia was only liable for GST if the sale had a **connection with Australia**.

Generally, that connection was missing for services and digital products sold to Australian consumers from outside Australia prior to 1 July 2017 and so they were deemed exempt from GST.



In a move designed to create a level playing field with Australian retailers, and in response to the Organisation for Economic Co-operation and Development's (OECD) aim to standardise cross-border taxation, the Australian government passed legislation to bring services and digital products imported into Australia into the GST net.

Australia has followed in the footsteps of tax authorities in other countries including Japan, South Africa, Norway, Switzerland and member countries of the European Union, in taxing digital supplies from overseas.

From 1 July 2017 a sale of services or digital products by a foreign business is deemed to be **connected with Australia** if they are sold to an Australian consumer.

Since the transaction now has the required connection with Australia, it falls within the regular GST regime and gives rise to a potential GST liability. Australian GST must be charged on a sale of imported services and digital products if:

- the sale is connected with Australia;
- the merchant is registered or required to be registered for GST;
- the sale is made for payment and as part of running the supplier's business; and,
- the supply is not GST-free or input taxed.

GST does not apply to sales of imported services or digital products to Australian GST-registered

businesses who are making the purchase for business use.

Under the new law, an obligation to register for, and charge, GST may arise for:

- the merchant who sells the imported services and digital products; or,
- an operator of an electronic distribution platform (EDP), for example an app store.

A merchant or EDP will be required to register for GST if the value of its turnover from sales that are connected with Australia, and made in the course of its business, meets or exceeds the GST registration threshold of AUD 75,000 in a 12-month period (or AUD 150,000 for a non-profit body).

Sales not connected with Australia, or that are GST-free, should not be included in the Australian GST turnover calculation.

If an EDP operator is responsible for the GST instead of the merchant, the sales count towards the GST turnover of the EDP and not the merchant.

Once a US business is registered it will need to:

- include GST in the price of imported services and digital products (unless they are GST-free);
- lodge regular GST returns with the Australian Tax Office; and,
- meet record keeping requirements.

# The Australian Tax Office's Definition of Services and Digital Products

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Australian GST applies to sales made by suppliers (i.e. merchants or EDPs) outside Australia to Australian consumers that purchase imported:

- services;
- digital services; or,
- digital products.

Examples of imported services and digital products include:

- Supplies of digital content such as e-books, movies, TV shows, music and online newspaper subscriptions;
- Online supplies of games, apps, software and software maintenance;
- Webinars;
- Website design or publishing services;
- Booking services for events or places within Australia (such as hotel accommodation or sports events);
- Online dating services;
- Gambling services;
- Distance learning courses;
- Legal, accounting, architectural or consultancy services;
- Insurance services; and,
- Professional association services (i.e. membership fees).

The law ensures these types of supplies to Australian consumers are now subject to GST regardless of whether they are supplied by an overseas-based merchant or an Australian merchant.

The GST rate applicable to taxable services and digital products is 10%. The GST on the sale will therefore be  $\frac{1}{11}$  of the price paid by the Australian consumer.

As soon as an overseas business is aware that Australian GST is likely to apply to the sale of imported services or digital products, Australian consumer law requires that the GST-inclusive price is displayed.



GST applies to the sale of services and digital products prior to 1 July 2017 where the invoice and payment were received on or after 1 July.

If a subscription started prior to 1 July 2017 and expires after 1 July 2017, and the invoice is received and paid after 1 July, GST will apply to the whole subscription.

Transition rules apply if a payment was received prior to 1 July 2017 for supplies made for a period that started before 1 July 2017 and continue after 1 July 2017. A common example is the sale of subscription services to an Australian consumer. The payment relating to the portion after 1 July 2017 may be subject to GST.

## **Example**

### ***An ongoing subscription supplied before 1 July 2017:***

*A1 Magazines is an overseas-based company that sells digital magazine subscriptions.*

*It sells a 12-month subscription to Brody, who is an Australian consumer. The subscription runs from 1 April 2017 to 31 March 2018 and was fully paid for prior to 1 July 2017.*

*As at 1 July 2017, nine months of the 12-month subscription supplied by A1 Magazines is still active, as such nine months of the 12-month subscription is a taxable sale.*

*GST does not apply to the portion of the subscription from 1 April 2017 to 30 June 2017.*

# Transactions on which GST is not Chargeable by the Supplier

Non-resident merchants and EDP operators will need to determine whether their customers are Australian **consumers** and therefore whether the imported services or digital products are subject to GST.

