

TAX TALKS

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197 | Netflix Tax

The import of services and digital products used to be GST free. But that is no more. The arrival of the so-called Netflix tax put an end to that.

Netflix Tax

Netflix tax is about GST on imported services and digital products. And since this is quite a mouthful, somebody came up with the much easier colloquial term 'Netflix tax'.

Netflix tax came in through a small addition to the concept of taxable supplies. In this episode Simon Dorevitch of A & A Tax Legal Consulting in Melbourne will tell you how this works.

Here is what we learned but please listen in as Simon Dorevitch explains all this much better than we ever could.

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Imported Services and Digital Products

The so-called Netflix tax doesn't just cover Netflix and other streaming services like HBO, Prime and Disney+.

It covers all services provided by overseas suppliers. Think of legal, accounting, architecture and consultancy services. Think of your website designer based overseas.

And it also covers all digital products provided by overseas suppliers. Think of games, apps, music, e-books, newspaper subscriptions as well as movies and television programs. Think of webinars, distance learning courses and professional associations.

Taxable Importation

Until 30 June 2017, we just had taxable importations in s13-5 of the GST Act. And taxable importations were just goods over \$1,000. So no goods under \$1,000 and no services. So there were two huge chunks missing in Australia's potential GST tax base. Netflix tax is to cover one of those missing chunks – the one relating to services and digital products.

But the Netflix tax rules don't change the taxable importations rules at all. Instead, they use a small addition to the rules around taxable supplies.

Taxable Supply

Netflix tax applies if the imported services or digital products are a taxable supply. And they are a taxable supply if connected with the Indirect Tax Zone, short ITZ. [We did an episode about ITZ in ep 140](#). But let's say Australia from now on – easier.

Connected with Australia

So it all hinges on this concept of having a connection with Australia. If a service or digital product has a connection with Australia – then the supply is subject to GST.

Until 30 June 2017 a supply of services and digital products – in GST lingo: anything other than goods or real property – only had a connection with Australia if one of two scenarios applied (s9-25(5)).

1 Done in Australia

A thing is connected with Australia if done in Australia. A service is done where the service is performed.

The creation, grant, transfer, assignment or surrender of any right through a written contract is done where the contract is made. And this is usually where acceptance of the offer takes place.

The instantaneous provision of advice or information is done where it is provided.

2 Enterprise in Australia

A supply has a connection with Australia, if the supplier makes the supply through an enterprise that the supplier carries on in Australia.

A supplier carries on an enterprise in Australia, if the relevant employee, officer or independent agent has the authority to conclude contracts on the supplier's behalf. And the enterprise is either carried on through a fixed place in Australia. Or the enterprise has been (or is intended to be) carried on through one or more places in Australia for more than 183 days in a 12-month period.

And these two conditions still apply. But now there is a third condition that will make a service or digital product a taxable supply if satisfied. And that is the big change. That is where the Netflix tax comes in.

3 The recipient of the supply is an Australian Consumer

A supply is a taxable supply if made to an Australian consumer. Australian consumer – this is the screw that bolts the Netflix tax onto our current system of taxable supplies through s9-25 (5)(d) of the GST Act. This is the new concept that took effect from 1 July 2017. So the big question is: What is an Australian consumer?

Australian Consumer

An entity is an Australian consumer under s9-25 (7) if it satisfies the following two conditions.

1 Australian Resident

The entity is an Australian resident. Residence is defined by reference to the income tax definition. So if a non-resident individual downloads a song while on holiday in Australia, the supply would not be connected with Australia under the amendments.

This is the so-called resident element.

2 Not Registered for GST or Not Supplied for Business Purposes

The entity either has no GST registration. Or it is registered and does not acquire the thing supplied solely or partly for the purpose of an enterprise that the entity carries on.

This is the so-called consumer element.

Safe Harbour Rules

It is often difficult for overseas suppliers to work out whether a customer or client is an Australian consumer. To make this easier, there are two safe harbour rules.

If you are an overseas supplier, you can treat a recipient as not being an Australian consumer if your business systems or reasonable steps support that approach.

#1 Business Systems

If your usual business systems and processes provide you with a reasonable basis for forming a reasonable belief that the recipient is not an Australian consumer of the supply and you reasonably believe that, then you can treat them as a non-Australian consumer.

The following information might help you form a reasonable belief:

- Billing address of recipient
- Mailing address of recipient
- Location of recipient's bank or credit card company
- Location-related data from third party payment intermediaries
- Mobile phone SIM or landline country code
- Recipient's country selection
- Tracking/geolocation software
- IP address
- Place of establishment of the recipient (for non-individual recipients)
- Representations and warranties given by the recipient
- The origin of correspondence; and
- Locations, such as Wi-Fi spot

2 Reasonable Steps

You can treat a customer or client as a non-Australian consumer if you take reasonable steps to obtain information and after taking those steps, you reasonably believe that the recipient is not an Australian consumer of the supply, even if that belief is later found not to have been correct. This is known as the reasonable steps approach.

Whether you have taken reasonable steps can depend on:

- The level of interaction you have with the recipient
- The type of personal information that a recipient usually shares
- The difficulty and costs involved for you in taking steps
- The expected reliability of the information

If you don't have access to all this information, you can still form a reasonable belief.

Registration

If you are an overseas supplier, you have to register for GST in Australia when your actual or expected turnover is \$75,000 or more.

You can ignore supplies that are not connected with Australia (s 188-15(3)(a)). And you can also ignore GST-free supplies (s 188-15(3)(d)).

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