

EXPOSURE DRAFT

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Tax Laws Amendment (GST Treatment of Cross-border Transactions) Bill 2015

No. , 2015

(Treasury)

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

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ii *Tax Laws Amendment (GST Treatment of Cross-border Transactions) No. , 2015*
Bill 2015

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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 (GST*
7 *Treatment of Cross-border Transactions) 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.

13

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
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22 repealed as set out in the applicable items in the Schedule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.

No. , 2015 *Tax Laws Amendment (GST Treatment of Cross-border Transactions)* 1
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Schedule 1 Tax integrity: extending GST to digital products and other services imported by consumers

Part 1 Main amendments

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

26 (ii) if the entity is registered—the entity does not acquire
27 the thing supplied solely or partly for the purpose of an
28 *enterprise that the entity *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 38**

4 Add:

5 **Subdivision 38-T—Inbound intangible consumer supplies**

6 **38-610 Inbound intangible consumer supplies**

- 7 (1) An *inbound intangible consumer supply is *GST-free* if:
8 (a) it is made by a *non-resident; and
9 (b) it is covered by a determination under subsection (2).
- 10 (2) The Minister may determine that a specified class of *inbound
11 intangible consumer supplies are GST-free.
- 12 (3) However, the Minister must not make the determination unless:
13 (a) the *Foreign Minister has advised the Minister in writing that
14 the treatment of the class of supplies under the *GST law
15 would, apart from the determination, be inconsistent with
16 Australia's international obligations; and
17 (b) the Minister is satisfied that similar supplies made by
18 *Australian residents would be GST-free.

19 **5 At the end of Division 40**

20 Add:

21 **Subdivision 40-G—Inbound intangible consumer supplies**

22 **40-180 Inbound intangible consumer supplies**

- 23 (1) An *inbound intangible consumer supply is *input taxed* if:
24 (a) it is made by a *non-resident; and
25 (b) it is covered by a determination under subsection (2).
- 26 (2) The Minister may determine that a specified class of *inbound
27 intangible consumer supplies are input taxed.

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

Part 1 Main amendments

- 1 (3) However, the Minister must not make the determination unless:
2 (a) the *Foreign Minister has advised the Minister in writing that
3 the treatment of the class of supplies under the *GST law
4 would, apart from the determination, be inconsistent with
5 Australia's international obligations; and
6 (b) the Minister is satisfied that similar supplies made by
7 *Australian residents would be input taxed.

8 **6 At the end of Division 84**

9 Add:

10 **Subdivision 84-B—Inbound intangible consumer supplies**

11 **84-45 What this Subdivision is about**

12 Tax invoices are not required for offshore supplies to Australian
13 consumers.

14 Operators of electronic distribution platforms through which
15 electronic supplies are made from offshore to Australian
16 consumers are treated as making those supplies. The result is that
17 the operator, instead of the suppliers, count the supplies towards
18 their GST turnover and pays the GST on the supplies.

19 **84-50 No tax invoices for inbound intangible consumer supplies**

- 20 (1) You are not required to issue a *tax invoice for a *taxable supply
21 that you make that is solely an *inbound intangible consumer
22 supply.
23 (2) This section has effect despite section 29-70 (which is about tax
24 invoices).

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

84-55 Operator of electronic distribution platform treated as supplier

- (1) If an *inbound intangible consumer supply is made through an *electronic distribution platform, the operator of the platform, instead of the supplier, is treated:
- (a) as being the supplier of, and as making, the supply; and
 - (b) as having made the supply for the *consideration for which it was made; and
 - (c) as having made the supply in the course or furtherance of an *enterprise that the operator *carries on.

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

- (2) Despite subsection (1), if an *inbound intangible consumer supply is made through more than one *electronic distribution platform, that subsection only applies to the operator of any of those platforms who is:
- (a) the operator determined in accordance with an instrument made under subsection (4); or
 - (b) if no instrument has been made under subsection (4):
 - (i) the first of the operators of those platforms to receive, or to authorise the charging of, any *consideration for the supply; or
 - (ii) if subparagraph (i) does not apply—the first of the operators of those platforms to authorise the delivery of the supply.

However, if that operator enters into a written agreement with another of the operators under which the other operator is to be treated as the supplier, that subsection only applies to the other operator.