A purchaser is an Australian consumer if they are both an Australian resident, and either:

- not a business registered for Australian GST; or,
- are registered for Australian GST but have not made the purchase for use in their business.

If the US merchant or the EDP operator can obtain the customer's **Australian Business Number (ABN)** and a statement (or other information from them) that they are registered for GST, then GST will not be chargeable and no consideration will need to be given as to whether the customer is purchasing the services or digital products for use in their business in Australia.

## Example

*Taxicity Co, a United States company that is registered for GST, sells a digital version of a software program to Australia.*

*Brian Co, an Australian company that is registered for GST, downloads the digital version of the software product from Taxicity Co for business use. Brian Co provides Taxicity Co with its ABN and states it is registered for GST.*

*Taxicity Co does not charge GST on the sale, as Brian Co is not an Australian consumer.*

GST should not be charged on sales of imported services or digital products that are not subject to GST under Australian law (known as 'GST-free' or 'input taxed' sales), for example some education courses and some medical, health and care services<sup>1</sup>.



# The Entity Responsible for Charging the GST

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The obligation to charge GST on services and digital products can fall to either:

- the merchant; or
- an operator of an electronic distribution platform (EDP) or online marketplace (e.g. an app store) that supplies the services or digital products to the Australian consumer.

Only one entity is required to charge GST on a taxable sale. If an EDP operator is responsible for GST on a sale, the merchant will not be responsible for GST.



# Merchants Supplying Non-Digital Services

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A merchant that supplies imported services to Australian consumers that are not digital supplies (e.g. legal services or architectural services) will always be responsible for any GST due.



An overseas merchant supplying digital services or products is generally:

- responsible for GST on sales made directly to Australian consumers; and,
- not responsible for GST on sales made to Australian consumers through an EDP.

This differs to the obligations of an Australian-based merchant who is responsible for GST on sales whether made directly or through an EDP (unless they have entered into an agreement to assign responsibility to the EDP).



# Merchants Selling Through an Electronic Distribution Platform (EDP)

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If imported digital services or digital products are sold to Australian consumers through an EDP, usually the EDP operator will be responsible for GST on the sales, instead of the merchant.

If the merchant is based in Australia, registered for GST and sells digital services or digital products through an EDP, under the previous and new rules the merchant is responsible for GST on any taxable sales. However, the Australian-based merchant and the EDP can enter into a written agreement stipulating that the EDP is responsible for the GST on the sales instead.

If the EDP operator is responsible for GST, these sales do not count towards the GST registration threshold of the merchant.

# What Constitutes an Electronic Distribution Platform (EDP)?

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It should be noted that an EDP is a service that:

- allows merchants to make sales of digital services or digital products available to purchasers; and,
- is delivered by electronic communication.

Examples of an EDP are an app store or a website.

However, a service that only advertises a merchant's products, for example by providing a link for customers to buy digital products from the merchant's website, is not an EDP. The merchant would be responsible for GST on these sales.



## GST Registration

A simplified form of GST registration<sup>2</sup> via an electronic portal is available to foreign businesses caught by the new rules which will reduce the compliance burden.

Alternatively, US retailers can opt to register under the standard domestic GST registration system<sup>3</sup>.

Reporting and payment of GST under both systems must be in Australian dollars. Sales in foreign currency must be converted to Australian dollars using one of the following rates consistently:

- A foreign exchange organisation rate;
- The Reserve Bank of Australia rate; or,
- The rate agreed between the merchant and the customer.

## Standard GST Registration

The standard GST registration system is Australia's full domestic GST system.

If a US merchant or an EDP chooses to register under the standard GST system it:

- receives an Australian business number (ABN);
- can claim input tax credits;
- is not limited to quarterly accounting periods, the due date for submitting and paying is displayed on the business activity statement (BAS); and,
- uses activity statements to report GST.

## Simplified Registration

The simplified GST system is intended to be a quick and easy way for foreign businesses to meet their GST obligations.

Both non-resident merchants and EDP operators are eligible to register under this system.

