

20 October 2015

General Manager  
Law Design Practice  
The Treasury  
Langton Crescent  
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Dear Sir

**GST and gambling implications of Exposure Draft: Supply of Intangibles**

Thank you for the opportunity to provide a submission on the Government's revised Exposure Draft legislation that is aimed at imposing GST on imported supplies of 'intangibles' (anything other than goods or real property) to Australian consumers, in particular as it relates to gambling supplies.

The revised Exposure Draft does not appear to address Tabcorp's submission on 7 July 2015 in relation to the GST treatment of gambling supplies. I also refer to my verbal comments during the teleconference on 16 October 2015.

During the course of the teleconference, the legality of non-residents providing gambling supplies to Australian consumers was questioned. While it may be illegal for non-residents to provide gambling supplies to Australian consumers, it does happen and on a considerable scale. Anecdotal evidence suggests that the annual revenue leakage for some gambling types only may exceed \$1billion. That represents around \$100million in GST foregone each year. The GST Act explicitly includes within its definition of taxable supply a supply that is illegal [section 9-10(3)]. It is therefore inconsistent with the policy intent to ignore non-residents making gambling supplies.

The Government has positioned the proposed changes as an 'integrity measure' with the objective of achieving competitive neutrality between Australian and overseas businesses. However, the practical effect of the revised Exposure Draft is to allow non-resident gambling suppliers to retain a competitive advantage over Australian gambling suppliers. We outline these issues below:

**Application to professional gamblers**

Professional gamblers that carry on an enterprise are entitled to register for GST and thus would not fall within the definition of an 'Australian consumer' under the proposed changes. In addition, a GST registered professional gambler would not be liable to 'reverse charge' GST.

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The definition of 'Australian consumer' is directed at taxing offshore entities that make supplies to Australian recipients who are not entitled to claim GST credits. However, in respect of gambling supplies there is no entitlement to GST credits even where the recipient is registered for GST, as acquisitions of gambling supplies are not creditable acquisitions under section 126-30 of the GST Act.

Therefore, non-resident gambling suppliers will continue to have a competitive advantage in relation to gambling supplies provided to GST registered entities (e.g. professional gamblers) as they would not be required to account for GST on those supplies.

Conceivably, offshore gambling suppliers may also have an incentive to encourage more professional gamblers to register for Australian GST so GST is not applied to their supplies. Or to register some gamblers who may not have seen themselves as professional gamblers.

The following table illustrates this issue for supplies made to Australian consumers:

	<i>Australian operator</i>	<i>Overseas operator</i>
Turnover	100.0	100.0
Return to player	(80.0)	(80.0)
Revenue	20.0	20.0
GST payable	1.8	0.0
GST claim by player	0.0	0.0
Net revenue to ATO	1.8	0.0

During the course of the teleconference it was mentioned that the global GST calculation required under Division 126 may not operate as intended for gambling supplies. However, we note that gambling suppliers are already required to calculate margins with reference to identifying supplies and prizes.

To ensure that all suppliers of gambling supplies are treated equally, the definition of "Australian consumer" in the proposed amendments to the GST Act could include gambling supplies where they are provided to an Australian resident that is GST registered. This aims to ensure that non-resident gambling suppliers will be required to account for GST on gambling supplies provided to both registered and unregistered Australian residents.

To achieve this outcome, two simple options are outlined below which specifically address the issue:

***Option 1) Insert a new provision in the definition of Australian consumer to reference gambling supplies***

*Subsection 9-25(7)(b)(iii)*

- if the entity is registered – the entity acquires a \*gambling supply.

***Option 2) Insert a new provision in the definition of Australian consumer to reference Division 126***

*Subsection 9-25(7)(b)(iii)*

- if the entity is registered – the acquisition is of a thing that is not a creditable acquisition because of section 126-30.

**GST-free supplies**

An issue regarding the potential application of the GST-free provisions to gambling supplies made to Australian customers remains. That is, a non-resident gambling supplier may argue that a gambling supply made to an Australian customer is a supply in relation to 'rights for use outside of Australia' under section 38-190. If the GST-free provisions apply in this way, arguably this would not be consistent with the policy objectives behind the proposed amendments. This issue is likely to have wider application than gambling suppliers and thus may require amendment to section 38-190 of the GST Act.

Please call me on 03 9868 2606 if we can be of further assistance in this matter.

Yours sincerely



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