- (3) The Commissioner may, by legislative instrument, prescribe how an operator is to be determined for the purposes of paragraph (2)(a).
- (4) Despite subsections (1) and (2), this section does not apply to an operator of an *electronic distribution platform in relation to an *inbound intangible consumer supply made through the platform if:

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

Part 1 Main amendments

- 1 (a) a document, relating to the supply, issued to the *recipient of
2 the supply identifies:
3 (i) the supply; and
4 (ii) the supplier as the supplier of the supply; and
5 (b) the supplier and the operator of the electronic distribution
6 platform have agreed in writing that the supplier is the entity
7 responsible for paying GST for:
8 (i) the supply; or
9 (ii) a class of supplies that includes the supply; and
10 (c) the operator of the electronic distribution platform:
11 (i) does not authorise the charge to the *recipient for the
12 supply; and
13 (ii) does not authorise the delivery of the supply; and
14 (iii) does not set the terms and conditions under which the
15 supply is made.

16 **84-60** *Meaning of inbound intangible consumer supply*

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

25 **84-65** *Meaning of electronic distribution platform*

- 26 (1) A service (including a website, internet portal, gateway, store or
27 marketplace) is an *electronic distribution platform* if:
28 (a) the service allows entities to make supplies available to
29 end-users; and
30 (b) the service is delivered by means of *electronic
31 communication; and

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

- 1 (c) the supplies are to be made by means of electronic
2 communication.
- 3 (2) However, a service is not an *electronic distribution platform*
4 solely because it is:
- 5 (a) a carriage service (within the meaning of the
6 *Telecommunications Act 1997*); or
- 7 (b) a service consisting of one or more of the following:
- 8 (i) providing access to a payment system;
- 9 (ii) processing payments;
- 10 (iii) providing * vouchers the supply of which are not
11 *taxable supplies because of section 100-5.

12 **Subdivision 84-C—Australian consumers**

13 **84-95 What this Subdivision is about**

14 A supplier is treated in some situations to be making a supply to an
15 entity that is not an Australian consumer.

16 Note: Whether the recipient of a supply of an intangible is an Australian
17 consumer is one of the tests for whether the supply is connected with
18 Australia: see subsection 9-25(5).

19 **84-100 When entities are treated as not being Australian consumers**

- 20 (1) The *GST law applies in relation to you as if another entity was not
21 an *Australian consumer of a supply if:
- 22 (a) you take reasonable steps to obtain information about
23 whether or not the other entity is an Australian consumer of
24 the supply; and
- 25 (b) after taking those steps, you reasonably believe that the other
26 entity is not an Australian consumer of the supply.
- 27 (2) Without limiting subsection (1), the *GST law applies in relation to
28 you as if another entity was not an *Australian consumer of a
29 supply if:
- 30 (a) your usual business systems and processes provide you with
31 a reasonable basis for forming a reasonable belief about

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

Part 1 Main amendments

- 1 whether the other entity is an Australian consumer of the
2 supply; and
3 (b) you reasonably believe that the other entity is not an
4 Australian consumer of the supply.
- 5 (3) However, your belief that the other entity is not an *Australian
6 consumer of the supply is taken, for the purposes of subsections (1)
7 and (2), not to be reasonable if:
8 (a) that belief is based solely on a belief that the other entity is
9 *registered; and
10 (b) one or both of the following apply:
11 (i) neither the other entity's *ABN, nor the other
12 identifying information prescribed under subsection (4)
13 relating to the other entity, has been disclosed to you;
14 (ii) the other entity has not provided to you a declaration or
15 information that indicates that the other entity is
16 registered.
- 17 (4) The Commissioner may, by legislative instrument, prescribe
18 identifying information for the purposes of subparagraph (3)(b)(i).

19 Subdivision 84-D—Limited registration entities

20 84-135 What this Subdivision is about

21 Non-residents may elect to be limited registration entities. Limited
22 registration entities are not entitled to input tax credits for
23 acquisitions, and must have quarterly tax periods.

24 Note: The Commissioner may approve simpler approved forms for limited
25 registration entities: see subsection 388-50(3) in Schedule 1 to the
26 *Taxation Administration Act 1953*.

27 84-140 Limited registration entities

- 28 (1) You are a *limited registration entity* for a tax period applying to
29 you if an election under subsection (2) is in effect for you during
30 the period.

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

1

Electing to be a limited registration entity

2

(2) You may, by notifying the Commissioner in the *approved form,
3 make an election under this subsection if:

3

4

(a) you have made, or intend to make, one or more *inbound
5 intangible consumer supplies; and

5

6

(b) you are a *non-resident.

