CHAPTER 2

Outline of Schedule 3

Introduction

2.1 The goods and services tax (GST) is a tax on private consumption in Australia. Under GST legislation,[1] GST is payable on 'taxable supplies' that are 'connected with Australia'.[2]

2.2 At present, the connection with Australia is satisfied if goods are supplied within Australia; goods are supplied which are exported from or imported into or assembled in Australia; there is a supply of real property located in Australia; and the supply of anything other than goods or real property is 'a thing…done in Australia' or supplied through an enterprise which the supplier carries on in Australia.[3]

What the amendments will do

2.3 Schedule 3 inserts paragraph (c) into subsection 9-25(5) to extend the meaning of 'connected with Australia' to include a 'supply of anything other than goods or real property' if:

- the thing is a right or option to acquire another thing; and
- the supply of the other thing would be connected with Australia.[4]

2.4 A note included with the amendment says:

> Example: A holiday package for Australia that is supplied overseas might be connected with Australia'.[5]

Reverse-charging rules

2.5 Divisions 83 and 84 of the GST Act provide for the payment of GST by the recipient of 'taxable supplies' in certain instances. Under both divisions, the recipient must be registered or required to be registered for GST purposes.[6]

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1 *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2 Section 9-5. Part 2.2, Division 9 defines taxable supplies; states who is liable for the GST; and describes how the GST is calculated.

3 Section 9-25.

4 Proposed subparagraphs 9-25(5)(c)(ii) and (iii).

5 Note to proposed paragraph 9-25(5)(c).

6 Paragraph 83-5(1)(c) and subsection 84-5(1).

2.6 Amendments to Division 83 will preserve the existing provisions but add the requirement that the recipient of the supplies carries on a business in Australia. According to the Explanatory Memorandum, the amendment will ensure that there should be an Australian presence through the recipient before the supplier and the recipient enter into a reverse-charging agreement.[7]

2.7 The Explanatory Memorandum says about Division 84 that:

> The policy intent of this Division is to ensure that there will be GST imposed on supplies of things, other than goods or real property, that could be made from outside Australia if the thing is going to be used in Australia other than solely for a creditable purpose. That is, if the thing is going to be used, solely or partly, for a private purpose or for making input taxed supplies. The reverse charge mechanism overcomes the difficulties that may arise in seeking to collect the GST from an offshore supplier.[8]

2.8 Amendments to Division 84 extend the reverse-charging rules to supplies other than goods or real property that are connected with Australia because of paragraph 9-25(5)(c). Therefore the supply can either be a supply 'not connected with Australia' or a supply connected with Australia because it is the supply of a thing that is 'a right or option to acquire another thing' and 'the supply of the other thing would be connected with Australia'.[9]

2.9 Subsection 84-10(3) has been inserted to clarify that GST will be payable under section 84-5 if a supply is a taxable supply under both sections 84-5 and 9-5.

Schedule 3 commencement date

2.10 The Schedule 3 amendments will apply to supplies made on or after the day on which the bill was introduced into Parliament—that is, 10 February 2005.[10]

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7 Explanatory Memorandum, p. 21, para. 3.19.

8 Explanatory Memorandum, p. 20, para. 3.11.

9 Proposed subparagraphs 9-25(5)(3)(ii) and (iii).

10 Schedule 3, Item 17.