Under the simplified GST system, a business can register, lodge and pay Australian GST online, manage its account details, and authorise others to securely access its account.

In the simplified GST system, a business:

- doesn't have to prove its identity;
- uses an ATO reference number (ARN) instead of an ABN;
- cannot claim GST credits;
- cannot issue tax invoices or credit notes;
- must lodge GST returns and pay GST quarterly; and,
- can pay electronically via SWIFT bank transfer or credit card.

### Payment and lodgement dates under the Simplified GST system

Quarter	Payment and lodgement date
1 Jul to 30 Sept	28 October
1 Oct to 31 Dec	28 February
1 Jan to 31 Mar	28 April
1 Apr to 30 Jun	28 July

## Record keeping

Once registered for Australian GST a business must keep:

- accurate records of its Australian supplies; and,
- GST records for 5 years.

Penalties may be imposed by the Australian Taxation Office if correct records are not kept.



# Australian Tax Office (ATO)

## Approach to Monitoring and Non-Compliance

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The ATO has identified a list of overseas businesses that it believes are impacted by this law. It has contacted them directly to raise awareness of the new rules and provide more detailed information to enable them to comply with the law.

The ATO can keep track of the digital economy and identify potential situations where obligations under the law have not been met using a number of information sources, including:

- Data-matching technology: more than 650 million pieces of data a year are obtained from various third-party sources, including bank records.
- Information from other countries obtained under arrangements to share information. This can be used to identify the legal identity behind e-commerce websites.
- Third party credit card transactional data for purchases made on the internet from non-resident businesses. This can be used to make an assessment of GST payable.
- Any information provided anonymously to the ATO.

### Consequences of Non-Compliance in the First 12 Months

Until the end of June 2018, the ATO has been operating a light touch approach with foreign suppliers who try to comply with the new rules. If a business is not yet fully compliant but the ATO believes that reasonable steps have been taken to meet their legal obligations, then the ATO will be supportive and no penalty will apply.

### Consequences of Non-Compliance from 1 July 2018

After the first year, more serious consequences will apply and the Commissioner of Taxation can take actions including:

- Registering the US supplier for GST.
- Assessing the GST liability from the date of commencement of the law.
- Applying a penalty.
- Applying interest charges.
- Issuing a default assessment with an additional 75% administrative penalty.
- Working with the taxation authority in the supplier's country to recover the debt.



With the 12-month period of a measured and supportive approach to non-compliance coming to an end in June 2018, it is essential that overseas suppliers of services and digital products to Australian consumers act now to ensure they are fully compliant with the new rules and to avoid serious punitive consequences.

Businesses impacted by the changes in law need to consider the following:

- Reviewing pricing to take into account the charging of GST.
- Communicating to customers that GST is chargeable on relevant supplies.
- Updating terms and conditions and website information to include clauses to allow for the charging of GST.
- Ensuring that billing and accounting systems can deal with GST on the affected sales.
- Ensuring systems can separately identify supplies made to consumers from those made to businesses.
- Ensuring systems can identify customers that are Australian consumers.
- Deciding which foreign currency exchange rates to use for their GST reporting and payments.
- Registering for either the simplified or the standard GST system, if applicable.

Please get in touch with rbcVAT Limited if you require further guidance on the new rules or would like assistance in registering for Australian GST.

**For more information about how Australian GST may affect your business, please contact us on:**

<http://www.rbcvat.com/> • +44 (0) 1189 885 797

# References and Resources

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## References

1. [https://www.ato.gov.au/Business/GST/When-to-charge-GST-\(and-when-not-to\)/GST-free-sales/](https://www.ato.gov.au/Business/GST/When-to-charge-GST-(and-when-not-to)/GST-free-sales/)
2. [https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Australian-GST-registration-for-non-residents/?page=1#Simplified\\_GST\\_registration](https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Australian-GST-registration-for-non-residents/?page=1#Simplified_GST_registration)
3. [https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Australian-GST-registration-for-non-residents/?page=1#Standard\\_GST\\_registration](https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Australian-GST-registration-for-non-residents/?page=1#Standard_GST_registration)

## Resources

<https://www.ato.gov.au/Business/International-tax-for-business/GST-on-imported-services-and-digital-products/>

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