7

When an election is in effect

8

(3) The election:

9

(a) takes effect from the start of the tax period you nominate in
10 the election; and

10

11

(b) if, under subsection (5), you revoke the election during a
12 *financial year (a *later financial year*) that starts at least 12
13 months after the end of the initial financial year—ceases to
14 have effect at the start of your first tax period of the financial
15 year preceding the later financial year.

15

16

(4) However, the election never takes effect if, under subsection (5),
17 you revoke the election during the initial financial year or the next
18 *financial year.

18

19

Revoking an election

20

(5) You may, by notifying the Commissioner in the *approved form,
21 revoke an election under subsection (2).

21

22

84-145 Limited registration entities cannot make creditable 23 acquisitions

23

24

(1) An acquisition made by a *limited registration entity is not a
25 *creditable acquisition if an election under subsection (2) is in
26 effect for the entity when the acquisition is made.

25

26

27

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

28

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

Part 1 Main amendments

1 **84-150 Limited registration entities have only quarterly tax periods**

- 2 (1) If you are a *limited registration entity, you cannot make an
3 election under section 27-10, and the Commissioner cannot
4 determine your tax periods under section 27-15 or 27-37.

5 Note: Sections 27-10, 27-15 and 27-37 provide for each individual month to
6 be a tax period.

- 7 (2) An election by you under section 27-10 or a determination under
8 section 27-15 or 27-37 in relation to you is taken not to be in force
9 at any time during which you are a *limited registration entity.

- 10 (3) This section has effect despite sections 27-10, 27-15 and 27-37
11 (which are about one month tax periods).

12 **7 Paragraph 188-15(3)(b)**

13 Repeal the paragraph, substitute:

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

20 **8 Subsection 188-15(3)**

21 At the end of the subsection, add:

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

24 **9 Paragraph 188-20(3)(b)**

25 Repeal the paragraph, substitute:

- 26 (b) any supply that is connected with the indirect tax zone
27 because of paragraph 9-25(5)(c), unless:
28 (i) the supply is made to an *Australian consumer; and
29 (ii) the supply is not *GST-free; and
30 (iii) the thing to be acquired under the right or option is not
31 goods or *real property; and

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

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

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

Part 2 Other amendments

1 **Part 2—Other amendments**

2 *A New Tax System (Australian Business Number) Act 1999*

3 **10 At the end of section 8**

4 Add:

5 *Limited registration entities*

6 (3) However, a limited registration entity (within the meaning of the *A*
7 *New Tax System (Goods and Services Tax) Act 1999*) is not entitled
8 to an *ABN.

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

10 **11 Section 13-1 (note 2)**

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

12 **12 Section 27-99 (table item 1AB)**

13 Repeal the item, substitute:

1AB	Offshore supplies other than goods or real property	Division 84
1AC	Payment of GST by instalments	Division 162

14 **13 Section 29-99 (after table item 4)**

15 Insert:

4A	Offshore supplies other than goods or real property	Division 84
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16 **14 Subparagraph 48-40(2)(a)(i)**

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

18 **15 Subsection 48-45(3)**

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

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

1 **16 Paragraph 58-10(2)(b)**

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

3 **17 Paragraph 83-5(2)(a)**

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

5 **18 Before section 84-1**

6 Insert:

7 **Subdivision 84-A—Intangible supplies from offshore that are**
8 **taxable supplies under this Subdivision**

9 **19 Section 84-1 (heading)**

10 Omit “Division”, substitute “Subdivision”.

11 **20 Section 84-1**

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

13 **21 Section 84-5 (heading)**

14 Omit “Division”, substitute “Subdivision”.

15 **22 Section 84-14**

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

17 **23 At the end of section 142-15**

18 Add:

19 *Inbound intangible consumer supplies*

20 (6) Section 142-10 does not apply for the purposes of applying a
21 *taxation law to the other entity, to the extent that the excess GST
22 arose from something that is not an *inbound intangible consumer
23 supply being treated as an inbound intangible consumer supply.

24 **24 Paragraph 162-5(1)(e)**

25 Omit “position.”, substitute “position; and”.

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

Part 2 Other amendments

1 **25 At the end of subsection 162-5(1)**

2 Add:

3 (f) you are not a *limited registration entity.

