

TAX TALKS

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207 | Electronic Distribution Platforms

Electronic distribution platforms – think eBay, Amazon, Netflix and the lot – play a central role now in the collection of GST.

Electronic Distribution Platforms

The new rules around low value imported goods as well as Netflix tax widened our GST tax base. But the collection of this GST would be tricky if it wasn't for electronic distribution platforms. In short EDPs. The new EDP rules shift the heavy lifting from the small merchants using EDPs to the EDPs themselves. We asked Simon Dorevitch of [A & A Tax Legal Consulting](#) in Melbourne to tell us more.

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

To listen while you drive, walk or work, just access the episode through a free podcast app on your mobile phone.

New Rules

The original GST Act just covered taxable importations. Consignments of goods worth more than \$1,000 coming into Australia.

But this left two huge gaps in Australia's GST tax base. Taxable importations don't cover goods worth \$1,000 or less. And taxable importations don't cover services and digital products.

To rectify this, we now have GST on low value imported goods as well as the so-called Netflix tax covering services and digital products provided from overseas.

But collecting the GST on low value goods as well as service and digital products can be tedious. There is a high risk of non-compliance. And this is where the electronic distribution platforms (EDP) come into the game.

EDP rules

Electronic distribution platforms (EDP) usually set the trading terms, control the payment process, have the recipient details and are generally larger and better resourced than the actual supplier on these platforms.

And so to simplify compliance and administration, the EDP rules try to move liability for GST from the individual supplier to the EDP.

To work out whether the EDP rules apply, you need to answer three questions:

- 1 – Is the supply made through an EDP?
- 2 – Is the supply subject to EDP rules?

3 – If it is, no exceptions apply?

If you can answer all three questions with Yes, then the EDP operator is responsible for the collection of GST for this supply.

Question # 1 – Is The Supply made Through an EDP?

Let's start with what an electronic distribution platform (EDP) actually looks like. An EDP can be a website, internet portal, gateway, online store or marketplace. The possibilities are endless.

But whatever it is, EDPs have three things in common. They (1) facilitate the supply of goods and/or (2) inbound intangible consumer supplies and (3) happen via electronic communication (s84-70 GST Act).

(1) Supply of Goods

An EDP allows buyers and merchants to make and accept offers for the supply of low value goods. Think of a website, internet portal, gateway, store or marketplace like eBay, Etsy or Amazon.

Services that merely create awareness of possible supplies – for example advertising on a business directory – or provide vouchers don't count as an EDP.

Likewise applies to services that only build or maintain the infrastructure behind an EDP. So an entity building a website that includes a shopping cart – for example – is not itself an EDP.

(2) Inbound Intangible Consumer Supplies

A supply of anything other than goods or real property to an Australian consumer is an inbound intangible consumer supply, unless the thing is wholly done in Australia or the supply is made wholly through an enterprise in Australia. If the latter is the case, then the normal 'normal' GST rules apply.

(3) Via Electronic Communication

The supply is facilitated by means of electronic communication, but it doesn't have to be delivered through the platform itself.

Electronic communication includes a website, automated email or an automated pre-recorded telephone call. Any human intervention that is not just incidental or optional would not qualify as electronic communication. A chat button would be optional, so wouldn't count as significant human interaction.

So these are the three positive limbs. And then there are 2 negative limbs being carriers and vouchers, but please listen to the episode to get more on that.

Question # 2 – Do the EDP Rules Apply?

There are three categories of supplies that are subject to the EDP rules.

- (1) Low value goods – [episode 194](#)
- (2) Inbound intangible consumer supplies – [episode 197](#)
- (3) Agreement between EDP operator and merchant to expand applications of the EDP rules

(2) Inbound Intangible Consumer Supplies

If the merchant of services or digital products provides the EDP operator with a business address outside of Australia, the EDP operator can assume that it is an inbound intangible consumer supply.

However, if the supplier gives the EDP operator a business address in Australia, then the EDP operator can assume that the supply is not an inbound intangible consumer supply. Because if the supplier is already based in

Australia, then the 'normal' GST rules apply

The EDP operator can apply this simple rule as long as they don't have information to the contrary.

(3) Agreement

A registered EDP operator may enter a written agreement with a merchant to treat all services and digital products made through the platform as being subject to the EDP rules, regardless of whether the supply is an inbound intangible consumer supply.

EDP operators might include such an agreement in their terms to streamline their processes. It might be easier to account for all supplies on the same basis and charge GST on all the supplies to Australian consumers made through the platform.

Hence, such an agreement can only be made for services and digital products, but not for the supply of goods.

Question # 3 – Is the supply NOT excluded from the EDP rules?

If the offshore supply is facilitated through the EDP via electronic communication, then the EDP rules would apply. However, the merchant and EDP operator can agree in writing to limit the scope of the EDP rules.

To agree to limit the application of the EDP rules, the EDP operator must:

- (1) Agree in writing with the merchant to limit the EDP rules
- (2) Not authorise the charge to the recipient of the supply
- (3) Not authorise delivery of the supply
- (4) Not set the terms and conditions
- (5) Identify the Merchant as Supplier

Where a supply is excluded from the EDP rules, the merchant (not the EDP operator) will be responsible for the GST.

(1) Agree in Writing

The merchant and the EDP operator have agreed in writing that the merchant is the entity liable for paying the GST for the supply.

Alternatively, the merchant and the EDP operator have agreed in writing that the merchant is the entity liable for paying GST for a class of supplies that includes the supply concerned.

(2) Does Not Authorise the Charge

The EDP operator authorises the charge to the recipient if it communicates the liability to pay to the customer, or otherwise influences whether or at what time the customer pays for the supply.

It is not necessary for the EDP operator to collect or receive payment, or that it is involved in each of the steps in the payment authorisation process.

(3) Does not Authorise Delivery

The EDP operator does not authorise delivery of the supply. An EDP operator authorises delivery of a supply if it sends approval to commence delivery, delivers the item itself or instructs the merchant or a third party to make delivery.

(4) Does Not Set Terms and Conditions

The EDP operator does not set (whether directly or indirectly) any of the terms and conditions under which the supply is made

The terms and conditions refer to the rights and obligations of the merchant and recipient, including terms such as the price and quality of items, arrangements for payment and delivery, and any guarantees or warranties.

The supply will not be excluded in situations where an EDP operator indirectly dictates the terms and conditions of the supply through its own contractual relationship with merchants using their platform.

(5) Identifies the Merchant as Supplier

A document relating to the supply issued to the recipient identifies the supply and the merchant as the supplier of that supply

Application of EDP Rules

Once the EDP rules apply, responsibility for the GST liability shifts from the supplier to the EDP operator.

However, the EDP operator will only need to account for GST on a supply if it is a taxable supply. This means that the supply must be connected with Australia and the entity must be registered or required to be registered for GST.

The merchant should not count supply made through the EDP when determining whether they are required to register.

MORE

[Low value Imported Goods](#)

[Taxable Importations](#)

[SMSF Joint Property Acquisitions](#)

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