4 **26 After paragraph 162-30(1)(ca)**

5 Insert:

6 (d) during a financial year, you become a *limited registration
7 entity; or

8 **27 At the end of section 162-30**

9 Add:

10 *Becoming a limited registration entity*

11 (6) If paragraph (1)(d) applies, your election is taken to have ceased to
12 have effect from the start of the *financial year referred to in that
13 paragraph.

14 **28 Section 195-1**

15 Insert:

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

18 **29 Section 195-1 (note at the end of the definition of**
19 ***creditable acquisition*)**

20 After “78-30”, insert “, 84-105”.

21 **30 Section 195-1**

22 Insert:

23 *electronic communication* has the same meaning as in the
24 *Electronic Transactions Act 1999*.

25 *electronic distribution platform* has the meaning given by
26 section 84-65.

27 *Foreign Minister* means the Minister administering the *Diplomatic*
28 *Privileges and Immunities Act 1967*.

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

1 *inbound intangible consumer supply* has the meaning given by
2 section 84-60.

3 *limited registration entity* has the meaning given by
4 section 84-140.

5 *Taxation Administration Act 1953*

6 **31 Paragraph 284-75(4)(b)**

7 Repeal the paragraph, substitute:

8 (b) the statement is, or purports to be one that:

- 9 (i) is required or permitted by a taxation law (other than the
10 Excise Acts); or
11 (ii) might reasonably be expected to be used, by an entity in
12 determining if you are an Australian consumer (within
13 the meaning of the *GST Act); and

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

Part 3 Application

1 **Part 3—Application**

2 **32 Application**

3 The amendments made by this Schedule apply in relation to:

- 4 (a) taxable supplies that are attributable to tax periods starting on
5 or after 1 July 2017; and
6 (b) supplies that would be attributable to such tax periods if they
7 were taxable supplies.

8 **33 Progressive or periodic supplies**

9 (1) If:

- 10 (a) a supply is made under an agreement, or an enactment, that
11 provides (expressly or impliedly) that the thing supplied is to
12 be supplied:
13 (i) for a period; or
14 (ii) progressively over a period; and
15 (b) that period begins before 1 July 2017 and ends on or after
16 1 July 2017;

17 then, for the purposes of the *A New Tax System (Goods and Services*
18 *Tax) Act 1999* as amended by this Act and for the purposes of item 32
19 of this Schedule:

- 20 (c) the supply is taken to be made continuously and uniformly
21 throughout that period; and
22 (d) to the extent that the supply is taken to be made on or after
23 1 July 2017:
24 (i) any consideration for the supply received before the first
25 tax period to start on or after that day is taken to be
26 received in that tax period; and
27 (ii) an invoice relating to the supply issued before the first
28 tax period to start on or after that day is taken to have
29 been issued in that tax period.

30 (2) However, this item does not apply to:

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

- 1 (a) a supply of a warranty (whether express, implied or required
2 by law) that relates to goods or a service, if the value of the
3 warranty was included in the price of the goods or service; or
4 (b) a supply of a long-term lease made before 1 July 2017; or
5 (c) a supply to which section 156-1 of the *A New Tax System*
6 (*Goods and Services Tax*) Act 1999 applies.
- 7 (3) For the purposes of this item, a supply by way of lease, hire or similar
8 arrangement is taken to be a supply for the period of the lease, hire or
9 arrangement.
- 10 (4) If this item has an effect in relation to a supply, it has a corresponding
11 effect in relation to the acquisition to which the supply relates.
- 12 (5) In this item:
13 *warranty* has the same meaning as in section 12 of the *A New Tax*
14 *System (Goods and Services Tax Transition) Act 1999*.

34 Existing agreements: no opportunity to review

- 15
- 16 (1) If a written agreement, made before 7.30 pm (by legal time in the
17 Australian Capital Territory) on 12 May 2015, specifically identifies a
18 supply and identifies the consideration in money, or a way of working
19 out the consideration in money, for the supply:
- 20 (a) the amendments made by this Schedule do not apply in
21 relation to the supply to the extent that it is made before the
22 earlier of the following:
23 (i) 1 July 2019;
24 (ii) if a review opportunity arises on or after 13 May
25 2015—when that opportunity arises; and
26 (b) if all of the consideration was paid before 7.30 pm (by legal
27 time in the Australian Capital Territory) on 12 May 2015—
28 the amendments made by this Schedule do not apply in
29 relation to the supply to the extent it is made on or after
30 1 July 2019 but before a review opportunity has arisen as
31 mentioned in subparagraph (1)(a)(ii).
- 32 (2) If:
-

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

Part 3 Application

- 1 (a) a change is made to the consideration for supplies that are
2 specifically identified by an agreement of the kind referred to
3 in subitem (1); and
4 (b) the change is made after the commencement of this subitem;
5 and
6 (c) the change applies to supplies made before 1 July 2019;
7 subitem (1) does not apply to supplies that are specifically identified by
8 the agreement, to the extent that the supplies are made on or after the
9 day on which the change takes effect.
- 10 (3) Whether subitem (1) applies to a supply made before 1 July 2019 is not
11 affected by a change (made after the commencement of this subitem),
12 whether agreed to before, on or after 1 July 2019, to the consideration
13 for supplies made on or after 1 July 2019 that are specifically identified
14 by an agreement.
- 15 (4) In this item:
16 *change*, to the consideration for a supply, has the same meaning as in
17 subsections 13(4B) and (4C) of the *A New Tax System (Goods and*
18 *Services Tax Transition) Act 1999*.
19 *review opportunity* has the same meaning as in section 13 of that Act.

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GST treatment of cross-border transactions between businesses **Schedule 2**
Cross-border supplies that are not connected with the indirect tax zone **Part 1**

Schedule 2—GST treatment of cross-border transactions between businesses

Part 1—Cross-border supplies that are not connected with the indirect tax zone

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

1 Subsection 9-25(6)

Repeal the subsection.

2 After section 9-25

Insert:

9-26 Supplies by non-residents that are not connected with the indirect tax zone

(1) A supply is *not connected with the indirect tax zone* if:

- (a) the supplier is a *non-resident; and
- (b) the supplier does not make the supply through an *enterprise that the supplier *carries on in the indirect tax zone; and
- (c) the supply is covered by an item in this table:

Offshore supplies that are not connected with the indirect tax zone

Item	Topic	These supplies are <i>not</i> connected with the indirect tax zone ...
1	Inbound intangible supply	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is *potentially chargeable for the supply.
2	Intangible supply between non-residents	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is a *non-resident that acquires the thing supplied solely for the purpose of an *enterprise that the recipient *carries on outside the indirect tax zone.

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Schedule 2 GST treatment of cross-border transactions between businesses

Part 1 Cross-border supplies that are not connected with the indirect tax zone

Offshore supplies that are not connected with the indirect tax zone

Item	Topic	These supplies are <i>not</i> connected with the indirect tax zone ...
3	Supply of goods installed or assembled	a supply of goods that involves the goods being brought to the indirect tax zone if: (a) the *recipient is *potentially chargeable for the supply; and (b) the supplier installs or assembles the goods in the indirect tax zone, but does not import the goods into the indirect tax zone (but see subsection (3)).
4	Supply between non-residents of leased goods	a supply by way of transfer of ownership of leased goods if: (a) the *recipient is a *non-resident that does not acquire the thing supplied solely or partly for the purpose of an *enterprise that the recipient *carries on in the indirect tax zone; and (b) the lessee: (i) made a *taxable importation of the goods before the supply was made; and (ii) continues to lease the goods on the same terms and conditions after the supply is made.
5	Supply by way of continued lease of goods from item 4	a supply made by way of lease if: (a) the *recipient is the lessee referred to in paragraph (b) of item 4 of this table; and (b) the lease is the lease referred to in subparagraph (ii) of that paragraph.

1

2

(2) An entity is *potentially chargeable* for a supply made or provided to the entity if:

3

4

(a) the entity is *registered; and

5

(b) an *enterprise of the entity is *carried on in the indirect tax zone; and

6

7

(c) the entity's acquisition of the thing supplied or provided is not solely of a private or domestic nature.

8

9

Note: If a supply is not connected with the indirect tax zone, the potentially chargeable entity may be subject to a reverse charge: see Division 84.

10

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GST treatment of cross-border transactions between businesses **Schedule 2**
Cross-border supplies that are not connected with the indirect tax zone **Part 1**

- 1 (3) If a supply of goods is not *connected with the indirect tax zone
2 because of item 3 of the table in subsection (1), the part of the
3 supply that involves the installation or assembly of the goods in the
4 indirect tax zone is to be treated as if it were a separate supply of a
5 thing done in the indirect tax zone.

6 Note 1: The separate supply of installation or assembly services is not
7 connected with the indirect tax zone (see item 1 of the table in
8 subsection (1)). However, there may be a reverse charge under
9 Division 84.

10 Note 2: There may be a taxable importation of the goods: see Division 13.

- 11 (4) This section applies despite sections 9-25 (which is about when
12 supplies are connected with the indirect tax zone) and 85-5 (which
13 is about telecommunication supplies).

14 **9-27 When enterprises are *carried on in the indirect tax zone***

- 15 (1) An *enterprise of an entity is *carried on in the indirect tax zone* if:

- 16 (a) the enterprise is *carried on by one or more individuals
17 covered by subsection (4) who are in the indirect tax zone;
18 and
19 (b) the enterprise is carried on through a fixed place in the
20 indirect tax zone.

- 21 (2) An *enterprise of an entity is also *carried on in the indirect tax*
22 *zone* if:

- 23 (a) the enterprise is *carried on by one or more individuals
24 covered by subsection (4) who are in the indirect tax zone;
25 and
26 (b) the entity carries on the enterprise through one or more
27 places in the indirect tax zone, or intends to carry on the
28 enterprise through one or more places in the indirect tax
29 zone, for more than 183 days in a 12 month period.

- 30 (3) It does not matter whether or not:

- 31 (a) the entity has exclusive use of the place; or
32 (b) the entity owns, leases or has any other claim or interest in
33 relation to the place.

- 34 (4) This subsection covers the following individuals:
-

EXPOSURE DRAFT

Schedule 2 GST treatment of cross-border transactions between businesses

Part 1 Cross-border supplies that are not connected with the indirect tax zone

- 1 (a) if the entity is an individual—that individual;
2 (b) an employee or *officer of the entity;
3 (c) an individual who is, or is employed by, an agent of the
4 entity that:
5 (i) has, and habitually exercises, authority to conclude
6 contracts on behalf of the entity; and
7 (ii) is not a broker, general commission agent or other agent
8 of independent status that is acting in the ordinary
9 course of the agent’s business as such an agent.

3 At the end of section 57-5

10 Add:

- 11 (3) However, this section does not apply to a *taxable supply if:
12 (a) apart from this section, the *non-resident would not be liable
13 to pay GST on the supply; or
14 (b) the non-resident makes the supply through an *enterprise that
15 the non-resident *carries on in the indirect tax zone.
16

4 Paragraph 84-5(1)(c)

17 Repeal the paragraph, substitute:

- 18 (c) the *recipient of the supply acquires the thing supplied solely
19 or partly for the purpose of an *enterprise that the recipient
20 *carries on in the indirect tax zone; and
21 (ca) the recipient of the supply does not acquire the thing supplied
22 solely for a *creditable purpose; and
23

5 Section 84-12 (note)

24 After “Note”, insert “1”.

6 At the end of section 84-12

25 Add:

- 26 Note 2: Section 84-20 includes a modification for a supply of installation or
27 assembly services that is treated as a separate supply because of
28 subsection 9-26(3).
29
30

EXPOSURE DRAFT

GST treatment of cross-border transactions between businesses **Schedule 2**
Cross-border supplies that are not connected with the indirect tax zone **Part 1**

1 **7 At the end of Division 84**

2 Add:

3 **84-20 Calculating the price of installation or assembly services**

4 (1) This section applies if a supply of installation or assembly services
5 that is a part of a supply of goods (the *actual supply*) is treated,
6 because of subsection 9-26(3), as a separate supply (the *intangible*
7 *supply*).

8 Note: Installation or assembly services are not treated as a separate supply if
9 the supplier also imports the goods: see subsection 9-26(3).

10 (2) For the purpose of section 84-12, the *price of the intangible
11 supply is so much of the price of the actual supply as reasonably
12 represents the price of the intangible supply.

13 **84-25 Adjustments for acquisitions made solely for a creditable**
14 **purpose**

15 (1) This section applies to an acquisition that relates to a supply if the
16 supply would be a *taxable supply under section 84-5 if
17 paragraph 84-5(1)(ca) were disregarded.

18 (2) For the purpose of working out whether there is an *adjustment for
19 the acquisition, and the amount of that adjustment, disregard
20 paragraph 84-5(1)(ca).

21 Note: As a result, the adjustment (including the full input tax credit referred
22 to in sections 129-70 and 129-75) is worked out assuming the supply
23 is taxable and the acquisition fully creditable.

24 **8 At the end of subsection 85-5(3)**

25 Add “, but is subject to section 9-26 (which is about when supplies are
26 not connected with the indirect tax zone)”.

27 **9 Section 195-1 (definition of *carried on in the indirect tax***
28 ***zone*)**

29 Omit “subsection 9-25(6)”, substitute “section 9-27”.

EXPOSURE DRAFT

GST treatment of cross-border transactions between businesses **Schedule 2**
Cross-border supplies that are GST-free **Part 2**

1 **Part 2—Cross-border supplies that are GST-free**

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

3 **12 Subdivision 38-E (heading)**

4 Repeal the heading, substitute:

5 **Subdivision 38-E—Exports and other cross-border supplies**

6 **13 After subsection 38-190(3)**

7 Insert:

8 (3A) Subsection (3) does not apply to a supply (other than an *input
9 taxed supply) if the supplier has sufficient documentary evidence
10 to show that the entity in the indirect tax zone to which the supply
11 is, or is to be, provided is:

- 12 (a) *registered; or
13 (b) an individual who is provided with the supply as an
14 employee or *officer of a *potentially chargeable entity; or
15 (c) an individual who is provided with the supply as an
16 employee or officer of the *recipient, and the recipient's
17 acquisition of the thing is:
18 (i) solely for a *creditable purpose; and
19 (ii) not a *non-deductible expense.

20 **14 At the end of Subdivision 38-E**

21 Add:

22 **38-191 Supplies relating to the repair etc. of goods under warranty**

- 23 (1) A supply of anything other than goods or *real property is
24 *GST-free* if:
25 (a) the supply is covered by paragraph (b) of item 2 of the table
26 in subsection 38-190(1); and
27 (b) the supply is constituted by the repair, renovation,
28 modification or treatment of goods; and

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Schedule 2 GST treatment of cross-border transactions between businesses

Part 2 Cross-border supplies that are GST-free

- 1 (c) the repair, renovation, modification or treatment is done in
2 order to meet the *recipient's obligations under a warranty
3 relating to the goods; and
4 (d) either:
5 (i) *consideration for the warranty was included in the
6 consideration for the supply of the goods; or
7 (ii) the supply of the warranty was a separate *taxable
8 supply to the supply of the goods.
- 9 (2) A supply of goods is *GST-free* if:
10 (a) it is made in the course of a supply that is GST-free under
11 subsection (1), and to the same *recipient; and
12 (b) either:
13 (i) the goods are attached to, or become part of, the goods
14 to which the warranty relates; or
15 (ii) the goods become unusable or worthless as a direct
16 result of being used to repair, renovate, modify or treat
17 the goods to which the warranty relates.

EXPOSURE DRAFT

GST treatment of cross-border transactions between businesses **Schedule 2**
Cross-border supplies that are not included in GST turnover **Part 3**

1 **Part 3—Cross-border supplies that are not included**
2 **in GST turnover**

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

4 **15 Subsections 188-15(3) and 188-20(3)**

5 At the end of the subsections, add:

6 ; and (d) any *GST-free supply made by a *non-resident that does not
7 make the supply through an *enterprise that the non-resident
8 *carries on in the indirect tax zone.

EXPOSURE DRAFT

Schedule 2 GST treatment of cross-border transactions between businesses

Part 4 Value of taxable importations

1 **Part 4—Value of taxable importations**

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

3 **16 At the end of section 13-20**

4 Add:

5 (4) For a *taxable importation that you make, you may choose to treat
6 the amount under paragraph (2)(b), (or, if paragraph (2)(ba)
7 applies, the sum of the amounts under paragraphs (2)(b) and (ba)),
8 as an amount equal to:

- 9 (a) the percentage prescribed by the regulations of the *customs
10 value of the goods imported; or
11 (b) if no percentage is prescribed—10% of their customs value.

12 (5) However, subsection (4) does not apply if:

- 13 (a) you are not *registered; or
14 (b) the *local entry of the goods is a *taxable dealing in relation
15 to *wine; or
16 (c) the importation of the goods is a *taxable importation of a
17 luxury car.

18 **17 Subparagraphs 38-185(3)(f)(ii) and 38-185(4)(f)(ii)**

19 Omit “wine (within the meaning of the *Wine Tax Act)”, substitute
20 “*wine”.

21 **18 Section 195-1**

22 Insert:

23 *taxable dealing*, in relation to *wine, has the meaning given by
24 section 33-1 of the *Wine Tax Act.

25 *taxable importation of a luxury car* has the meaning given by
26 section 27-1 of the *A New Tax System (Luxury Car Tax) Act 1999*.

27 *wine* has the meaning given by Subdivision 31-A of the *Wine Tax
28 Act.

EXPOSURE DRAFT

GST treatment of cross-border transactions between businesses **Schedule 2**
Minor amendments **Part 5**

1 **Part 5—Minor amendments**

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

3 **19 Subsection 72-5(2)**

4 Repeal the subsection, substitute:

- 5 (2) This section has effect despite paragraphs 9-5(a) and 84-5(1)(d)
6 (which would otherwise require a taxable supply to be for
7 consideration).

8 **20 After section 72-10**

9 Insert:

10 **72-11 The price of taxable supplies of offshore intangibles without**
11 **consideration**

- 12 (1) If a supply to your *associate without *consideration is a *taxable
13 supply because of section 84-5 (which is about offshore supplies
14 other than goods or real property), its *price* is the *GST exclusive
15 market value of the supply.
- 16 (2) This section has effect despite section 9-75 (which is about the
17 price of taxable supplies) and section 84-20 (which is about the
18 price of installation or assembly services).

19 **21 After subsection 72-15(1)**

20 Insert:

- 21 (1A) However, if a *taxable supply to your *associate without
22 *consideration is not *connected with the indirect tax zone, the tax
23 period to which the GST on the supply is attributable is the tax
24 period in which the thing supplied starts to be done.

25 **22 Subsection 72-45(2)**

26 Repeal the subsection, substitute:

EXPOSURE DRAFT

Schedule 2 GST treatment of cross-border transactions between businesses

Part 5 Minor amendments

1 (1B) In applying this section to a supply that is a *taxable supply
2 because of section 84-5 (which is about offshore supplies other
3 than goods or real property), treat the supply as if it had been or is
4 a taxable supply otherwise than because of section 84-5.

5 (2) This section has effect despite the following:

- 6 (a) subsection 11-30(3) (which is about the amount of input tax
7 credits on partly creditable acquisitions);
8 (b) section 84-13 (which is about the amount of input tax credits
9 on offshore intangible supplies).

10 **23 After subsection 72-50(1)**

11 Insert:

12 (1A) However, if the *taxable supply to which a *creditable acquisition
13 from your *associate without *consideration relates is not
14 *connected with the indirect tax zone, the tax period to which the
15 input tax credit on the acquisition is attributable is the tax period in
16 which the thing supplied starts to be done.

17 **24 At the end of Subdivision 72-C**

18 Add:

19 **72-75 The price of taxable supplies of offshore intangibles for** 20 **inadequate consideration**

- 21 (1) If a supply to your *associate for *consideration that is *less* than the
22 *GST exclusive market value is a *taxable supply because of
23 section 84-5 (which is about offshore supplies other than goods or
24 real property) its *price* is the *GST exclusive market value of the
25 supply.
26 (2) This section has effect despite section 9-75 (which is about the
27 price of taxable supplies) and section 84-20 (which is about the
28 price of installation or assembly services).

EXPOSURE DRAFT

GST treatment of cross-border transactions between businesses **Schedule 2**
Minor amendments **Part 5**

1 **72-80 The amount of the input tax credit for acquisitions relating to**
2 **offshore intangibles**

3 (1) Subsection (2) applies for the purposes of working out the amount
4 of the input tax credit for a *creditable acquisition that:

5 (a) is from your *associate for *consideration that is *less* than the
6 *GST exclusive market value; and

7 (b) relates to a supply that is a *taxable supply because of
8 section 84-5.

9 (2) Section 84-13 applies as if the words “11/10 of” were omitted from
10 the definition of *full input tax credit* in subsection 84-13(1).

11 **25 Section 195-1 (definition of price)**

12 Omit “section 9-75”, substitute “sections 9-75, 72-11 and 72-75”.

EXPOSURE DRAFT

Schedule 2 GST treatment of cross-border transactions between businesses

Part 6 Saving provisions

1 **Part 6—Saving provisions**

2 **26 Saving—previous interpretation preserved**

3 The amendments of Division 72 of the *A New Tax System (Goods and*
4 *Services Tax) Act 1999* made by Part 5 of this Schedule do not affect by
5 implication the interpretation of that Act before the amendments.

6